

Title 1
GENERAL PROVISIONS

Chapters

- 1.20 General provisions.**
1.70 Uniform electronic legal material act.

Chapter 1.20 RCW
GENERAL PROVISIONS

Sections

- 1.20.017 Display of national league of families' POW/MIA flag.

1.20.017 Display of national league of families' POW/MIA flag. (1) Each public entity must display the national league of families' POW/MIA flag along with the flag of the United States and the flag of the state upon or near the principal building of the public entity on the following days: (a) Former Prisoners of War Recognition Day on April 9th; (b) Welcome Home Vietnam Veterans Day on March 30; (c) Armed Forces Day on the third Saturday in May; (d) Memorial Day on the last Monday in May; (e) Flag Day on June 14; (f) Independence Day on July 4; (g) National Korean War Veterans Armistice Day on July 27; (h) National POW/MIA Recognition Day on the third Friday in September; (i) Veterans' Day on November 11th; and (j) Pearl Harbor Remembrance Day on December 7th. If the designated day falls on a Saturday or Sunday, then the POW/MIA flag must be displayed on the preceding Friday.

(2) The governor's veterans affairs advisory committee must provide information to public entities regarding the purchase and display of the POW/MIA flag upon request.

(3) As used in this section, "public entity" means every state agency, including each institution of higher education, and every county, city, and town. [2017 c 79 § 1; 2013 c 5 § 2; 2012 c 11 § 2; 2002 c 293 § 1.]

Chapter 1.70 RCW
UNIFORM ELECTRONIC LEGAL MATERIAL ACT

Sections

- 1.70.010 Definitions. *(Effective January 1, 2018.)*
1.70.020 Applicability. *(Effective January 1, 2018.)*
1.70.030 Legal material in official electronic record. *(Effective January 1, 2018.)*
1.70.040 Authentication of official electronic record. *(Effective January 1, 2018.)*
1.70.050 Effect of authentication. *(Effective January 1, 2018.)*
1.70.060 Preservation and security of legal material in official electronic record. *(Effective January 1, 2018.)*
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1.70.900 Short title. *(Effective January 1, 2018.)*
1.70.901 Uniformity of application and construction. *(Effective January 1, 2018.)*
1.70.902 Relation to electronic signatures in global and national commerce act. *(Effective January 1, 2018.)*
1.70.903 Effective date—2017 c 106.

1.70.010 Definitions. (Effective January 1, 2018.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) "Legal material" means, whether or not in effect:

- (a) The Washington state Constitution;
- (b) The session laws of the state of Washington;
- (c) The Revised Code of Washington;
- (d) A state agency rule that has or had the effect of law;
- (e) The Washington State Register; or
- (f) The Washington Administrative Code.

(3) "Official publisher" means:

(a) For the Washington state Constitution, the secretary of state;

(b) For session laws of the state of Washington, the statute law committee;

(c) For the Revised Code of Washington, the statute law committee;

(d) For a rule published in the Washington State Register, the statute law committee;

(e) For a rule not published in the Washington State Register, the state agency adopting the rule;

(f) For the Washington State Register, the statute law committee; or

(g) For the Washington Administrative Code, the statute law committee.

(4) "Publish" means to display, present, or release to the public, or cause to be displayed, presented, or released to the public, by the official publisher.

(5) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(6) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. [2017 c 106 § 2.]

1.70.020 Applicability. (Effective January 1, 2018.)

(1) Except as provided in subsection (2) of this section, this chapter applies to all legal material in an electronic record that is designated as official under RCW 1.70.030 and first published electronically on or after January 1, 2018.

(2) This chapter applies to issues of the Washington State Register in an official electronic record that were first published on or after May 7, 2008. [2017 c 106 § 3.]

1.70.030 Legal material in official electronic record. (Effective January 1, 2018.) (1) If an official publisher publishes legal material only in an electronic record, the publisher shall:

(a) Designate the electronic record as official; and

(b) Comply with RCW 1.70.040, 1.70.060, and 1.70.070.

(2) An official publisher that publishes legal material in an electronic record and also publishes the material in a record other than an electronic record may designate the electronic record as official if the publisher complies with RCW 1.70.040, 1.70.060, and 1.70.070. [2017 c 106 § 4.]

1.70.040 Authentication of official electronic record. (*Effective January 1, 2018.*) An official publisher of legal material in an electronic record that is designated as official under RCW 1.70.030 shall authenticate the record. To authenticate an electronic record, the publisher shall provide a method for a user to determine that the record received by the user from the publisher is unaltered from the official record published by the publisher. [2017 c 106 § 5.]

1.70.050 Effect of authentication. (*Effective January 1, 2018.*) (1) Legal material in an electronic record that is authenticated under RCW 1.70.040 is presumed to be an accurate copy of the legal material.

(2) If another state has adopted a law substantially similar to this chapter, legal material in an electronic record that is designated as official and authenticated by the official publisher in that state is presumed to be an accurate copy of the legal material.

(3) A party contesting the authentication of legal material in an electronic record authenticated under RCW 1.70.040 has the burden of proving by a preponderance of the evidence that the record is not authentic. [2017 c 106 § 6.]

1.70.060 Preservation and security of legal material in official electronic record. (*Effective January 1, 2018.*) (1) An official publisher of legal material in an electronic record that is or was designated as official under RCW 1.70.030 shall provide for the preservation and security of the record in an electronic form or a form that is not electronic.

(2) If legal material is preserved under subsection (1) of this section in an electronic record, the official publisher shall:

- (a) Ensure the integrity of the record;
- (b) Provide for backup and disaster recovery of the record; and
- (c) Ensure the continuing usability of the material. [2017 c 106 § 7.]

1.70.070 Public access to legal material in official electronic record. (*Effective January 1, 2018.*) An official publisher of legal material in an electronic record that is required to be preserved under RCW 1.70.060 shall ensure that the material is reasonably available for use by the public on a permanent basis. [2017 c 106 § 8.]

1.70.080 Standards. (*Effective January 1, 2018.*) In implementing this chapter, an official publisher of legal material in an electronic record shall consider:

- (1) Standards and practices of other jurisdictions;
- (2) The most recent standards regarding authentication of, preservation and security of, and public access to, legal material in an electronic record and other electronic records, as promulgated by national standard-setting bodies;
- (3) The needs of users of legal material in an electronic record;
- (4) The views of governmental officials and entities and other interested persons; and
- (5) To the extent practicable, methods and technologies for the authentication of, preservation and security of, and public access to, legal material which are compatible with the methods and technologies used by other official publishers in

this state and in other states that have adopted a law substantially similar to this chapter. [2017 c 106 § 9.]

1.70.090 Courts excluded. (*Effective January 1, 2018.*) This chapter does not apply to any court or agency of the judicial branch. [2017 c 106 § 12.]

1.70.900 Short title. (*Effective January 1, 2018.*) This chapter may be known and cited as the uniform electronic legal material act. [2017 c 106 § 1.]

1.70.901 Uniformity of application and construction. (*Effective January 1, 2018.*) In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2017 c 106 § 10.]

1.70.902 Relation to electronic signatures in global and national commerce act. (*Effective January 1, 2018.*) This chapter modifies, limits, and supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b). [2017 c 106 § 11.]

1.70.903 Effective date—2017 c 106. This act takes effect January 1, 2018. [2017 c 106 § 13.]

Title 2 COURTS OF RECORD

Chapters

- 2.32** Court clerks, reporters, and bailiffs.
- 2.42** Interpreters in legal proceedings.
- 2.43** Interpreters for non-English-speaking persons.
- 2.56** Administrator for the courts.
- 2.72** Office of public guardianship.

Chapter 2.32 RCW COURT CLERKS, REPORTERS, AND BAILIFFS

Sections

- 2.32.050 Powers and duties of court clerks.

2.32.050 Powers and duties of court clerks. The clerk of the supreme court, each clerk of the court of appeals, and each clerk of a superior court, has power to take and certify the proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged, and to administer oaths in every case when authorized by law; and it is the duty of the clerk of the supreme court, each clerk of the court of appeals, and of each county clerk for each of the courts for which he or she is clerk:

- (1) To keep the seal of the court and affix it in all cases where he or she is required by law;
- (2) To record the proceedings of the court;
- (3) To keep the records, files, and other books and papers appertaining to the court;

(4) To file all papers delivered to him or her for that purpose in any action or proceeding in the court as directed by court rule or statute;

(5) To attend the court of which he or she is clerk, to administer oaths, and receive the verdict of a jury in any action or proceeding therein, in the presence and under the direction of the court;

(6) To keep the minutes of the proceedings of the court, and, under the direction of the court, to enter its orders, judgments, and decrees;

(7) To authenticate by certificate or transcript, as may be required, the records, files, or proceedings of the court, or any other paper appertaining thereto and filed with him or her;

(8) To exercise the powers and perform the duties conferred and imposed upon him or her elsewhere by statute;

(9) In the performance of his or her duties to conform to the direction of the court;

(10) To publish notice of the procedures for inspection of the public records of the court. [2017 c 183 § 1; 2011 c 336 § 45; 1981 c 277 § 1; 1971 c 81 § 12; 1891 c 57 § 3; RRS § 77. Prior: Code 1881 §§ 2180, 2182, 2184.]

Rules of court: *SAR 16.*

Chapter 2.42 RCW

INTERPRETERS IN LEGAL PROCEEDINGS

Sections

2.42.050 Oath.

2.42.050 Oath. Every qualified interpreter appointed under this chapter in a judicial or administrative proceeding shall, upon receiving the interpreter's initial qualification from the office of the deaf and hard of hearing, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the court or other agency conducting the proceedings, to the best of the interpreter's skill and judgment. [2017 c 83 § 1; 1989 c 358 § 14; 1985 c 389 § 20; 1973 c 22 § 5.]

Rules of court: *ER 604.*

Additional notes found at www.leg.wa.gov

Chapter 2.43 RCW

INTERPRETERS FOR NON-ENGLISH-SPEAKING PERSONS

Sections

2.43.050 Oath.

2.43.050 Oath. (1) Upon certification or registration with the administrative office of the courts, certified or registered interpreters shall take an oath, affirming that the interpreter will make a true interpretation to the person being examined of all the proceedings in a language which the person understands, and that the interpreter will repeat the statements of the person being examined to the court or agency conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment. The administrative office of the courts shall maintain a record of the oath in

the same manner that the list of certified and registered interpreters is maintained.

(2) Before any person serving as an interpreter for the court or agency begins to interpret, the appointing authority shall require the interpreter to state the interpreter's name on the record and whether the interpreter is a certified or registered interpreter. If the interpreter is not a certified or registered interpreter, the interpreter must submit the interpreter's qualifications on the record.

(3) Before beginning to interpret, every interpreter appointed under this chapter shall take an oath unless the interpreter is a certified or registered interpreter who has taken the oath as required in subsection (1) of this section. The oath must affirm that the interpreter will make a true interpretation to the person being examined of all the proceedings in a language which the person understands, and that the interpreter will repeat the statements of the person being examined to the court or agency conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment. [2017 c 83 § 2; 2010 c 190 § 1; 1989 c 358 § 5. Formerly RCW 2.42.240.]

Additional notes found at www.leg.wa.gov

Chapter 2.56 RCW

ADMINISTRATOR FOR THE COURTS

Sections

2.56.031 Repealed.
2.56.250 Repealed.

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

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

Chapter 2.72 RCW

OFFICE OF PUBLIC GUARDIANSHIP

Sections

2.72.055 Decision-making authority training—Legal community and persons working in long-term care facilities.

2.72.055 Decision-making authority training—Legal community and persons working in long-term care facilities. The office of public guardianship, in partnership with the office of the state long-term care ombuds, must develop and offer training targeted to the legal community and persons working in long-term care facilities regarding the different kinds of decision-making authority, including guardianship, authority granted under power of attorney, and surrogate health care decision-making authority. The training must include, at a minimum, information regarding: The roles, duties, and responsibilities of different kinds of decision makers; the scope of authority and limitations on authority with respect to different kinds of decision makers; and any relevant remedial measures provided in law for activity that exceeds the scope of decision-making authority. [2017 c 268 § 4.]

Title 3

DISTRICT COURTS—COURTS OF LIMITED JURISDICTION

Chapters

- 3.62 Income of court.
3.72 Youth court.

Chapter 3.62 RCW
INCOME OF COURT

Sections

- 3.62.060 Filing fees in civil cases—Surcharge—Fees allowed as court costs.

3.62.060 Filing fees in civil cases—Surcharge—Fees allowed as court costs. (1) Clerks of the district courts shall collect the following fees for their official services:

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

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

(c) For filing a supplemental proceeding a fee of twenty dollars.

(d) For demanding a jury in a civil case a fee of one hundred twenty-five dollars to be paid by the person demanding a jury.

(e) For preparing a transcript of a judgment a fee of twenty dollars.

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

(g) At the option of the district court:

(i) For preparing a certified copy of an instrument on file or of record in the clerk's office, for the first page or portion of the first page, a fee of five dollars, and for each additional page or portion of a page, a fee of one dollar;

(ii) For authenticating or exemplifying an instrument, a fee of two dollars for each additional seal affixed;

(iii) For preparing a copy of an instrument on file or of record in the clerk's office without a seal, a fee of fifty cents per page;

(iv) When copying a document without a seal or file that is in an electronic format, a fee of twenty-five cents per page;

(v) For copies made on a compact disc, an additional fee of twenty dollars for each compact disc.

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

(i) At the option of the district court, for clerk's services such as processing ex parte orders, performing historical searches, compiling statistical reports, and conducting excep-

tional record searches, a fee not to exceed twenty dollars per hour or portion of an hour.

(j) For duplication of part or all of the electronic recording of a proceeding ten dollars per tape or other electronic storage medium.

(k) For filing any abstract of judgment or transcript of judgment from a municipal court or municipal department of a district court organized under the laws of this state a fee of forty-three dollars.

(l) At the option of the district court, a service fee of up to three dollars for the first page and one dollar for each additional page for receiving faxed documents, pursuant to Washington state rules of court, general rule 17.

(2)(a) Until July 1, 2021, in addition to the fees required to be collected under this section, clerks of the district courts must collect a surcharge of thirty dollars on all fees required to be collected under subsection (1)(a) of this section.

(b) Seventy-five percent of each surcharge collected under this subsection (2) must be remitted to the state treasurer for deposit in the judicial stabilization trust account.

(c) Twenty-five percent of each surcharge collected under this subsection (2) must be retained by the county.

(3) The fees or charges imposed under this section shall be allowed as court costs whenever a judgment for costs is awarded. [2017 3rd sp.s. c 2 § 1; 2013 2nd sp.s. c 7 § 1; 2012 c 199 § 1; 2011 1st sp.s. c 44 § 4. Prior: 2009 c 572 § 1; 2009 c 372 § 1; 2007 c 46 § 3; 2005 c 457 § 9; 2003 c 222 § 15; 1992 c 62 § 8; 1990 c 172 § 2; 1987 c 382 § 2; 1984 c 258 § 309; 1981 c 330 § 1; 1980 c 162 § 9; 1969 c 25 § 1; 1965 c 55 § 1; 1961 c 299 § 110.]

Effective date—2017 3rd sp.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2017." [2017 3rd sp.s. c 2 § 4.]

Effective date—2013 2nd sp.s. c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013." [2013 2nd sp.s. c 7 § 4.]

Effective date—2011 1st sp.s. c 44: See note following RCW 3.62.020.

Effective date—2009 c 572: See note following RCW 43.79.505.

Intent—2005 c 457: See note following RCW 43.08.250.

Intent—1984 c 258: See note following RCW 3.34.130.

Additional notes found at www.leg.wa.gov

Chapter 3.72 RCW
YOUTH COURT

Sections

- 3.72.005 Definitions.
3.72.010 Youth court creation—Jurisdiction.
3.72.020 Youth court agreement.
3.72.030 Purpose and limitations of youth courts, student courts.
3.72.040 Youth court programs.

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

(1) "Court" when used without further qualification means the district court under chapter 3.30 RCW, the municipal department under chapter 3.46 RCW, or the municipal court under chapter 3.50 or 35.20 RCW.

(2) "Traffic infraction" means those acts defined as traffic infractions by RCW 46.63.020.

(3) "Transit infraction" means an infraction issued by a transit authority as defined in RCW 9.91.025(2)(c), including those infractions authorized under RCW 35.58.580, 36.57A.230, and 81.112.220.

(4) "Youth court" means an alternative method of hearing and disposing of traffic infractions for juveniles age sixteen or seventeen. [2017 c 9 § 1; 2002 c 237 § 1.]

3.72.010 Youth court creation—Jurisdiction. (1) A court created under chapter 3.30, 3.46, 3.50, or 35.20 RCW may create a youth court. The youth court shall have jurisdiction over traffic and transit infractions alleged to have been committed by juveniles age sixteen or seventeen. The court may refer a juvenile to the youth court upon request of any party or upon its own motion. However, a juvenile shall not be required under this section to have his or her traffic or transit infraction referred to or disposed of by a youth court.

(2) To be referred to a youth court pursuant to this chapter, a juvenile:

(a) May not have had a prior traffic or transit infraction referred to a youth court;

(b) May not be under the jurisdiction of any court for a violation of any provision of Title 46 RCW or for unlawful transit conduct under RCW 9.91.025;

(c) May not have any convictions for a violation of any provision of Title 46 RCW or for unlawful transit conduct under RCW 9.91.025; and

(d) Must acknowledge that there is a high likelihood that he or she would be found to have committed the traffic or transit infraction.

(3)(a) Nothing in this chapter shall interfere with the ability of juvenile courts to refer matters to youth courts that have been established to provide a diversion for matters involving juvenile offenders who are eligible for diversion pursuant to RCW 13.40.070 (6) and (8) and who agree, along with a parent, guardian, or legal custodian, to comply with the provisions of RCW 13.40.600.

(b) Nothing in this chapter shall interfere with the ability of student courts to work with students who violate school rules and policies pursuant to RCW 28A.300.420. [2017 c 9 § 2; 2005 c 73 § 1; 2002 c 237 § 2.]

3.72.020 Youth court agreement. (1) A youth court agreement shall be a contract between a juvenile accused of a traffic or transit infraction and a court whereby the juvenile agrees to fulfill certain conditions imposed by a youth court in lieu of a determination that a traffic or transit infraction occurred. Such agreements may be entered into only after the law enforcement authority has determined that probable cause exists to believe that a traffic or transit infraction has been committed and that the juvenile committed it. A youth court agreement shall be reduced to writing and signed by the court and the youth accepting the terms of the agreement. Such agreements shall be entered into as expeditiously as possible.

(2) Conditions imposed on a juvenile by a youth court shall be limited to one or more of the following:

(a) Community service not to exceed one hundred fifty hours, not to be performed during school hours if the juvenile is attending school;

(b) Attendance at defensive driving school or driver improvement education classes or, in the discretion of the court, a like means of fulfilling this condition. The state shall not be liable for costs resulting from the youth court or the conditions imposed upon the juvenile by the youth court;

(c) A monetary penalty, not to exceed one hundred dollars. All monetary penalties assessed and collected under this section shall be deposited and distributed in the same manner as costs, fines, forfeitures, and penalties are assessed and collected under RCW 2.68.040, *3.46.120, 3.50.100, 3.62.020, 3.62.040, 35.20.220, and 46.63.110(7), regardless of the juvenile's successful or unsuccessful completion of the youth court agreement;

(d) Requirements to remain during specified hours at home, school, or work, and restrictions on leaving or entering specified geographical areas;

(e) Participating in law-related education classes;

(f) Providing periodic reports to the youth court or the court;

(g) Participating in mentoring programs;

(h) Serving as a participant in future youth court proceedings;

(i) Writing apology letters; or

(j) Writing essays.

(3) Youth courts may require that the youth pay any costs associated with conditions imposed upon the youth by the youth court.

(a) A youth court disposition shall be completed within one hundred eighty days from the date of referral.

(b) The court, as specified in RCW 3.72.010, shall monitor the successful or unsuccessful completion of the disposition.

(4) A youth court agreement may extend beyond the eighteenth birthday of the youth.

(5) Any juvenile who is, or may be, referred to a youth court shall be afforded due process in all contacts with the youth court regardless of whether the juvenile is accepted by the youth court or whether the youth court program is successfully completed. Such due process shall include, but not be limited to, the following:

(a) A written agreement shall be executed stating all conditions in clearly understandable language and the action that will be taken by the court upon successful or unsuccessful completion of the agreement;

(b) Violation of the terms of the agreement shall be the only grounds for termination.

(6) The youth court shall, subject to available funds, be responsible for providing interpreters when juveniles need interpreters to effectively communicate during youth court hearings or negotiations.

(7) The court shall be responsible for advising a juvenile of his or her rights as provided in this chapter.

(8) When a juvenile enters into a youth court agreement, the court may receive only the following information for dispositional purposes:

(a) The fact that a traffic or transit infraction was alleged to have been committed;

(b) The fact that a youth court agreement was entered into;

(c) The juvenile's obligations under such agreement;

(d) Whether the juvenile performed his or her obligations under such agreement; and

(e) The facts of the alleged traffic or transit infraction.

(9) A court may refuse to enter into a youth court agreement with a juvenile. When a court refuses to enter a youth court agreement with a juvenile, it shall set the matter for hearing in accordance with all applicable court rules and statutory provisions governing the hearing and disposition of traffic and transit infractions.

(10) If a monetary penalty required by a youth court agreement cannot reasonably be paid due to a lack of financial resources of the youth, the court may convert any or all of the monetary penalty into community service. The modification of the youth court agreement shall be in writing and signed by the juvenile and the court. The number of hours of community service in lieu of a monetary penalty shall be converted at the rate of the prevailing state minimum wage per hour. [2017 c 9 § 3; 2002 c 237 § 3.]

***Reviser's note:** RCW 3.46.120 was repealed by 2008 c 227 § 12, effective July 1, 2008.

3.72.030 Purpose and limitations of youth courts, student courts. Youth courts provide a disposition method for cases involving juveniles alleged to have committed traffic or transit infractions. Youth courts may also provide diversion in cases involving juvenile offenders who are eligible for diversion pursuant to RCW 13.40.070 (6) and (8) and who agree, along with a parent, guardian, or legal custodian, to comply with the provisions of RCW 13.40.600. Student court programs may also be available in schools to work with students who violate school rules and policies pursuant to RCW 28A.300.420. Youth court participants, under the supervision of the court or an adult coordinator, may serve in various capacities within the youth court, acting in the role of jurors, lawyers, bailiffs, clerks, and judges. Youth courts and student courts have no jurisdiction except as provided for in this chapter, chapter 13.40 RCW, and RCW 28A.300.420. Youth courts and student courts are not courts established under Article IV of the state Constitution. [2017 c 9 § 4; 2005 c 73 § 2; 2002 c 237 § 4.]

3.72.040 Youth court programs. The administrative office of the courts shall encourage the courts to work with cities, counties, and schools to implement, expand, or use youth court programs for juveniles who commit traffic or transit infractions. Program operations of youth court programs may be funded by government and private grants. Youth court programs are limited to those that:

(1) Are developed using the guidelines for creating and operating youth court programs developed by nationally recognized experts in youth court projects;

(2) Target youth ages sixteen and seventeen who are alleged to have committed a traffic or transit infraction; and

(3) Emphasize the following principles:

(a) Youth must be held accountable for their problem behavior;

(b) Youth must be educated about the impact their actions have on themselves and others including their victims, their families, and their community;

(c) Youth must develop skills to resolve problems with their peers more effectively; and

(d) Youth should be provided a meaningful forum to practice and enhance newly developed skills. [2017 c 9 § 5; 2002 c 237 § 5.]

Title 4

CIVIL PROCEDURE

Chapters

4.12 Venue—Jurisdiction.

4.24 Special rights of action and special immunities.

Chapter 4.12 RCW

VENUE—JURISDICTION

Sections

4.12.040 Disqualification of judge, transfer to another department, visiting judge—Change of venue generally, criminal cases.

4.12.050 Notice of disqualification.

4.12.040 Disqualification of judge, transfer to another department, visiting judge—Change of venue generally, criminal cases. (1) No judge of a superior court of the state of Washington shall sit to hear or try any action or proceeding if that judge has been disqualified pursuant to RCW 4.12.050. In such case the presiding judge in judicial districts where there is more than one judge shall forthwith transfer the action to another department of the same court, or call in a judge from some other court. In all judicial districts where there is only one judge, a certified copy of the notice of disqualification filed in the cause shall be transmitted by the clerk of the superior court to the clerk of the superior court designated by the chief justice of the supreme court. Upon receipt the clerk of said superior court shall transmit the forwarded notice to the presiding judge who shall direct a visiting judge to hear and try such action as soon as convenient and practical.

(2) The presiding judge in judicial districts where there is more than one judge, or the presiding judge of judicial districts where there is only one judge, may send a case for trial to another court if the convenience of witnesses or the ends of justice will not be interfered with by such a course and the action is of such a character that a change of venue may be ordered: PROVIDED, That in criminal prosecutions the case shall not be sent for trial to any court outside the county unless the accused shall waive his or her right to a trial by a jury of the county in which the offense is alleged to have been committed.

(3) This section does not apply to water right adjudications filed under chapter 90.03 or 90.44 RCW. Disqualification of judges in water right adjudications is governed by RCW 90.03.620. [2017 c 42 § 1; 2009 c 332 § 19; 1989 c 15 § 1; 1961 c 303 § 1; 1927 c 145 § 1; 1911 c 121 § 1; RRS § 209-1.]

Application—2009 c 332: See note following RCW 90.03.110.

Criminal proceedings, venue and jurisdiction: Chapter 10.25 RCW.

4.12.050 Notice of disqualification. (1) Any party to or any attorney appearing in any action or proceeding in a superior court may disqualify a judge from hearing the matter, subject to these limitations:

(a) Notice of disqualification must be filed and called to the attention of the judge before the judge has made any discretionary ruling in the case.

(b) In counties with only one resident judge, the notice of disqualification must be filed not later than the day on which the case is called to be set for trial.

(c) A judge who has been disqualified under this section may decide such issues as the parties agree in writing or on the record in open court.

(d) No party or attorney is permitted to disqualify more than one judge in any matter under this section and RCW 4.12.040.

(2) Even though they may involve discretion, the following actions by a judge do not cause the loss of the right to file a notice of disqualification against that judge: Arranging the calendar, setting a date for a hearing or trial, ruling on an agreed continuance, issuing an arrest warrant, presiding over criminal preliminary proceedings under CrR 3.2.1, arraignment of the accused, fixing bail, and presiding over juvenile detention and release hearings under JuCR 7.3 and 7.4.

(3) This section does not apply to water right adjudications filed under chapter 90.03 or 90.44 RCW. Disqualification of judges in water right adjudications is governed by RCW 90.03.620. [2017 c 42 § 2; 2009 c 332 § 20; 1941 c 148 § 1; 1927 c 145 § 2; 1911 c 121 § 2; Rem. Supp. 1941 § 209-2.]

Rules of court: *Demurrers abolished—CR 7(c).*

Application—2009 c 332: See note following RCW 90.03.110.

Chapter 4.24 RCW SPECIAL RIGHTS OF ACTION AND SPECIAL IMMUNITIES

Sections

4.24.210	Liability of owners or others in possession of land and water areas for injuries to recreation users—Known dangerous artificial latent conditions—Other limitations.
4.24.355	Action by person removed from premises pursuant to RCW 9A.52.105—Damages, costs, attorneys' fees.
4.24.595	Liability immunity—Emergent placement investigations of child abuse or neglect—Shelter care and other dependency orders. (<i>Effective July 1, 2018.</i>)
4.24.830	Agritourism—Definitions.
4.24.832	Agritourism—Immunity.
4.24.835	Agritourism—Warning notice.

Public benefit hospital entity joint self-insurance program filings and publications, civil immunity: RCW 48.190.120.

4.24.210 Liability of owners or others in possession of land and water areas for injuries to recreation users—Known dangerous artificial latent conditions—Other limitations. (1) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners, hydroelectric project owners, or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal

use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, aviation activities including, but not limited to, the operation of airplanes, ultra-light airplanes, hang gliders, parachutes, and paragliders, rock climbing, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, kayaking, canoeing, rafting, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

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

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

(4)(a) Nothing in this section shall prevent the liability of a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted.

(i) A fixed anchor used in rock climbing and put in place by someone other than a landowner is not a known dangerous artificial latent condition and a landowner under subsection (1) of this section shall not be liable for unintentional injuries resulting from the condition or use of such an anchor.

(ii) Releasing water or flows and making waterways or channels available for kayaking, canoeing, or rafting purposes pursuant to and in substantial compliance with a hydroelectric license issued by the federal energy regulatory commission, and making adjacent lands available for purposes of allowing viewing of such activities, does not create a known dangerous artificial latent condition and hydroelectric project owners under subsection (1) of this section shall not be liable for unintentional injuries to the recreational users and observers resulting from such releases and activities.

(b) Nothing in RCW 4.24.200 and this section limits or expands in any way the doctrine of attractive nuisance.

(c) Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

(5) For purposes of this section, the following are not fees:

(a) A license or permit issued for statewide use under authority of chapter 79A.05 RCW or Title 77 RCW;

(b) A pass or permit issued under RCW 79A.80.020, 79A.80.030, or 79A.80.040;

(c) A daily charge not to exceed twenty dollars per person, per day, for access to a publicly owned ORV sports park, as defined in RCW 46.09.310, or other public facility accessed by a highway, street, or nonhighway road for the purposes of off-road vehicle use; and

(d) Payments to landowners for public access from state, local, or nonprofit organizations established under department of fish and wildlife cooperative public access agreements if the landowner does not charge a fee to access the land subject to the cooperative agreement. [2017 c 245 § 1; 2012 c 15 § 1. Prior: 2011 c 320 § 11; 2011 c 171 § 2; 2011 c 53 § 1; 2006 c 212 § 6; prior: 2003 c 39 § 2; 2003 c 16 § 2; 1997 c 26 § 1; 1992 c 52 § 1; prior: 1991 c 69 § 1; 1991 c 50 § 1; 1980 c 111 § 1; 1979 c 53 § 1; 1972 ex.s. c 153 § 17; 1969 ex.s. c 24 § 2; 1967 c 216 § 2.]

Findings—Intent—2011 c 320: See RCW 79A.80.005.

Effective date—2011 c 320: See note following RCW 79A.80.005.

Intent—2011 c 171: "This act is intended to reconcile and conform amendments made in chapter 161, Laws of 2010 with other legislation passed during the 2010 legislative sessions, as well as provide technical amendments to codified sections affected by chapter 161, Laws of 2010. Any statutory changes made by this act should be interpreted as technical in nature and not be interpreted to have any substantive policy or legal implications." [2011 c 171 § 1.]

Effective date—2011 c 171: "Except for section 129 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 c 171 § 142.]

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

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

Off-road and nonhighway vehicles: Chapter 46.09 RCW.

Snowmobiles: Chapter 46.10 RCW.

4.24.355 Action by person removed from premises pursuant to RCW 9A.52.105—Damages, costs, attorneys' fees. All persons removed from premises pursuant to RCW 9A.52.105 on the basis of false statements made by a declarant pursuant to RCW 9A.52.115 shall have a cause of action to recover from the declarant for actual damages, together with costs and reasonable attorneys' fees. [2017 c 284 § 3.]

4.24.595 Liability immunity—Emergent placement investigations of child abuse or neglect—Shelter care and other dependency orders. (Effective July 1, 2018.) (1) Governmental entities, and their officers, agents, employees, and volunteers, are not liable in tort for any of their acts or omissions in emergent placement investigations of child abuse or neglect under chapter 26.44 RCW including, but not limited to, any determination to leave a child with a parent, custodian, or guardian, or to return a child to a parent, custodian, or guardian, unless the act or omission constitutes gross negligence. Emergent placement investigations are those conducted prior to a shelter care hearing under RCW 13.34.065.

[2017 RCW Supp—page 8]

(2) The department of children, youth, and families and its employees shall comply with the orders of the court, including shelter care and other dependency orders, and are not liable for acts performed to comply with such court orders. In providing reports and recommendations to the court, employees of the department of children, youth, and families are entitled to the same witness immunity as would be provided to any other witness. [2017 3rd sp.s. c 6 § 301; 2012 c 259 § 13.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

4.24.830 Agritourism—Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agritourism activity" means any activity carried out on a farm or ranch whose primary business activity is agriculture or ranching and that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities including, but not limited to: Farming; ranching; historic, cultural, and on-site educational programs; recreational farming programs that may include on-site hospitality services; guided and self-guided tours; petting zoos; farm festivals; corn mazes; harvest-your-own operations; hayrides; barn parties; horseback riding; fishing; and camping.

(2) "Agritourism professional" means any person in the business of providing one or more agritourism activities, whether or not for compensation.

(3) "Inherent risks of agritourism activity" means those dangers or conditions that are an integral part of an agritourism activity including certain hazards, such as surface and subsurface conditions, natural conditions of land, vegetation, waters, the behavior of wild or domestic animals, and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity, unless the participant acting in a negligent manner is a minor or is under the influence of alcohol or drugs.

(4) "Participant" means any person, other than the agritourism professional, who engages in an agritourism activity.

(5) "Person" means an individual, fiduciary, firm, association, partnership, limited liability company, corporation, unit of government, or any other group acting as a unit. [2017 c 227 § 2.]

Finding—2017 c 227: See note following RCW 4.24.832.

4.24.832 Agritourism—Immunity. (1)(a) Except as provided in subsection (2) of this section, an agritourism professional is not liable for injury, loss, damage, or death of a participant resulting exclusively from any of the inherent risks of agritourism activities.

(b) Except as provided in subsection (2) of this section, no participant or participant's representative may pursue an

action or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities.

(c) In any action for damages against an agritourism professional for agritourism activity, the agritourism professional must plead the affirmative defense of assumption of the risk of agritourism activity by the participant.

(2) Nothing in subsection (1) of this section prevents or limits the liability of an agritourism professional if the agritourism professional does any one or more of the following:

(a) Commits an act or omission that is grossly negligent or constitutes willful or wanton disregard for the safety of the participant and that act or omission proximately causes injury, damage, or death to the participant.

(b) Has actual knowledge or reasonably should have known of an existing dangerous condition on the land, facilities, or equipment used in the activity or the dangerous propensity of a particular animal used in such an activity and does not make the danger known to the participant and the danger proximately causes injury, damage, or death to the participant.

(c) Permits minor participants to use facilities or engage in agritourism activities that are not reasonably appropriate for their age. This provision shall not be interpreted to relieve a parent or guardian of a minor participant of the duty to reasonably supervise the minor's participation in agritourism activities, including assessing whether the minor's participation in an agritourism activity is reasonably appropriate for his or her age.

(d) Knowingly permits participants to use facilities or engage in agritourism activities while under the influence of alcohol or drugs.

(e) Fails to warn participants as required by RCW 4.24.835.

(3) Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law. [2017 c 227 § 3.]

Finding—2017 c 227: "The legislature finds that agriculture plays a substantial role in the economy, culture, and history of Washington state. As an increasing number of Washington's citizens are removed from day-to-day agricultural experiences, agritourism provides a valuable opportunity for the public to interact with, experience, and understand agriculture. In addition, agritourism opportunities provide valuable options for farmers and ranchers and rural residents to maintain their operations and continue a traditional economic development opportunity in rural areas. Inherent risks exist on farms and ranches, some of which cannot be reasonably eliminated. Uncertainty of potential liability associated with inherent risks has a negative impact on the establishment and success of agritourism operations." [2017 c 227 § 1.]

4.24.835 Agritourism—Warning notice. (1) Every agritourism professional must post and maintain signs that contain the warning notice specified in subsection (2) of this section. The sign must be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice must consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an agritourism professional for the providing of professional services, instruction, or the rental of equipment to a participant, whether or not the contract involves agritourism activities on or off the location or at the site of the agritourism activity,

must contain in clearly readable print the warning notice specified in subsection (2) of this section.

(2) The sign and contracts described in subsection (1) of this section must contain the following notice of warning:

"WARNING

Under Washington state law, there is limited liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such an injury or death results exclusively from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. We are required to ensure that in any activity involving minor children, only age-appropriate access to activities, equipment, and animals is permitted. You are assuming the risk of participating in this agritourism activity."

(3) Failure to comply with the requirements concerning warning signs and notices provided in this section prohibits an agritourism professional from invoking the privilege of immunity provided by this section, section 1, chapter 227, Laws of 2017, and RCW 4.24.830 and 4.24.832 and may be introduced as evidence in any claim for damages. [2017 c 227 § 4.]

Finding—2017 c 227: See note following RCW 4.24.832.

**Title 5
EVIDENCE**

Chapters

5.45 Uniform business records as evidence act.

Chapter 5.45 RCW

UNIFORM BUSINESS RECORDS AS EVIDENCE ACT

Sections

5.45.920 Decodified.

5.45.920 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Title 7
SPECIAL PROCEEDINGS AND ACTIONS**

Chapters

7.36 Habeas corpus.
7.68 Victims of crimes—Compensation, assistance.
7.70 Actions for injuries resulting from health care.
7.90 Sexual assault protection order act.
7.94 Extreme risk protection order act.

**Chapter 7.36 RCW
HABEAS CORPUS**

Sections

7.36.260 Waiver of fees—Service of writ of habeas corpus issued for return of a child.

7.36.260 Waiver of fees—Service of writ of habeas corpus issued for return of a child. Notwithstanding RCW 36.18.040, the sheriff may waive fees associated with service of a writ of habeas corpus that was issued for the return of a child when the person who was granted the writ is, by reason of poverty, unable to pay the cost of service. [2017 c 272 § 6.]

Finding—2017 c 272: See note following RCW 9A.36.041.

Chapter 7.68 RCW

VICTIMS OF CRIMES—COMPENSATION, ASSISTANCE

Sections

7.68.020	Definitions.
7.68.030	Duties of the director—General provisions—Testimony by medical providers.
7.68.031	Sending notices, orders, payments to claimants.
7.68.062	Application for compensation—Treating provider shall provide assistance.
7.68.070	Benefits—Right to and amount—Limitations.
7.68.080	Reimbursement of costs for transportation, medical services, counseling—Medical examinations—Regulatory inspection program.
7.68.111	Payment of compensation after appeal—Enforcement of order—Penalty.
7.68.101	Commercially sexually exploited children statewide coordinating committee. (<i>Expires June 30, 2023.</i>)

7.68.020 Definitions. The following words and phrases as used in this chapter have the meanings set forth in this section unless the context otherwise requires.

(1) "Accredited school" means a school or course of instruction which is:

(a) Approved by the state superintendent of public instruction, the state board of education, or the state board for community and technical colleges; or

(b) Regulated or licensed as to course content by any agency of the state or under any occupational licensing act of the state, or recognized by the apprenticeship council under an agreement registered with the apprenticeship council pursuant to chapter 49.04 RCW.

(2) "Average monthly wage" means the average annual wage as determined under RCW 50.04.355 as now or hereafter amended divided by twelve.

(3) "Beneficiary" means a husband, wife, registered domestic partner, or child of a victim in whom shall vest a right to receive payment under this chapter, except that a husband or wife of an injured victim, living separate and apart in a state of abandonment, regardless of the party responsible therefor, for more than one year at the time of the injury or subsequently, shall not be a beneficiary. A spouse who has lived separate and apart from the other spouse for the period of two years and who has not, during that time, received or attempted by process of law to collect funds for maintenance, shall be deemed living in a state of abandonment.

(4) "Child" means every natural born child, posthumous child, stepchild, child legally adopted prior to the injury, child born after the injury where conception occurred prior to the injury, and dependent child in the legal custody and control of the victim, all while under the age of eighteen years, or under the age of twenty-three years while permanently enrolled as a full-time student in an accredited school, and

over the age of eighteen years if the child is a dependent as a result of a physical, mental, or sensory handicap.

(5) "Consumer price index" means the consumer price index compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items must be used.

(6) "Criminal act" means an act committed or attempted in this state which is: (a) Punishable as a federal offense that is comparable to a felony or gross misdemeanor in this state; (b) punishable as a felony or gross misdemeanor under the laws of this state; (c) an act committed outside the state of Washington against a resident of the state of Washington which would be compensable had it occurred inside this state and the crime occurred in a state which does not have a crime victims' compensation program, for which the victim is eligible as set forth in the Washington compensation law; or (d) trafficking as defined in RCW 9A.40.100. A "criminal act" does not include the following:

(i) The operation of a motor vehicle, motorcycle, train, boat, or aircraft in violation of law unless:

(A) The injury or death was intentionally inflicted;

(B) The operation thereof was part of the commission of another nonvehicular criminal act as defined in this section;

(C) The death or injury was the result of the operation of a motor vehicle after July 24, 1983, and one of the following applies:

(I) A preponderance of the evidence establishes that the death was the result of vehicular homicide under RCW 46.61.520;

(II) The victim submits a copy of a certificate of probable cause filed by the prosecutor stating that a vehicular assault under RCW 46.61.522 occurred;

(III) Charges have been filed against the defendant for vehicular assault under RCW 46.61.522;

(IV) A conviction of vehicular assault under RCW 46.61.522 has been obtained; or

(V) In cases where a probable criminal defendant has died in perpetration of vehicular assault or, in cases where the perpetrator of the vehicular assault is unascertainable because he or she left the scene of the accident in violation of RCW 46.52.020 or, because of physical or mental infirmity or disability the perpetrator is incapable of standing trial for vehicular assault, the department may, by a preponderance of the evidence, establish that a vehicular assault had been committed and authorize benefits;

(D) The injury or death was caused by a driver in violation of RCW 46.61.502; or

(E) The injury or death was caused by a driver in violation of RCW 46.61.655(7)(a), failure to secure a load in the first degree;

(ii) Neither an acquittal in a criminal prosecution nor the absence of any such prosecution is admissible in any claim or proceeding under this chapter as evidence of the noncriminal character of the acts giving rise to such claim or proceeding, except as provided for in (d)(i)(C) of this subsection;

(iii) Evidence of a criminal conviction arising from acts which are the basis for a claim or proceeding under this chap-

ter is admissible in such claim or proceeding for the limited purpose of proving the criminal character of the acts; and

(iv) Acts which, but for the insanity or mental irresponsibility of the perpetrator, would constitute criminal conduct are deemed to be criminal conduct within the meaning of this chapter.

(7) "Department" means the department of labor and industries.

(8) "Financial support for lost wages" means a partial replacement of lost wages due to a temporary or permanent total disability.

(9) "Gainfully employed" means engaging on a regular and continuous basis in a lawful activity from which a person derives a livelihood.

(10) "Injury" means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom.

(11) "Invalid" means one who is physically or mentally incapacitated from earning wages.

(12) "Permanent total disability" means loss of both legs, or arms, or one leg and one arm, total loss of eyesight, paralysis, or other condition permanently incapacitating the victim from performing any work at any gainful occupation.

(13) "Private insurance" means any source of recompense provided by contract available as a result of the claimed injury or death at the time of such injury or death, or which becomes available any time thereafter.

(14) "Public insurance" means any source of recompense provided by statute, state or federal, available as a result of the claimed injury or death at the time of such injury or death, or which becomes available any time thereafter.

(15) "Temporary total disability" means any condition that temporarily incapacitates a victim from performing any type of gainful employment as certified by the victim's attending physician.

(16) "Victim" means a person who suffers bodily injury or death as a proximate result of a criminal act of another person, the victim's own good faith and reasonable effort to prevent a criminal act, or his or her good faith effort to apprehend a person reasonably suspected of engaging in a criminal act. For the purposes of receiving benefits pursuant to this chapter, "victim" is interchangeable with "employee" or "worker" as defined in chapter 51.08 RCW as now or hereafter amended. [2017 c 235 § 1; 2011 c 346 § 101; 2006 c 268 § 1; 2002 c 10 § 3; 2001 c 136 § 1; 1997 c 249 § 1; 1990 c 73 § 1; 1987 c 281 § 6; 1985 c 443 § 11; 1983 c 239 § 4; 1980 c 156 § 2; 1977 ex.s. c 302 § 2; 1975 1st ex.s. c 176 § 1; 1973 1st ex.s. c 122 § 2.]

Intent—2011 c 346: "It is the intent of the legislature that eligible victims of crime who suffer bodily injury or death as a result of violent crime receive benefits under the crime victims' compensation program. To ensure benefits are provided, within funds available, to the largest number of eligible victims, it is imperative to streamline and provide flexibility in the administration of the program. Therefore, the legislature intends to simplify the administration of the benefits and services provided to victims of crime by separating the administration of the benefits and services provided to crime victims from the workers' compensation program under Title 51 RCW. These changes are intended to clarify that the limited funding available to help victims of crimes will be managed to help the largest number of crime victims as possible." [2011 c 346 § 1.]

Retroactive application—2011 c 346: "This act applies retroactively for claims of victims of criminal acts that occurred on or after July 1, 1981,

in which a closing order has not been issued or become final and binding as of July 1, 2011, except that victims receiving time loss or loss of support on or before July 1, 2011, may continue to receive time loss at the rate established prior to July 1, 2011. Aggravation applications filed by crime victims who had claims prior to July 1, 2011, will be adjudicated under the laws in effect on or after July 1, 2011. This act does not affect the retroactive application of chapter 122, Laws of 2010." [2011 c 346 § 802.]

Effective date—2011 c 346: "Except for *sections 402 and 503 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 c 346 § 806.]

***Reviser's note:** Sections 402 and 503 of this act were vetoed by the governor.

Findings—Purpose—2002 c 10: "(1) The legislature finds that:

(a) The trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today;

(b) At least seven hundred thousand persons annually, primarily women and children, are trafficked within or across international borders;

(c) Approximately fifty thousand women and children are trafficked into the United States each year;

(d) Trafficking in persons is not limited to the sex industry, and includes forced labor with significant violations of labor, public health, and human rights standards worldwide;

(e) Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin; and

(f) There are not adequate services and facilities to meet the needs of trafficking victims regarding health care, housing, education, and legal assistance, which safely reintegrate trafficking victims into their home countries.

(2) The legislature declares that the purpose of this act is to provide a coordinated, humane response for victims of human trafficking through a review of existing programs and clarification of existing options for such victims." [2002 c 10 § 1.]

Legislative intent—"Public or private insurance"—1980 c 156: "Sections 2 through 4 of this 1980 act are required to clarify the legislative intent concerning the phrase "public or private insurance" as used in section 13, chapter 122, Laws of 1973 1st ex. sess. and RCW 7.68.130 which was the subject of *Wagner v. Labor & Indus.*, 92 Wn.2d 463 (1979). It has continuously been the legislative intent to include as "public insurance" both state and federal statutory social welfare and insurance schemes which make available to victims or their beneficiaries recompense as a result of the claimed injury or death, such as but not limited to old age and survivors insurance, medicare, medicaid, benefits under the veterans' benefits act, longshore and harbor workers act, industrial insurance act, law enforcement officers' and firefighters' retirement system act, Washington public employees' retirement system act, teachers' retirement system act, and firemen's relief and pension act. "Private insurance" continuously has been intended to include sources of recompense available by contract, such as but not limited to policies insuring a victim's life or disability." [1980 c 156 § 1.]

Additional notes found at www.leg.wa.gov

7.68.030 Duties of the director—General provisions—Testimony by medical providers. (1) It shall be the duty of the director to establish and administer a program of benefits to innocent victims of criminal acts within the terms and limitations of this chapter. The director may apply for and, subject to appropriation, expend federal funds under Public Law 98-473 and any other federal program providing financial assistance to state crime victim compensation programs. The federal funds shall be deposited in the state general fund and may be expended only for purposes authorized by applicable federal law.

(2) The director shall:

(a) Establish and adopt rules governing the administration of this chapter in accordance with chapter 34.05 RCW;

(b) Regulate the proof of accident and extent thereof, the proof of death, and the proof of relationship and the extent of dependency;

(c) Supervise the medical, surgical, and hospital treatment to the intent that it may be in all cases efficient and up to the recognized standard of modern surgery;

(d) Issue proper receipts for moneys received and certificates for benefits accrued or accruing;

(e) Designate a medical director who is licensed under chapter 18.57 or 18.71 RCW;

(f) Supervise the providing of prompt and efficient care and treatment, including care provided by physician assistants governed by the provisions of chapters 18.57A and 18.71A RCW, acting under a supervising physician, including chiropractic care, and including care provided by licensed advanced registered nurse practitioners, to victims at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to that end shall, from time to time, establish and adopt and supervise the administration of printed forms, electronic communications, rules, regulations, and practices for the furnishing of such care and treatment. The medical coverage decisions of the department do not constitute a "rule" as used in RCW 34.05.010(16), nor are such decisions subject to the rule-making provisions of chapter 34.05 RCW except that criteria for establishing medical coverage decisions shall be adopted by rule. The department may recommend to a victim particular health care services and providers where specialized treatment is indicated or where cost-effective payment levels or rates are obtained by the department, and the department may enter into contracts for goods and services including, but not limited to, durable medical equipment so long as statewide access to quality service is maintained for injured victims;

(g) In consultation with interested persons, establish and, in his or her discretion, periodically change as may be necessary, and make available a fee schedule of the maximum charges to be made by any physician, surgeon, chiropractor, hospital, druggist, licensed advanced registered nurse practitioner, and physician assistants as defined in chapters 18.57A and 18.71A RCW, acting under a supervising physician or other agency or person rendering services to victims. The department shall coordinate with other state purchasers of health care services to establish as much consistency and uniformity in billing and coding practices as possible, taking into account the unique requirements and differences between programs. No service covered under this title, including services provided to victims, whether aliens or other victims, who are not residing in the United States at the time of receiving the services, shall be charged or paid at a rate or rates exceeding those specified in such fee schedule, and no contract providing for greater fees shall be valid as to the excess. The establishment of such a schedule, exclusive of conversion factors, does not constitute "agency action" as used in RCW 34.05.010(3), nor does such a fee schedule constitute a "rule" as used in RCW 34.05.010(16). Payments for providers' services under the fee schedule established pursuant to this subsection (2) may not be less than payments provided for comparable services under the workers' compensation program under Title 51 RCW, provided:

(i) If the department, using caseload estimates, projects a deficit in funding for the program by July 15th for the following fiscal year, the director shall notify the governor and the

appropriate committees of the legislature and request funding sufficient to continue payments to not less than payments provided for comparable services under the workers' compensation program. If sufficient funding is not provided to continue payments to not less than payments provided for comparable services under the workers' compensation program, the director shall reduce the payments under the fee schedule for the following fiscal year based on caseload estimates and available funding, except payments may not be reduced to less than seventy percent of payments for comparable services under the workers' compensation program;

(ii) If an unforeseeable catastrophic event results in insufficient funding to continue payments to not less than payments provided for comparable services under the workers' compensation program, the director shall reduce the payments under the fee schedule to not less than seventy percent of payments provided for comparable services under the workers' compensation program, provided that the reduction may not be more than necessary to fund benefits under the program; and

(iii) Once sufficient funding is provided or otherwise available, the director shall increase the payments under the fee schedule to not less than payments provided for comparable services under the workers' compensation program;

(h) Make a record of the commencement of every disability and the termination thereof and, when bills are rendered for the care and treatment of injured victims, shall approve and pay those which conform to the adopted rules, regulations, established fee schedules, and practices of the director and may reject any bill or item thereof incurred in violation of the principles laid down in this section or the rules, regulations, or the established fee schedules and rules and regulations adopted under it.

(3) The director and his or her authorized assistants:

(a) Have power to issue subpoenas to enforce the attendance and testimony of witnesses and the production and examination of books, papers, photographs, tapes, and records before the department in connection with any claim made to the department or any billing submitted to the department. The superior court has the power to enforce any such subpoena by proper proceedings;

(b)(i) May apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed records or documents are located, or in Thurston county. The application must (A) state that an order is sought pursuant to this subsection; (B) adequately specify the records, documents, or testimony; and (C) declare under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents or testimony are reasonably related to an investigation within the department's authority.

(ii) Where the application under this subsection (3)(b) is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the records or testimony.

(iii) The director and his or her authorized assistants may seek approval and a court may issue an order under this sub-

section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation.

(4) In all hearings, actions, or proceedings before the department, any physician or licensed advanced registered nurse practitioner having theretofore examined or treated the claimant may be required to testify fully regarding such examination or treatment, and shall not be exempt from so testifying by reason of the relation of the physician or licensed advanced registered nurse practitioner to the patient. [2017 c 235 § 2; 2011 c 346 § 206; 2009 c 479 § 7; 1989 1st ex.s. c 5 § 2; 1985 c 443 § 12; 1973 1st ex.s. c 122 § 3.]

Intent—Retroactive application—Effective date—2011 c 346: See notes following RCW 7.68.020.

Effective date—2009 c 479: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

7.68.031 Sending notices, orders, payments to claimants. On all claims under this chapter, claimants' written or electronic notices, orders, or payments must be forwarded directly to the claimant until such time as there has been entered an order on the claim appealable to the board of industrial insurance appeals. Claimants' written or electronic notices, orders, or payments may be forwarded to the claimant in care of a representative before an order has been entered if the claimant sets forth in writing the name and address of the representative to whom the claimant desires this information to be forwarded. [2017 c 235 § 3; 2013 c 125 § 1; 2011 c 346 § 201.]

Intent—Retroactive application—Effective date—2011 c 346: See notes following RCW 7.68.020.

7.68.062 Application for compensation—Treating provider shall provide assistance. (1)(a) Where a victim is eligible for compensation under this chapter he or she shall file with the department his or her application for such, together with the certificate of the treating provider who attended him or her. An application for compensation form developed by the department shall include a notice specifying the victim's right to receive health services from a treating provider utilizing his or her private or public insurance or if no insurance, of the victim's choice under RCW 7.68.095.

(b) The treating provider who attended the injured victim shall inform the injured victim of his or her rights under this chapter and lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the victim.

(2) If the application required by this section is filed on behalf of the victim by the treating provider who attended the victim, the treating provider may transmit the application to the department electronically. [2017 c 235 § 4; 2011 c 346 § 302.]

Intent—Retroactive application—Effective date—2011 c 346: See notes following RCW 7.68.020.

7.68.070 Benefits—Right to and amount—Limitations. The eligibility for benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in this chapter.

(1) Each victim injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, or the victim's family or beneficiary in case of death of the victim, are eligible for benefits in accordance with this chapter, subject to the limitations under RCW 7.68.015. Except for medical benefits authorized under RCW 7.68.080, no more than forty thousand dollars shall be granted as a result of a single injury or death.

(a) Benefits payable for temporary total disability that results in financial support for lost wages shall not exceed fifteen thousand dollars.

(b) Benefits payable for a permanent total disability or fatality that results in financial support for lost wages shall not exceed forty thousand dollars. After at least twelve monthly payments have been paid, the department shall have the sole discretion to make a final lump sum payment of the balance remaining.

(2) If the victim was not gainfully employed at the time of the criminal act, no financial support for lost wages will be paid to the victim or any beneficiaries, unless the victim was gainfully employed for a total of at least twelve weeks in the six months preceding the date of the criminal act.

(3) No victim or beneficiary shall receive compensation for or during the day on which the injury was received.

(4) If a victim's employer continues to pay the victim's wages that he or she was earning at the time of the crime, the victim shall not receive any financial support for lost wages.

(5) When the director determines that a temporary total disability results in a loss of wages, the victim shall receive monthly subject to subsection (1) of this section, during the period of disability, sixty percent of the victim's monthly wage but no more than one hundred percent of the state's average monthly wage as defined in RCW 7.68.020. The minimum monthly payment shall be no less than five hundred dollars. Monthly wages shall be based upon employer wage statements, employment security records, or documents reported to and certified by the internal revenue service. Monthly wages must be determined using the actual documented monthly wage or averaging the total wages earned for up to twelve successive calendar months preceding the injury. In cases where the victim's wages and hours are fixed, they shall be determined by multiplying the daily wage the victim was receiving at the time of the injury:

(a) By five, if the victim was normally employed one day a week;

(b) By nine, if the victim was normally employed two days a week;

(c) By thirteen, if the victim was normally employed three days a week;

(d) By eighteen, if the victim was normally employed four days a week;

(e) By twenty-two, if the victim was normally employed five days a week;

(f) By twenty-six, if the victim was normally employed six days a week; or

(g) By thirty, if the victim was normally employed seven days a week.

(6) When the director determines that a permanent total disability or death results in a loss of wages, the victim or eligible spouse shall receive the monthly payments established

in this subsection, not to exceed forty thousand dollars or the limits established in this chapter.

(7) If the director determines that the victim is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section.

(8) In the case of death, if there is no eligible spouse, benefits shall be paid to the child or children of the deceased victim. If there is no spouse or children, no payments shall be made under this section. If the spouse remarries before this benefit is paid in full benefits shall be paid to the victim's child or children and the spouse shall not receive further payment. If there is no child or children no further payments will be made.

(9) The benefits for disposition of remains or burial expenses shall not exceed six thousand one hundred seventy dollars per claim. Beginning July 1, 2020, the department shall adjust the amount in this subsection (9) for inflation every three years based upon changes in the consumer price index during that time period. To receive reimbursement for expenses related to the disposition of remains or burial, the department must receive an itemized statement from a provider of services within twenty-four months of the date of the claim allowance. If there is a delay in the recovery of remains or the release of remains for disposition or burial, an itemized statement from a provider of services must be received within twenty-four months of the date of the release of the remains or of the date of the claim allowance, whichever is later.

(10) Any person who is responsible for the victim's injuries, or who would otherwise be unjustly enriched as a result of the victim's injuries, shall not be a beneficiary under this chapter.

(11) Crime victims' compensation is not available to pay for services covered under chapter 74.09 RCW or Title XIX of the federal social security act.

(12) A victim whose crime occurred in another state who qualifies for benefits under RCW 7.68.060(6) may receive appropriate mental health counseling to address distress arising from participation in the civil commitment proceedings. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080.

(13) If the provisions of this title relative to compensation for injuries to or death of victims become invalid because of any adjudication, or are repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this title by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death.

(14) The benefits established in RCW 51.32.080 for permanent partial disability will not be provided to any crime victim or for any claim submitted on or after July 1, 2011. [2017 c 235 § 5; 2011 c 346 § 401. Prior: 2010 c 289 § 6; (2010 c 122 § 1 expired July 1, 2015); 2009 c 38 § 1; 2002 c 54 § 1; 1996 c 122 § 5; 1993 sp.s. c 24 § 912; 1992 c 203 § 1; 1990 c 3 § 502; 1989 1st ex.s. c 5 § 5; 1989 c 12 § 2; 1987 c 281 § 8; 1985 c 443 § 15; 1983 c 239 § 2; 1982 1st ex.s. c 8 § 2; 1981 1st ex.s. c 6 § 26; 1977 ex.s. c 302 § 5; 1975 1st ex.s. c 176 § 3; 1973 1st ex.s. c 122 § 7.]

Intent—Retroactive application—Effective date—2011 c 346: See notes following RCW 7.68.020.

Effective date, application—2010 c 122 §§ 1 and 2: "Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect April 1, 2010, for all claims of victims of criminal acts occurring after July 1, 1981." [2010 c 122 § 8.]

Expiration date—2010 c 122 §§ 1 and 2: "Sections 1 and 2 of this act expire July 1, 2015." [2010 c 122 § 9.]

Findings—Intent—1996 c 122: See note following RCW 7.68.035.

Effective dates—Intent—Reports—1982 1st ex.s. c 8: See notes following RCW 7.68.035.

Additional notes found at www.leg.wa.gov

7.68.080 Reimbursement of costs for transportation, medical services, counseling—Medical examinations—Regulatory inspection program. (1) When the injury to any victim is so serious as to require the victim's being taken from the place of injury to a place of treatment, reasonable transportation costs to the nearest place of proper treatment shall be reimbursed by the department as part of the victim's total claim under RCW 7.68.070(1).

(2) In the case of alleged rape or molestation of a child, the reasonable costs of a colposcopy examination shall be reimbursed by the department. Costs for a colposcopy examination given under this subsection shall not be included as part of the victim's total claim under RCW 7.68.070(1).

(3) The director shall adopt rules for fees and charges for hospital, clinic, medical, and other health care services, including fees and costs for durable medical equipment, eyeglasses, hearing aids, and other medically necessary devices for crime victims under this chapter. The director shall set these service levels and fees at a level no lower than those established for comparable services under the workers' compensation program under Title 51 RCW, except the director shall comply with the requirements of RCW 7.68.030(2)(g)(i) through (iii) when setting service levels and fees, including reducing levels and fees when required. In establishing fees for medical and other health care services, the director shall consider the director's duty to purchase health care in a prudent, cost-effective manner. The director shall establish rules adopted in accordance with chapter 34.05 RCW. Nothing in this chapter may be construed to require the payment of interest on any billing, fee, or charge.

(4) Whenever the director deems it necessary in order to resolve any medical issue, a victim shall submit to examination by a physician or physicians selected by the director, with the rendition of a report to the person ordering the examination. The department shall provide the physician performing an examination with all relevant medical records from the victim's claim file. The director, in his or her discretion, may charge the cost of such examination or examinations to the crime victims' compensation fund. If the examination is paid for by the victim, then the cost of said examination shall be reimbursed to the victim for reasonable costs connected with the examination as part of the victim's total claim under RCW 7.68.070(1).

(5) Victims of sexual assault are eligible to receive appropriate counseling. Fees for such counseling shall be determined by the department. Counseling services may include, if determined appropriate by the department, coun-

seling of members of the victim's immediate family, other than the perpetrator of the assault.

(6) Immediate family members of a homicide victim may receive appropriate counseling to assist in dealing with the immediate, near-term consequences of the related effects of the homicide. Up to twelve counseling sessions may be received after the crime victim's claim has been allowed. Fees for counseling shall be determined by the department in accordance with and subject to this section. Payment of counseling benefits under this section may not be provided to the perpetrator of the homicide. The benefits under this subsection may be provided only with respect to homicides committed on or after July 1, 1992.

(7) Pursuant to RCW 7.68.070(12), a victim of a sex offense that occurred outside of Washington may be eligible to receive mental health counseling related to participation in proceedings to civilly commit a perpetrator.

(8) The crime victims' compensation program shall consider payment of benefits solely for the effects of the criminal act.

(9) The legislature finds and declares it to be in the public interest of the state of Washington that a proper regulatory and inspection program be instituted in connection with the provision of any services provided to crime victims pursuant to this chapter. In order to effectively accomplish such purpose and to assure that the victim receives such services as are paid for by the state of Washington, the acceptance by the victim of such services, and the request by a provider of services for reimbursement for providing such services, shall authorize the director of the department or the director's authorized representative to inspect and audit all records in connection with the provision of such services. In the conduct of such audits or investigations, the director or the director's authorized representatives may:

(a) Examine all records, or portions thereof, including patient records, for which services were rendered by a health care provider and reimbursed by the department, notwithstanding the provisions of any other statute which may make or purport to make such records privileged or confidential, except that no original patient records shall be removed from the premises of the health care provider, and that the disclosure of any records or information obtained under authority of this section by the department is prohibited and constitutes a violation of RCW 42.52.050, unless such disclosure is directly connected to the official duties of the department. The disclosure of patient information as required under this section shall not subject any physician, licensed advanced registered nurse practitioner, or other health care provider to any liability for breach of any confidential relationships between the provider and the patient. The director or the director's authorized representative shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation, or proceedings;

(b) Approve or deny applications to participate as a provider of services furnished to crime victims pursuant to this title;

(c) Terminate or suspend eligibility to participate as a provider of services furnished to victims pursuant to this title; and

(d) Pursue collection of unpaid overpayments and/or penalties plus interest accrued from health care providers pursuant to RCW 51.32.240(6).

(10) When contracting for health care services and equipment, the department, upon request of a contractor, shall keep confidential financial and valuable trade information, which shall be exempt from public inspection and copying under chapter 42.56 RCW. [2017 c 235 § 6. Prior: 2011 1st sp.s. c 15 § 69; 2011 c 346 § 501; 1990 c 3 § 503; 1989 1st ex.s. c 5 § 6; 1986 c 98 § 2; 1983 c 239 § 3; 1981 1st ex.s. c 6 § 27; 1975 1st ex.s. c 176 § 4; 1973 1st ex.s. c 122 § 8.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Intent—Retroactive application—Effective date—2011 c 346: See notes following RCW 7.68.020.

Additional notes found at www.leg.wa.gov

7.68.111 Payment of compensation after appeal—Enforcement of order—Penalty. (1)(a) If the victim or beneficiary in a claim prevails in an appeal by any party to the board of industrial insurance appeals or the court, the department shall comply with the board of industrial insurance appeals or court's order with respect to the payment of compensation within the later of the following time periods:

(i) Sixty days after the compensation order has become final and is not subject to review or appeal; or

(ii) If the order has become final and is not subject to review or appeal and the department has, within the period specified in (a)(i) of this subsection, requested the filing by the victim or beneficiary of documents necessary to make payment of compensation, sixty days after all requested documents are filed with the department.

The department may extend the sixty-day time period for an additional thirty days for good cause.

(b) If the department fails to comply with (a) of this subsection, any person eligible for compensation under the order may institute proceedings for injunctive or other appropriate relief for enforcement of the order. These proceedings may be instituted in the superior court for the county in which the claimant resides, or, if the claimant is not then a resident of this state, in the superior court for Thurston county.

(2) In a proceeding under this section, the court shall enforce obedience to the order by proper means, enjoining compliance upon the person obligated to comply with the compensation order. The court may issue such writs and processes as are necessary to carry out its orders and may award a penalty of up to one thousand dollars to the person eligible for compensation under the order.

(3) A proceeding under this section does not preclude other methods of enforcement provided for in this chapter. [2017 c 235 § 7; 2011 c 346 § 601.]

Intent—Retroactive application—Effective date—2011 c 346: See notes following RCW 7.68.020.

7.68.801 Commercially sexually exploited children statewide coordinating committee. (*Expires June 30, 2023.*) (1) The commercially sexually exploited children statewide coordinating committee is established to address the issue of children who are commercially sexually exploited, to examine the practices of local and regional enti-

ties involved in addressing sexually exploited children, and to make recommendations on statewide laws and practices.

(2) The committee is convened by the office of the attorney general with the department of commerce assisting with agenda planning and administrative and clerical support. The committee consists of the following members:

(a) One member from each of the two largest caucuses of the house of representatives appointed by the speaker of the house;

(b) One member from each of the two largest caucuses of the senate appointed by the speaker of the senate;

(c) A representative of the governor's office appointed by the governor;

(d) The secretary of the children's administration or his or her designee;

(e) The secretary of the juvenile rehabilitation administration or his or her designee;

(f) The attorney general or his or her designee;

(g) The superintendent of public instruction or his or her designee;

(h) A representative of the administrative office of the courts appointed by the administrative office of the courts;

(i) The executive director of the Washington association of sheriffs and police chiefs or his or her designee;

(j) The executive director of the Washington state criminal justice training commission or his or her designee;

(k) A representative of the Washington association of prosecuting attorneys appointed by the association;

(l) The executive director of the office of public defense or his or her designee;

(m) Three representatives of community service providers that provide direct services to commercially sexually exploited children appointed by the attorney general;

(n) Two representatives of nongovernmental organizations familiar with the issues affecting commercially sexually exploited children appointed by the attorney general;

(o) The president of the superior court judges' association or his or her designee;

(p) The president of the juvenile court administrators or his or her designee;

(q) Any existing chairs of regional task forces on commercially sexually exploited children;

(r) A representative from the criminal defense bar;

(s) A representative of the center for children and youth justice;

(t) A representative from the office of crime victims advocacy;

(u) The executive director of the Washington coalition of sexual assault programs;

(v) A representative of an organization that provides inpatient chemical dependency treatment to youth, appointed by the attorney general;

(w) A representative of an organization that provides mental health treatment to youth, appointed by the attorney general; and

(x) A survivor of human trafficking, appointed by the attorney general.

(3) The duties of the committee include, but are not limited to:

(a) Overseeing and reviewing the implementation of the Washington state model protocol for commercially sexually exploited children at task force sites;

(b) Receiving reports and data from local and regional entities regarding the incidence of commercially sexually exploited children in their areas as well as data information regarding perpetrators, geographic data and location trends, and any other data deemed relevant;

(c) Receiving reports on local coordinated community response practices and results of the community responses;

(d) Reviewing recommendations from local and regional entities regarding policy and legislative changes that would improve the efficiency and effectiveness of local response practices;

(e) Making recommendations regarding policy and legislative changes that would improve the effectiveness of the state's response to and promote best practices for suppression of the commercial sexual exploitation of children;

(f) Making recommendations regarding data collection useful to understanding or addressing the problem of commercially sexually exploited children;

(g) Reviewing and making recommendations regarding strategic local investments or opportunities for federal and state funding to address the commercial sexual exploitation of children;

(h) Reviewing the extent to which chapter 289, Laws of 2010 (Engrossed Substitute Senate Bill No. 6476) is understood and applied by enforcement authorities; and

(i) Researching any barriers that exist to full implementation of chapter 289, Laws of 2010 (Engrossed Substitute Senate Bill No. 6476) throughout the state.

(4) The committee must meet no less than annually.

(5) The committee shall annually report its findings and recommendations to the appropriate committees of the legislature and to any other known statewide committees addressing trafficking or the commercial sex trade.

(6) This section expires June 30, 2023. [2017 c 18 § 1; 2015 c 273 § 4; 2013 c 253 § 1.]

Effective date—2017 c 18: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2017]." [2017 c 18 § 2.]

Effective date—2015 c 273: See note following RCW 7.68.370.

Chapter 7.70 RCW

ACTIONS FOR INJURIES RESULTING FROM HEALTH CARE

Sections

7.70.065 Informed consent—Persons authorized to provide for patients who are not competent—Priority.

7.70.065 Informed consent—Persons authorized to provide for patients who are not competent—Priority. (1) Informed consent for health care for a patient who is not competent, as defined in RCW 11.88.010(1)(e), to consent may be obtained from a person authorized to consent on behalf of such patient.

(a) Persons authorized to provide informed consent to health care on behalf of a patient who is not competent to consent, based upon a reason other than incapacity as defined in RCW 11.88.010(1)(d), shall be a member of one of the following classes of persons in the following order of priority:

(i) The appointed guardian of the patient, if any;

(ii) The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions;

(iii) The patient's spouse or state registered domestic partner;

(iv) Children of the patient who are at least eighteen years of age;

(v) Parents of the patient; and

(vi) Adult brothers and sisters of the patient.

(b) If the health care provider seeking informed consent for proposed health care of the patient who is not competent to consent under RCW 11.88.010(1)(e), other than a person determined to be incapacitated because he or she is under the age of majority and who is not otherwise authorized to provide informed consent, makes reasonable efforts to locate and secure authorization from a competent person in the first or succeeding class and finds no such person available, authorization may be given by any person in the next class in the order of descending priority. However, no person under this section may provide informed consent to health care:

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

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

(c) Before any person authorized to provide informed consent on behalf of a patient not competent to consent under RCW 11.88.010(1)(e), other than a person determined to be incapacitated because he or she is under the age of majority and who is not otherwise authorized to provide informed consent, exercises that authority, the person must first determine in good faith that that patient, if competent, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that the proposed health care is in the patient's best interests.

(2) Informed consent for health care, including mental health care, for a patient who is not competent, as defined in RCW 11.88.010(1)(e), because he or she is under the age of majority and who is not otherwise authorized to provide informed consent, may be obtained from a person authorized to consent on behalf of such a patient.

(a) Persons authorized to provide informed consent to health care, including mental health care, on behalf of a patient who is incapacitated, as defined in RCW 11.88.010(1)(e), because he or she is under the age of majority and who is not otherwise authorized to provide informed consent, shall be a member of one of the following classes of persons in the following order of priority:

(i) The appointed guardian, or legal custodian authorized pursuant to Title 26 RCW, of the minor patient, if any;

(ii) A person authorized by the court to consent to medical care for a child in out-of-home placement pursuant to chapter 13.32A or 13.34 RCW, if any;

(iii) Parents of the minor patient;

(iv) The individual, if any, to whom the minor's parent has given a signed authorization to make health care decisions for the minor patient; and

(v) A competent adult representing himself or herself to be a relative responsible for the health care of such minor patient or a competent adult who has signed and dated a declaration under penalty of perjury pursuant to RCW 9A.72.085 stating that the adult person is a relative responsible for the health care of the minor patient. Such declaration shall be effective for up to six months from the date of the declaration.

(b)(i) Informed consent for health care on behalf of a patient who is incapacitated, as defined in RCW 11.88.010(1)(e), because he or she is under the age of majority and who is not otherwise authorized to provide informed consent may be obtained from a school nurse, school counselor, or homeless student liaison when:

(A) Consent is necessary for nonemergency, outpatient, primary care services, including physical examinations, vision examinations and eyeglasses, dental examinations, hearing examinations and hearing aids, immunizations, treatments for illnesses and conditions, and routine follow-up care customarily provided by a health care provider in an outpatient setting, excluding elective surgeries;

(B) The minor patient meets the definition of a "homeless child or youth" under the federal McKinney-Vento homeless education assistance improvements act of 2001, P.L. 107-110, January 8, 2002, 115 Stat. 2005; and

(C) The minor patient is not under the supervision or control of a parent, custodian, or legal guardian, and is not in the care and custody of the department of social and health services.

(ii) A person authorized to consent to care under this subsection (2)(b) and the person's employing school or school district are not subject to administrative sanctions or civil damages resulting from the consent or nonconsent for care, any care, or payment for any care, rendered pursuant to this section. Nothing in this section prevents a health care facility or a health care provider from seeking reimbursement from other sources for care provided to a minor patient under this subsection (2)(b).

(iii) Upon request by a health care facility or a health care provider, a person authorized to consent to care under this subsection (2)(b) must provide to the person rendering care a declaration signed and dated under penalty of perjury pursuant to RCW 9A.72.085 stating that the person is a school nurse, school counselor, or homeless student liaison and that the minor patient meets the elements under (b)(i) of this subsection. The declaration must also include written notice of the exemption from liability under (b)(ii) of this subsection.

(c) A health care provider may, but is not required to, rely on the representations or declaration of a person claiming to be a relative responsible for the care of the minor patient, under (a)(v) of this subsection, or a person claiming to be authorized to consent to the health care of the minor patient under (b) of this subsection, if the health care provider does not have actual notice of the falsity of any of the statements made by the person claiming to be a relative responsible for the health care of the minor patient, or person claiming to be authorized to consent to the health care of the minor patient.

(d) A health care facility or a health care provider may, in its discretion, require documentation of a person's claimed status as being a relative responsible for the health care of the minor patient, or a person claiming to be authorized to consent to the health care of the minor patient under (b) of this subsection. However, there is no obligation to require such documentation.

(e) The health care provider or health care facility where services are rendered shall be immune from suit in any action, civil or criminal, or from professional or other disciplinary action when such reliance is based on a declaration signed under penalty of perjury pursuant to RCW 9A.72.085 stating that the adult person is a relative responsible for the health care of the minor patient under (a)(v) of this subsection, or a person claiming to be authorized to consent to the health care of the minor patient under (b) of this subsection.

(3) For the purposes of this section, "health care," "health care provider," and "health care facility" shall be defined as established in RCW 70.02.010. [2017 c 275 § 1; 2007 c 156 § 11; 2006 c 93 § 1; 2005 c 440 § 2; 2003 c 283 § 29; 1987 c 162 § 1.]

Intent—2005 c 440: "(1) It is the intent of the legislature to assist children in the care of kin to access appropriate medical services. Children being raised by kin have faced barriers to medical care because their kinship caregivers have not been able to verify that they are the identified primary caregivers of these children. Such barriers pose an especially significant challenge to kinship caregivers in dealing with health professionals when children are left in their care.

(2) It is the intent of the legislature to assist kinship caregivers in accessing appropriate medical care to meet the needs of a child in their care by permitting such responsible adults who are providing care to a child to give informed consent to medical care." [2005 c 440 § 1.]

Chapter 7.90 RCW

SEXUAL ASSAULT PROTECTION ORDER ACT

Sections

7.90.120	Ex parte orders—Duration.
7.90.121	Renewal of ex parte order.
7.90.170	Modification or termination of protection orders.

7.90.120 Ex parte orders—Duration. (1)(a) An ex parte temporary sexual assault protection order shall be effective for a fixed period not to exceed fourteen days. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order or not later than twenty-four days if service by publication or service by mail is permitted. If the court permits service by publication or service by mail, the court shall also reissue the ex parte temporary protection order not to exceed another twenty-four days from the date of reissuing the ex parte protection order. Except as provided in RCW 7.90.050, 7.90.052, or 7.90.053, the respondent shall be personally served with a copy of the ex parte temporary sexual assault protection order along with a copy of the petition and notice of the date set for the hearing.

(b) Any ex parte temporary order issued under this section shall contain the date and time of issuance and the expiration date and shall be entered into a statewide judicial information system by the clerk of the court within one judicial day after issuance.

(2) Except as otherwise provided in this section or RCW 7.90.150, a final sexual assault protection order shall be effective for a fixed period of time or be permanent.

(3) Any sexual assault protection order which would expire on a court holiday shall instead expire at the close of the next court business day.

(4) The practice of dismissing or suspending a criminal prosecution in exchange for the issuance of a sexual assault protection order undermines the purposes of this chapter. This section shall not be construed as encouraging that practice. [2017 c 233 § 1; 2013 c 74 § 3; 2006 c 138 § 13.]

7.90.121 Renewal of ex parte order. (1) Any ex parte temporary or nonpermanent final sexual assault protection order may be renewed one or more times, as required.

(2) The petitioner may apply for renewal of the order by filing a motion for renewal at any time within the three months before the order expires. The motion for renewal shall state the reasons why the petitioner seeks to renew the protection order.

(3)(a) The court shall grant the motion for renewal unless the respondent proves by a preponderance of the evidence that there has been a material change in circumstances such that the respondent is not likely to engage in or attempt to engage in physical or nonphysical contact with the petitioner when the order expires.

(b) For purposes of this subsection (3), a court shall determine whether there has been a material change in circumstances by considering only factors which address whether the respondent is likely to engage in or attempt to engage in physical or nonphysical contact with the petitioner when the order expires. The passage of time and compliance with the existing protection order shall not, alone, be sufficient to meet this burden of proof. The court may renew the sexual assault protection order for another fixed time period or may enter a permanent order as provided in this section.

(c) In determining whether there has been a material change in circumstances, the court may consider the following unweighted factors, and no inference is to be drawn from the order in which the factors are listed:

(i) Whether the respondent has committed or threatened sexual assault, domestic violence, stalking, or other violent acts since the protection order was entered;

(ii) Whether the respondent has violated the terms of the protection order and the time that has passed since the entry of the order;

(iii) Whether the respondent has exhibited suicidal ideation or attempts since the protection order was entered;

(iv) Whether the respondent has been convicted of criminal activity since the protection order was entered;

(v) Whether the respondent has either acknowledged responsibility for acts of sexual assault that resulted in entry of the protection order or successfully completed sexual assault perpetrator treatment or counseling since the protection order was entered;

(vi) Whether the respondent has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order;

(vii) Whether the respondent or petitioner has relocated to an area more distant from the other party, giving due con-

sideration to the fact that acts of sexual assault may be committed from any distance such as via cybercrime;

(viii) Other factors relating to a material change in circumstances.

(4)(a) If the motion is contested, upon receipt of the motion, the court shall order that a hearing be held not later than fourteen days from the date of the order.

(b) The court may schedule a hearing by telephone pursuant to local court rule, to reasonably accommodate a disability, or in exceptional circumstances to protect a petitioner from further nonconsensual sexual conduct or nonconsensual sexual penetration. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing.

(c) The respondent shall be personally served not less than five court days prior to the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 7.90.052 or service by mail as provided in RCW 7.90.053. The court shall not require more than two attempts at obtaining personal service and shall permit service by publication or service by mail unless the petitioner requests additional time to attempt personal service. If the court permits service by publication or service by mail, the court shall set the hearing date not later than twenty-four days from the date of the order.

(5) Renewals may be granted only in open court. [2017 c 233 § 2; 2013 c 74 § 4.]

7.90.170 Modification or termination of protection orders. (1) Upon a motion with notice to all parties and after a hearing, the court may terminate or modify the terms of an existing sexual assault protection order, including terms entered pursuant to RCW 9.41.800 related to firearms or other dangerous weapons or to concealed pistol licenses.

(2)(a) A respondent's motion to terminate or modify a sexual assault protection order must include a declaration setting forth facts supporting the requested order for termination or modification. The nonmoving parties to the proceeding may file opposing declarations. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the declarations. If the court finds that the respondent established adequate cause, the court shall set a date for hearing the respondent's motion.

(b) The court may terminate or modify the terms of a sexual assault protection order, including terms entered pursuant to RCW 9.41.800 related to firearms or other dangerous weapons or to concealed pistol licenses, if the respondent proves by a preponderance of the evidence that there has been a material change in circumstances such that the respondent is not likely to engage in or attempt to engage in physical or nonphysical contact with the persons protected by the protection order if the order is terminated or modified. The petitioner bears no burden of proving that he or she has a current reasonable fear of harm by the respondent.

(c) A respondent may file a motion to terminate or modify pursuant to this section no more than once in every twelve-month period that the order is in effect, starting from the date of the order and continuing through any renewal.

(d) A court may require the respondent to pay the petitioner for costs incurred in responding to a motion to termi-

nate or modify pursuant to this section, including reasonable attorneys' fees.

(3) The court shall order that a hearing on the motion for termination or modification of the order be held not later than fourteen days from the date of the order. The nonmoving party shall be personally served not less than five days before the hearing. If timely service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 7.90.052 or service by mail as provided in RCW 7.90.053. If the court permits service by mail or service by publication, the court shall set the new hearing date not later than twenty-four days from the date of the order.

(4) In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the computer-based criminal intelligence information system, or if the order is terminated, remove the order from the computer-based criminal intelligence information system. [2017 c 233 § 3; 2013 c 74 § 9; 2006 c 138 § 18.]

**Chapter 7.94 RCW
EXTREME RISK PROTECTION ORDER ACT**

Sections

7.94.010	Purpose—Intent.
7.94.020	Definitions.
7.94.030	Petition for order.
7.94.040	Hearings on petition—Grounds for order issuance.
7.94.050	Ex parte orders.
7.94.060	Service of orders.
7.94.070	Service by publication or mail.
7.94.080	Termination and renewal of orders.
7.94.090	Firearms—Surrender.
7.94.100	Firearms—Return—Disposal.
7.94.110	Reporting of orders.
7.94.120	Penalties.
7.94.130	Other authority retained.
7.94.140	Liability.
7.94.150	Instructional and informational material.
7.94.900	Short title—2017 c 3 (Initiative Measure No. 1491).

7.94.010 Purpose—Intent. (1) Chapter 3, Laws of 2017 is designed to temporarily prevent individuals who are at high risk of harming themselves or others from accessing firearms by allowing family, household members, and police to obtain a court order when there is demonstrated evidence that the person poses a significant danger, including danger as a result of a dangerous mental health crisis or violent behavior.

(2) Every year, over one hundred thousand people are victims of gunshot wounds and more than thirty thousand of those victims lose their lives. Over the last five years for which data is available, one hundred sixty-four thousand eight hundred twenty-one people in America were killed with firearms—an average of ninety-one deaths each day.

(3) Studies show that individuals who engage in certain dangerous behaviors are significantly more likely to commit violence toward themselves or others in the near future. These behaviors, which can include other acts or threats of

violence, self-harm, or the abuse of drugs or alcohol, are warning signs that the person may soon commit an act of violence.

(4) Individuals who pose a danger to themselves or others often exhibit signs that alert family, household members, or law enforcement to the threat. Many mass shooters displayed warning signs prior to their killings, but federal and state laws provided no clear legal process to suspend the shooters' access to guns, even temporarily.

(5) In enacting this initiative [chapter 3, Laws of 2017], it is the purpose and intent of the people to reduce gun deaths and injuries, while respecting constitutional rights, by providing a court procedure for family, household members, and law enforcement to obtain an order temporarily restricting a person's access to firearms. Court orders are intended to be limited to situations in which the person poses a significant danger of harming themselves or others by possessing a firearm and include standards and safeguards to protect the rights of respondents and due process of law. [2017 c 3 § 1 (Initiative Measure No. 1491, approved November 8, 2016).]

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

(1) "Extreme risk protection order" means an ex parte temporary order or a final order granted under this chapter.

(2) "Family or household member" means, with respect to a respondent, any: (a) Person related by blood, marriage, or adoption to the respondent; (b) dating partners of the respondent; (c) person who has a child in common with the respondent, regardless of whether such person has been married to the respondent or has lived together with the respondent at any time; (d) person who resides or has resided with the respondent within the past year; (e) domestic partner of the respondent; (f) person who has a biological or legal parent-child relationship with the respondent, including stepparents and stepchildren and grandparents and grandchildren; and (g) person who is acting or has acted as the respondent's legal guardian.

(3) "Petitioner" means the person who petitions for an order under this chapter.

(4) "Respondent" means the person who is identified as the respondent in a petition filed under this chapter. [2017 c 3 § 3 (Initiative Measure No. 1491, approved November 8, 2016).]

7.94.030 Petition for order. There shall exist an action known as a petition for an extreme risk protection order.

(1) A petition for an extreme risk protection order may be filed by (a) a family or household member of the respondent or (b) a law enforcement officer or agency.

(2) An action under this chapter must be filed in the county where the petitioner resides or the county where the respondent resides.

(3) A petition must:

(a) Allege that the respondent poses a significant danger of causing personal injury to self or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm, and be accompanied by an affidavit made under oath stating the specific statements, actions, or facts that give rise

to a reasonable fear of future dangerous acts by the respondent;

(b) Identify the number, types, and locations of any firearms the petitioner believes to be in the respondent's current ownership, possession, custody, or control;

(c) Identify whether there is a known existing protection order governing the respondent, under chapter 7.90, 7.92, 10.14, 9A.46, 10.99, 26.50, or 26.52 RCW or under any other applicable statute; and

(d) Identify whether there is a pending lawsuit, complaint, petition, or other action between the parties to the petition under the laws of Washington.

(4) The court administrator shall verify the terms of any existing order governing the parties. The court may not delay granting relief because of the existence of a pending action between the parties or the necessity of verifying the terms of an existing order. A petition for an extreme risk protection order may be granted whether or not there is a pending action between the parties.

(5) If the petitioner is a law enforcement officer or agency, the petitioner shall make a good faith effort to provide notice to a family or household member of the respondent and to any known third party who may be at risk of violence. The notice must state that the petitioner intends to petition the court for an extreme risk protection order or has already done so, and include referrals to appropriate resources, including mental health, domestic violence, and counseling resources. The petitioner must attest in the petition to having provided such notice, or attest to the steps that will be taken to provide such notice.

(6) If the petition states that disclosure of the petitioner's address would risk harm to the petitioner or any member of the petitioner's family or household, the petitioner's address may be omitted from all documents filed with the court. If the petitioner has not disclosed an address under this subsection, the petitioner must designate an alternative address at which the respondent may serve notice of any motions. If the petitioner is a law enforcement officer or agency, the address of record must be that of the law enforcement agency.

(7) Within ninety days of receipt of the master copy from the administrative office of the courts, all court clerk's offices shall make available the standardized forms, instructions, and informational brochures required by RCW 7.94.150. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(8) No fees for filing or service of process may be charged by a court or any public agency to petitioners seeking relief under this chapter. Petitioners shall be provided the necessary number of certified copies, forms, and instructional brochures free of charge.

(9) A person is not required to post a bond to obtain relief in any proceeding under this section.

(10) The superior courts of the state of Washington have jurisdiction over proceedings under this chapter. Additionally, district and municipal courts have limited jurisdiction over issuance and enforcement of ex parte extreme risk protection orders issued under RCW 7.94.050. The district or municipal court shall set the full hearing provided for in RCW 7.94.040 in superior court and transfer the case. If the notice and order are not served on the respondent in time for

the full hearing, the issuing court has concurrent jurisdiction with the superior court to extend the ex parte extreme risk protection order. [2017 c 3 § 4 (Initiative Measure No. 1491, approved November 8, 2016).]

7.94.040 Hearings on petition—Grounds for order issuance. (1) Upon receipt of the petition, the court shall order a hearing to be held not later than fourteen days from the date of the order and issue a notice of hearing to the respondent for the same.

(a) The court may schedule a hearing by telephone pursuant to local court rule, to reasonably accommodate a disability, or in exceptional circumstances to protect a petitioner from potential harm. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing.

(b) The court clerk shall cause a copy of the notice of hearing and petition to be forwarded on or before the next judicial day to the appropriate law enforcement agency for service upon the respondent.

(c) Personal service of the notice of hearing and petition shall be made upon the respondent by a law enforcement officer not less than five court days prior to the hearing. Service issued under this section takes precedence over the service of other documents, unless the other documents are of a similar emergency nature. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication or mail as provided in RCW 7.94.070. The court shall not require more than two attempts at obtaining personal service and shall permit service by publication or mail after two attempts at obtaining personal service unless the petitioner requests additional time to attempt personal service. If the court issues an order permitting service by publication or mail, the court shall set the hearing date not later than twenty-four days from the date the order issues.

(d) The court may, as provided in RCW 7.94.050, issue an ex parte extreme risk protection order pending the hearing ordered under this subsection (1). Such ex parte order must be served concurrently with the notice of hearing and petition.

(2) Upon hearing the matter, if the court finds by a preponderance of the evidence that the respondent poses a significant danger of causing personal injury to self or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm, the court shall issue an extreme risk protection order for a period of one year.

(3) In determining whether grounds for an extreme risk protection order exist, the court may consider any relevant evidence including, but not limited to, any of the following:

(a) A recent act or threat of violence by the respondent against self or others, whether or not such violence or threat of violence involves a firearm;

(b) A pattern of acts or threats of violence by the respondent within the past twelve months including, but not limited to, acts or threats of violence by the respondent against self or others;

(c) Any dangerous mental health issues of the respondent;

(d) A violation by the respondent of a protection order or a no-contact order issued under chapter 7.90, 7.92, 10.14, 9A.46, 10.99, 26.50, or 26.52 RCW;

(e) A previous or existing extreme risk protection order issued against the respondent;

(f) A violation of a previous or existing extreme risk protection order issued against the respondent;

(g) A conviction of the respondent for a crime that constitutes domestic violence as defined in RCW 10.99.020;

(h) The respondent's ownership, access to, or intent to possess firearms;

(i) The unlawful or reckless use, display, or brandishing of a firearm by the respondent;

(j) The history of use, attempted use, or threatened use of physical force by the respondent against another person, or the respondent's history of stalking another person;

(k) Any prior arrest of the respondent for a felony offense or violent crime;

(l) Corroborated evidence of the abuse of controlled substances or alcohol by the respondent; and

(m) Evidence of recent acquisition of firearms by the respondent.

(4) The court may:

(a) Examine under oath the petitioner, the respondent, and any witnesses they may produce, or, in lieu of examination, consider sworn affidavits of the petitioner, the respondent, and any witnesses they may produce; and

(b) Ensure that a reasonable search has been conducted for criminal history records related to the respondent.

(5) In a hearing under this chapter, the rules of evidence apply to the same extent as in a domestic violence protection order proceeding under chapter 26.50 RCW.

(6) During the hearing, the court shall consider whether a mental health evaluation or chemical dependency evaluation is appropriate, and may order such evaluation if appropriate.

(7) An extreme risk protection order must include:

(a) A statement of the grounds supporting the issuance of the order;

(b) The date and time the order was issued;

(c) The date and time the order expires;

(d) Whether a mental health evaluation or chemical dependency evaluation of the respondent is required;

(e) The address of the court in which any responsive pleading should be filed;

(f) A description of the requirements for relinquishment of firearms under RCW 7.94.090; and

(g) The following statement: "To the subject of this protection order: This order will last until the date and time noted above. If you have not done so already, you must surrender to the (insert name of local law enforcement agency) all firearms in your custody, control, or possession and any concealed pistol license issued to you under RCW 9.41.070 immediately. You may not have in your custody or control, purchase, possess, receive, or attempt to purchase or receive, a firearm while this order is in effect. You have the right to request one hearing to terminate this order every twelve-month period that this order is in effect, starting from the date of this order and continuing through any renewals. You may seek the advice of an attorney as to any matter connected with this order."

(8) When the court issues an extreme risk protection order, the court shall inform the respondent that he or she is entitled to request termination of the order in the manner pre-

scribed by RCW 7.94.080. The court shall provide the respondent with a form to request a termination hearing.

(9) If the court declines to issue an extreme risk protection order, the court shall state the particular reasons for the court's denial. [2017 c 3 § 5 (Initiative Measure No. 1491, approved November 8, 2016).]

7.94.050 Ex parte orders. (1) A petitioner may request that an ex parte extreme risk protection order be issued before a hearing for an extreme risk protection order, without notice to the respondent, by including in the petition detailed allegations based on personal knowledge that the respondent poses a significant danger of causing personal injury to self or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm.

(2) In considering whether to issue an ex parte extreme risk protection order under this section, the court shall consider all relevant evidence, including the evidence described in RCW 7.94.040(3).

(3) If a court finds there is reasonable cause to believe that the respondent poses a significant danger of causing personal injury to self or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm, the court shall issue an ex parte extreme risk protection order.

(4) The court shall hold an ex parte extreme risk protection order hearing in person or by telephone on the day the petition is filed or on the judicial day immediately following the day the petition is filed.

(5) In accordance with RCW 7.94.040(1), the court shall schedule a hearing within fourteen days of the issuance of an ex parte extreme risk protection order to determine if a one-year extreme risk protection order should be issued under this chapter.

(6) An ex parte extreme risk protection order shall include:

- (a) A statement of the grounds asserted for the order;
- (b) The date and time the order was issued;
- (c) The date and time the order expires;
- (d) The address of the court in which any responsive pleading should be filed;
- (e) The date and time of the scheduled hearing;
- (f) A description of the requirements for surrender of firearms under RCW 7.94.090; and

(g) The following statement: "To the subject of this protection order: This order is valid until the date and time noted above. You are required to surrender all firearms in your custody, control, or possession. You may not have in your custody or control, purchase, possess, receive, or attempt to purchase or receive, a firearm while this order is in effect. You must surrender to the (insert name of local law enforcement agency) all firearms in your custody, control, or possession and any concealed pistol license issued to you under RCW 9.41.070 immediately. A hearing will be held on the date and at the time noted above to determine if an extreme risk protection order should be issued. Failure to appear at that hearing may result in a court making an order against you that is valid for one year. You may seek the advice of an attorney as to any matter connected with this order."

(7) Any ex parte extreme risk protection order issued expires upon the hearing on the extreme risk protection order.

(8) An ex parte extreme risk protection order shall be served by a law enforcement officer in the same manner as provided for in RCW 7.94.040 for service of the notice of hearing and petition, and shall be served concurrently with the notice of hearing and petition.

(9) If the court declines to issue an ex parte extreme risk protection order, the court shall state the particular reasons for the court's denial. [2017 c 3 § 6 (Initiative Measure No. 1491, approved November 8, 2016).]

7.94.060 Service of orders. (1) An extreme risk protection order issued under RCW 7.94.040 must be personally served upon the respondent, except as otherwise provided in this chapter.

(2) The law enforcement agency with jurisdiction in the area in which the respondent resides shall serve the respondent personally, unless the petitioner elects to have the respondent served by a private party.

(3) If service by a law enforcement agency is to be used, the clerk of the court shall cause a copy of the order issued under this chapter to be forwarded on or before the next judicial day to the law enforcement agency specified in the order for service upon the respondent. Service of an order issued under this chapter takes precedence over the service of other documents, unless the other documents are of a similar emergency nature.

(4) If the law enforcement agency cannot complete service upon the respondent within ten days, the law enforcement agency shall notify the petitioner. The petitioner shall provide information sufficient to permit such notification.

(5) If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary.

(6) If the court previously entered an order allowing service of the notice of hearing and petition, or an ex parte extreme risk protection order, by publication or mail under RCW 7.94.070, or if the court finds there are now grounds to allow such alternate service, the court may permit service by publication or mail of the extreme risk protection order issued under this chapter as provided in RCW 7.94.070. The court order must state whether the court permitted service by publication or service by mail.

(7) Returns of service under this chapter must be made in accordance with the applicable court rules. [2017 c 3 § 7 (Initiative Measure No. 1491, approved November 8, 2016).]

7.94.070 Service by publication or mail. (1) The court may order service by publication or service by mail under the circumstances permitted for such service in RCW 7.90.052, 7.90.053, 26.50.123, or 26.50.085, except any summons must be essentially in the following form:

In the court of the state of Washington for
the county of
., Petitioner
vs. No.
., Respondent
The state of Washington to (respondent):

You are hereby summoned to appear on the day of, (year), at a.m./p.m., and respond to the petition. If you fail to respond, an extreme risk protection order may be issued against you pursuant to the provisions of the extreme risk protection order act, chapter 7.94 RCW, for one year from the date you are required to appear. (An ex parte extreme risk protection order has been issued against you, restraining you from having in your custody or control, purchasing, possessing, or receiving any firearms. You must surrender to the (insert name of local law enforcement agency) all firearms in your custody, control, or possession and any concealed pistol license issued to you under RCW 9.41.070 within forty-eight hours. A copy of the notice of hearing, petition, and ex parte extreme risk protection order has been filed with the clerk of this court.) (A copy of the notice of hearing and petition has been filed with the clerk of this court.)

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 Petitioner

(2) If the court orders service by publication or mail for notice of an extreme risk protection order hearing, it shall also reissue the ex parte extreme risk protection order, if issued, to expire on the date of the extreme risk protection order hearing.

(3) Following completion of service by publication or by mail for notice of an extreme risk protection order hearing, if the respondent fails to appear at the hearing, the court may issue an extreme risk protection order as provided in RCW 7.94.040. [2017 c 3 § 8 (Initiative Measure No. 1491, approved November 8, 2016).]

7.94.080 Termination and renewal of orders. (1) The respondent may submit one written request for a hearing to terminate an extreme risk protection order issued under this chapter every twelve-month period that the order is in effect, starting from the date of the order and continuing through any renewals.

(a) Upon receipt of the request for a hearing to terminate an extreme risk protection order, the court shall set a date for a hearing. Notice of the request must be served on the petitioner in accordance with RCW 4.28.080. The hearing shall occur no sooner than fourteen days and no later than thirty days from the date of service of the request upon the petitioner.

(b) The respondent shall have the burden of proving by a preponderance of the evidence that the respondent does not pose a significant danger of causing personal injury to self or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm. The court may consider any relevant evidence, including evidence of the considerations listed in RCW 7.94.040(3).

(c) If the court finds after the hearing that the respondent has met his or her burden, the court shall terminate the order.

(2) The court must notify the petitioner of the impending expiration of an extreme risk protection order. Notice must be received by the petitioner one hundred five calendar days before the date the order expires.

(3) A family or household member of a respondent or a law enforcement officer or agency may by motion request a renewal of an extreme risk protection order at any time within one hundred five calendar days before the expiration of the order.

(a) Upon receipt of the motion to renew, the court shall order that a hearing be held not later than fourteen days from the date the order issues.

(i) The court may schedule a hearing by telephone in the manner prescribed by RCW 7.94.040(1)(a).

(ii) The respondent shall be personally served in the same manner prescribed by RCW 7.94.040(1) (b) and (c).

(b) In determining whether to renew an extreme risk protection order issued under this section, the court shall consider all relevant evidence presented by the petitioner and follow the same procedure as provided in RCW 7.94.040.

(c) If the court finds by a preponderance of the evidence that the requirements for issuance of an extreme risk protection order as provided in RCW 7.94.040 continue to be met, the court shall renew the order. However, if, after notice, the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal.

(d) The renewal of an extreme risk protection order has a duration of one year, subject to termination as provided in subsection (1) of this section or further renewal by order of the court. [2017 c 3 § 9 (Initiative Measure No. 1491, approved November 8, 2016).]

7.94.090 Firearms—Surrender. (1) Upon issuance of any extreme risk protection order under this chapter, including an ex parte extreme risk protection order, the court shall order the respondent to surrender to the local law enforcement agency all firearms in the respondent's custody, control, or possession and any concealed pistol license issued under RCW 9.41.070.

(2) The law enforcement officer serving any extreme risk protection order under this chapter, including an ex parte extreme risk protection order, shall request that the respondent immediately surrender all firearms in his or her custody, control, or possession and any concealed pistol license issued under RCW 9.41.070, and conduct any search permitted by law for such firearms. The law enforcement officer shall take possession of all firearms belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search. Alternatively, if personal service by a law enforcement officer is not possible, or not required because the respondent was present at the extreme risk protection order hearing, the respondent shall surrender the firearms in a safe manner to the control of the local law enforcement agency within forty-eight hours of being served with the order by alternate service or within forty-eight hours of the hearing at which the respondent was present.

(3) At the time of surrender, a law enforcement officer taking possession of a firearm or concealed pistol license shall issue a receipt identifying all firearms that have been surrendered and provide a copy of the receipt to the respondent. Within seventy-two hours after service of the order, the

officer serving the order shall file the original receipt with the court and shall ensure that his or her law enforcement agency retains a copy of the receipt.

(4) Upon the sworn statement or testimony of the petitioner or of any law enforcement officer alleging that the respondent has failed to comply with the surrender of firearms as required by an order issued under this chapter, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms in his or her possession, custody, or control. If probable cause exists, the court shall issue a warrant describing the firearms and authorizing a search of the locations where the firearms are reasonably believed to be and the seizure of any firearms discovered pursuant to such search.

(5) If a person other than the respondent claims title to any firearms surrendered pursuant to this section, and he or she is determined by the law enforcement agency to be the lawful owner of the firearm, the firearm shall be returned to him or her, provided that:

(a) The firearm is removed from the respondent's custody, control, or possession and the lawful owner agrees to store the firearm in a manner such that the respondent does not have access to or control of the firearm; and

(b) The firearm is not otherwise unlawfully possessed by the owner.

(6) Upon the issuance of a one-year extreme risk protection order, the court shall order a new hearing date and require the respondent to appear not later than three judicial days from the issuance of the order. The court shall require a showing that the person subject to the order has surrendered any firearms in his or her custody, control, or possession. The court may dismiss the hearing upon a satisfactory showing that the respondent is in compliance with the order.

(7) All law enforcement agencies must develop policies and procedures by June 1, 2017, regarding the acceptance, storage, and return of firearms required to be surrendered under this chapter. [2017 c 3 § 10 (Initiative Measure No. 1491, approved November 8, 2016).]

7.94.100 Firearms—Return—Disposal. (1) If an extreme risk protection order is terminated or expires without renewal, a law enforcement agency holding any firearm that has been surrendered pursuant to this chapter shall return any surrendered firearm requested by a respondent only after confirming, through a background check, that the respondent is currently eligible to own or possess firearms under federal and state law and after confirming with the court that the extreme risk protection order has terminated or has expired without renewal.

(2) A law enforcement agency must, if requested, provide prior notice of the return of a firearm to a respondent to family or household members of the respondent in the manner provided in RCW 9.41.340 and 9.41.345.

(3) Any firearm surrendered by a respondent pursuant to RCW 7.94.090 that remains unclaimed by the lawful owner shall be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of firearms in police custody. [2017 c 3 § 11 (Initiative Measure No. 1491, approved November 8, 2016).]

7.94.110 Reporting of orders. (1) The clerk of the court shall enter any extreme risk protection order or ex parte extreme risk protection order issued under this chapter into a statewide judicial information system on the same day such order is issued.

(2) The clerk of the court shall forward a copy of an order issued under this chapter the same day such order is issued to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order into the national instant criminal background check system, any other federal or state computer-based systems used by law enforcement or others to identify prohibited purchasers of firearms, and any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order must remain in each system for the period stated in the order, and the law enforcement agency shall only expunge orders from the systems that have expired or terminated. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(3) The issuing court shall, within three judicial days after issuance of an extreme risk protection order or ex parte extreme risk protection order, forward a copy of the respondent's driver's license or identicard, or comparable information, along with the date of order issuance, to the department of licensing. Upon receipt of the information, the department of licensing shall determine if the respondent has a concealed pistol license. If the respondent does have a concealed pistol license, the department of licensing shall immediately notify the license issuing authority which, upon receipt of such notification, shall immediately revoke the license.

(4) If an extreme risk protection order is terminated before its expiration date, the clerk of the court shall forward the same day a copy of the termination order to the department of licensing and the appropriate law enforcement agency specified in the termination order. Upon receipt of the order, the law enforcement agency shall promptly remove the order from any computer-based system in which it was entered pursuant to subsection (2) of this section. [2017 c 3 § 12 (Initiative Measure No. 1491, approved November 8, 2016).]

7.94.120 Penalties. (1) Any person who files a petition under this chapter knowing the information in such petition to be materially false, or with intent to harass the respondent, is guilty of a gross misdemeanor.

(2) Any person who has in his or her custody or control, purchases, possesses, or receives a firearm with knowledge that he or she is prohibited from doing so by an order issued under this chapter is guilty of a gross misdemeanor, and further is prohibited from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm for a period of five years from the date the existing order expires. However, such person is guilty of a class C felony if the person has two or more previous convictions for violating an order issued under this chapter. [2017 c 3 § 13 (Initiative Measure No. 1491, approved November 8, 2016).]

7.94.130 Other authority retained. This chapter does not affect the ability of a law enforcement officer to remove a firearm or concealed pistol license from any person or conduct any search and seizure for firearms pursuant to other lawful authority. [2017 c 3 § 14 (Initiative Measure No. 1491, approved November 8, 2016).]

7.94.140 Liability. Except as provided in RCW 7.94.120, this chapter does not impose criminal or civil liability on any person or entity for acts or omissions related to obtaining an extreme risk protection order or ex parte extreme risk protection [order] including, but not limited to, reporting, declining to report, investigating, declining to investigate, filing, or declining to file a petition under this chapter. [2017 c 3 § 15 (Initiative Measure No. 1491, approved November 8, 2016).]

7.94.150 Instructional and informational material.

(1) The administrative office of the courts shall develop and prepare instructions and informational brochures, standard petitions and extreme risk protection order forms, and a court staff handbook on the extreme risk protection order process. The standard petition and order forms must be used after June 1, 2017, for all petitions filed and orders issued under this chapter. The instructions, brochures, forms, and handbook shall be prepared in consultation with interested persons, including representatives of gun violence prevention groups, judges, and law enforcement personnel. Materials must be based on best practices and available electronically online to the public.

(a) The instructions must be designed to assist petitioners in completing the petition, and must include a sample of a standard petition and order for protection forms.

(b) The instructions and standard petition must include a means for the petitioner to identify, with only lay knowledge, the firearms the respondent may own, possesses [possess], receive, or have in his or her custody or control. The instructions must provide pictures of types of firearms that the petitioner may choose from to identify the relevant firearms, or an equivalent means to allow petitioners to identify firearms without requiring specific or technical knowledge regarding the firearms.

(c) The informational brochure must describe the use of and the process for obtaining, modifying, and terminating an extreme risk protection order under this chapter, and provide relevant forms.

(d) The extreme risk protection order form must include, in a conspicuous location, notice of criminal penalties resulting from violation of the order, and the following statement: "You have the sole responsibility to avoid or refrain from violating this order's provisions. Only the court can change the order and only upon written application."

(e) The court staff handbook must allow for the addition of a community resource list by the court clerk.

(2) All court clerks may create a community resource list of crisis intervention, mental health, substance abuse, interpreter, counseling, and other relevant resources serving the county in which the court is located. The court may make the community resource list available as part of or in addition to the informational brochures described in subsection (1) of this section.

(3) The administrative office of the courts shall distribute a master copy of the petition and order forms, instructions, and informational brochures to all court clerks and shall distribute a master copy of the petition and order forms to all superior, district, and municipal courts. Distribution of all documents shall, at a minimum, be in an electronic format or formats accessible to all courts and court clerks in the state.

(4) For purposes of this section, "court clerks" means court administrators in courts of limited jurisdiction and elected court clerks.

(5) The administrative office of the courts shall determine the significant non-English speaking or limited English speaking populations in the state. The administrator shall then arrange for translation of the instructions and informational brochures required by this section, which shall contain a sample of the standard petition and order for protection forms, into the languages spoken by those significant non-English speaking populations and shall distribute a master copy of the translated instructions and informational brochures to all court clerks by December 1, 2017.

(6) The administrative office of the courts shall update the instructions, brochures, standard petition and extreme risk protection order forms, and court staff handbook as necessary, including when changes in the law make an update necessary. [2017 c 3 § 16 (Initiative Measure No. 1491, approved November 8, 2016).]

7.94.900 Short title—2017 c 3 (Initiative Measure No. 1491). Chapter 3, Laws of 2017 may be known and cited as the extreme risk protection order act. [2017 c 3 § 2 (Initiative Measure No. 1491, approved November 8, 2016).]

Title 8

EMINENT DOMAIN

Chapters

8.26 Relocation assistance—Real property acquisition policy.

Chapter 8.26 RCW

RELOCATION ASSISTANCE—REAL PROPERTY ACQUISITION POLICY

Sections

8.26.010	Purposes—Applicability.
8.26.035	Payment for moving and related expenses.
8.26.045	Payment for replacement housing for homeowners.
8.26.055	Payment for replacement housing for tenants and others.

8.26.010 Purposes—Applicability. (1) The purposes of this chapter are:

(a) To establish a uniform policy for the fair and equitable treatment of persons displaced as a direct result of public works programs of the state and local governments in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole and to minimize the hardship of displacement on such persons;

(b) To encourage and expedite the acquisition of real property for public works programs by agreements with owners, to reduce litigation and relieve congestion in the courts, to assure consistent treatment for owners affected by state

and local programs, and to promote public confidence in state and local land acquisition practices;

(c) To require the state, local public agencies, and other persons who have the authority to acquire property by eminent domain under state law to comply with the provisions of chapter 213, Laws of 2017 in order to assure the fair and equitable treatment of all persons and property owners impacted by public projects.

(2) Any determination by the head of a state agency or local public agency administering a program or project as to payments under this chapter is subject to review pursuant to chapter 34.05 RCW; otherwise, no provision of this chapter may be construed to give any person a cause of action in any court.

(3) Unless otherwise prohibited by law, any state or local public agency providing a grant, loan, or matching funds for any program or project that displaces persons who are eligible for relocation assistance under this chapter may not limit, restrict, or otherwise prohibit grant, loan, or matching fund money from being used for any required relocation assistance payments.

(4) The governing body of any local public agency may elect not to comply with the provisions of RCW 8.26.035 through 8.26.115 in connection with a program or project not receiving federal financial assistance initiated on or before December 31, 2017.

(5) Nothing in this chapter may be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately before March 16, 1988. [2017 c 213 § 1; 1988 c 90 § 1; 1971 ex.s. c 240 § 1.]

Additional notes found at www.leg.wa.gov

8.26.035 Payment for moving and related expenses.

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

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

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

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

(d) Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, in accordance with criteria established by the lead agency, but not to exceed fifty thousand dollars or the dollar amount allowed under 42 U.S.C. Sec. 4622 as it existed on July 23, 2017, or such subsequent date as may be provided by the displacing agency by rule or regulation, consistent with the purposes of this section, whichever is greater.

(2) A displaced person eligible for payments under subsection (1) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (1)

of this section may receive an expense and dislocation allowance determined according to a schedule established by the lead agency.

(3) A displaced person eligible for payments under subsection (1) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (1) of this section. The payment shall consist of a fixed payment in an amount to be determined according to criteria established by the lead agency, except that the payment shall be not less than the dollar amount allowed under 42 U.S.C. Sec. 4622 as it existed on July 23, 2017, or such subsequent date as may be provided by the displacing agency by rule or regulation, consistent with the purposes of this section. A person whose sole business at the displacement dwelling is the rental of that property to others does not qualify for a payment under this subsection. [2017 c 12 § 1; 2003 c 357 § 1; 1988 c 90 § 3.]

Additional notes found at www.leg.wa.gov

8.26.045 Payment for replacement housing for homeowners.

(1) In addition to payments otherwise authorized by this chapter, the displacing agency shall make an additional payment, not in excess of the dollar amount allowed under 42 U.S.C. Sec. 4623 as it existed on July 23, 2017, or such subsequent date as may be provided by the displacing agency by rule or regulation, consistent with the purposes of this section, to any displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for not less than ninety days immediately before the initiation of negotiations for the acquisition of the property. The additional payment shall include the following elements:

(a) The amount, if any, that when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable and necessary cost of a comparable replacement dwelling;

(b) The amount, if any, that will compensate the displaced person for any increased mortgage interest costs and other debt service costs that the person is required to pay for financing the acquisition of any such comparable replacement dwelling. This amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage that was a valid lien on the dwelling for not less than one hundred and eighty days immediately before the initiation of negotiations for the acquisition of the dwelling;

(c) Reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the date on which the person receives final payment from the displacing agency for the acquired dwelling or the date on which the obligation of the displacing agency under RCW 8.26.075 is met, whichever date is later, except that the displacing agency may extend the period for good cause. If the period is extended, the payment under this section shall be based on the costs of relocating the person to

a comparable replacement dwelling within one year of that date. [2017 c 12 § 2; 1988 c 90 § 4.]

Additional notes found at www.leg.wa.gov

8.26.055 Payment for replacement housing for tenants and others. (1) In addition to amounts otherwise authorized by this chapter, a displacing agency shall make a payment to or for a displaced person displaced from a dwelling not eligible to receive a payment under RCW 8.26.045 if the dwelling was actually and lawfully occupied by the displaced person for not less than ninety days immediately before (a) the initiation of negotiations for acquisition of the dwelling, or (b) in any case in which displacement is not a direct result of acquisition, such other event as the lead agency prescribes. The payment shall consist of the amount necessary to enable the person to lease or rent for a period not to exceed forty-two months, a comparable replacement dwelling, but not to exceed the dollar amount allowed under 42 U.S.C. Sec. 4624 as it existed on July 23, 2017, or such subsequent date as may be provided by the displacing agency by rule or regulation, consistent with the purposes of this section. At the discretion of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account the person's income.

(2) A person eligible for a payment under subsection (1) of this section may elect to apply the payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. The person may, at the discretion of the displacing agency, be eligible under this subsection for the maximum payment allowed under subsection (1) of this section. [2017 c 12 § 3; 1988 c 90 § 5.]

Additional notes found at www.leg.wa.gov

Title 9

CRIMES AND PUNISHMENTS

Chapters

- 9.04 Advertising, crimes relating to.**
- 9.35 Identity crimes.**
- 9.41 Firearms and dangerous weapons.**
- 9.46 Gambling—1973 act.**
- 9.68A Sexual exploitation of children.**
- 9.91 Miscellaneous crimes.**
- 9.94A Sentencing reform act of 1981.**
- 9.96 Restoration of civil rights.**
- 9.96A Restoration of employment rights.**
- 9.97 Certificates of restoration of opportunity.**

Chapter 9.04 RCW

ADVERTISING, CRIMES RELATING TO

Sections

- 9.04.040 Repealed.

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

Chapter 9.35 RCW IDENTITY CRIMES

Sections

- 9.35.001 Findings—Intent.
- 9.35.005 Definitions.
- 9.35.020 Identity theft.
- 9.35.060 Consumer fraud targeting seniors, vulnerable individuals.

9.35.001 Findings—Intent. (1) The legislature finds that means of identification and financial information are personal and sensitive information such that if unlawfully obtained, possessed, used, or transferred by others may result in significant harm to a person's privacy, financial security, and other interests. The legislature finds that unscrupulous persons find ever more clever ways, including identity theft, to improperly obtain, possess, use, and transfer another person's means of identification or financial information. The legislature intends to penalize for each unlawful act of improperly obtaining, possessing, using, or transferring means of identification or financial information of an individual person. The unit of prosecution for identity theft by use of a means of identification or financial information is each individual unlawful use of any one person's means of identification or financial information. Unlawfully obtaining, possessing, or transferring each means of identification or financial information of any individual person, with the requisite intent, is a separate unit of prosecution for each victim and for each act of obtaining, possessing, or transferring of the individual person's means of identification or financial information.

(2) The people find that additional measures are needed to protect seniors and vulnerable individuals from identity theft because such individuals often have less ability to protect themselves and such individuals can be targeted using information available through public sources, including publicly available information that identifies such individuals or their in-home caregivers. [2017 c 4 § 4 (Initiative Measure No. 1501, approved November 8, 2016); 2008 c 207 § 3; 1999 c 368 § 1.]

Short title—Intent—Construction—2017 c 4 (Initiative Measure No. 1501): See notes following RCW 9.35.005.

Finding—Intent—2008 c 207 §§ 3 and 4: "The legislature enacts sections 3 and 4 of this act to expressly reject the interpretation of *State v. Leyda*, 157 Wn.2d 335, 138 P.3d 610 (2006), which holds that the unit of prosecution in identity theft is any one act of either knowingly obtaining, possessing, using, or transferring a single piece of another's identification or financial information, including all subsequent proscribed conduct with that single piece of identification or financial information, when the acts are taken with the requisite intent. The legislature finds that proportionality of punishment requires the need for charging and punishing for obtaining, using, possessing, or transferring any individual person's identification or financial information, with the requisite intent. The legislature specifically intends that each individual who obtains, possesses, uses, or transfers any individual person's identification or financial information, with the requisite intent, be classified separately and punished separately as provided in chapter 9.94A RCW." [2008 c 207 § 1.]

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

(1) "Financial information" means any of the following information identifiable to the individual that concerns the amount and conditions of an individual's assets, liabilities, or credit:

(a) Account numbers and balances;
 (b) Transactional information concerning an account;
 and

(c) Codes, passwords, social security numbers, tax identification numbers, driver's license or permit numbers, state identicard numbers issued by the department of licensing, and other information held for the purpose of account access or transaction initiation.

(2) "Financial information repository" means a person engaged in the business of providing services to customers who have a credit, deposit, trust, stock, or other financial account or relationship with the person.

(3) "Means of identification" means information or an item that is not describing finances or credit but is personal to or identifiable with an individual or other person, including: A current or former name of the person, telephone number, an electronic address, or identifier of the individual or a member of his or her family, including the ancestor of the person; information relating to a change in name, address, telephone number, or electronic address or identifier of the individual or his or her family; a social security, driver's license, or tax identification number of the individual or a member of his or her family; and other information that could be used to identify the person, including unique biometric data.

(4) "Person" means a person as defined in RCW 9A.04.110.

(5) "Senior" means a person over the age of sixty-five.

(6) "Victim" means a person whose means of identification or financial information has been used or transferred with the intent to commit, or to aid or abet, any unlawful activity.

(7) "Vulnerable individual" means a person:

(i) [(a)] Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;

(ii) [(b)] Found incapacitated under chapter 11.88 RCW;

(iii) [(c)] Who has a developmental disability as defined under RCW 71A.10.020;

(iv) [(d)] Admitted to any facility;

(v) [(e)] Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;

(vi) [(f)] Receiving services from an individual provider as defined in RCW 74.39A.240; or

(vii) [(g)] Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW. [2017 c 4 § 3 (Initiative Measure No. 1501, approved November 8, 2016); 2001 c 217 § 1.]

Short title—2017 c 4 (Initiative Measure No. 1501): "This act may be known and cited as the seniors and vulnerable individuals' safety and financial crimes prevention act." [2017 c 4 § 1 (Initiative Measure No. 1501, approved November 8, 2016).]

Intent—2017 c 4 (Initiative Measure No. 1501): "It is the intent of this initiative to protect the safety and security of seniors and vulnerable individuals by (1) increasing criminal penalties for identity theft targeting seniors and vulnerable individuals; (2) increasing penalties for consumer fraud targeting seniors and vulnerable individuals; and (3) prohibiting the release of certain public records that could facilitate identity theft and other financial crimes against seniors and vulnerable individuals." [2017 c 4 § 2 (Initiative Measure No. 1501, approved November 8, 2016).]

Construction—2017 c 4 (Initiative Measure No. 1501): "This act shall be liberally construed to promote the public policy of protecting seniors

and vulnerable individuals from identity theft, consumer fraud, and other forms of victimization." [2017 c 4 § 12 (Initiative Measure No. 1501, approved November 8, 2016).]

Additional notes found at www.leg.wa.gov

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

(2) Violation of this section when the accused or an accomplice violates subsection (1) of this section and obtains credit, money, goods, services, or anything else of value in excess of one thousand five hundred dollars in value, or when the accused knowingly targets a senior or vulnerable individual in carrying out a violation of subsection (1) of this section, shall constitute identity theft in the first degree. Identity theft in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(3) A person is guilty of identity theft in the second degree when he or she violates subsection (1) of this section under circumstances not amounting to identity theft in the first degree. Identity theft in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(4) Each crime prosecuted under this section shall be punished separately under chapter 9.94A RCW, unless it is the same criminal conduct as any other crime, under RCW 9.94A.589.

(5) Whenever any series of transactions involving a single person's means of identification or financial information which constitute identity theft would, when considered separately, constitute identity theft in the second degree because of value, and the series of transactions are a part of a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all of the transactions shall be the value considered in determining the degree of identity theft involved.

(6) Every person who, in the commission of identity theft, shall commit any other crime may be punished therefor as well as for the identity theft, and may be prosecuted for each crime separately.

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

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

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

(10) In a proceeding under this section in which a person's means of identification or financial information was used without that person's authorization, and when there has been a conviction, the sentencing court may issue such orders as are necessary to correct a public record that contains false information resulting from a violation of this section. [2017

c 4 § 5 (Initiative Measure No. 1501, approved November 8, 2016); 2008 c 207 § 4; 2004 c 273 § 2; 2003 c 53 § 22; 2001 c 217 § 9; 1999 c 368 § 3.]

Short title—Intent—Construction—2017 c 4 (Initiative Measure No. 1501): See notes following RCW 9.35.005.

Finding—Intent—2008 c 207 §§ 3 and 4: See note following RCW 9.35.001.

Finding—Purpose—2004 c 273: "The legislature finds that identity theft and the other types of fraud is a significant problem in the state of Washington, costing our citizens and businesses millions each year. The most common method of accomplishing identity theft and other fraudulent activity is by securing a fraudulently issued driver's license. It is the purpose of this act to significantly reduce identity theft and other fraud by preventing the fraudulent issuance of driver's licenses and identicards." [2004 c 273 § 1.]

Additional notes found at www.leg.wa.gov

9.35.060 Consumer fraud targeting seniors, vulnerable individuals. (1) It is the intent of this section to increase civil penalties for consumer fraud targeting a senior or a vulnerable individual.

(2) Any consumer fraud that targets a senior or a vulnerable individual, as defined in RCW 9.35.005, is subject to civil penalties of three times the amount of actual damages.

(3) This section creates no new cause of action. This section increases penalties where a plaintiff proceeds under any existing cause of action under statute or common law and successfully proves that he or she was victim to consumer fraud that targeted him or her as a senior or vulnerable individual. [2017 c 4 § 6 (Initiative Measure No. 1501, approved November 8, 2016).]

Short title—Intent—Construction—2017 c 4 (Initiative Measure No. 1501): See notes following RCW 9.35.005.

Chapter 9.41 RCW

FIREARMS AND DANGEROUS WEAPONS

Sections

9.41.010	Terms defined.
9.41.040	Unlawful possession of firearms—Ownership, possession by certain persons—Restoration of right to possess—Penalties.
9.41.070	Concealed pistol license—Application—Fee—Renewal.
9.41.113	Firearm sales or transfers—Background checks—Requirements—Exceptions.
9.41.114	Firearm sales or transfers—Denial of application report—Dealer's duties.
9.41.173	Alien possession of firearms—Alien firearm license—Political subdivisions may not modify requirements—Penalty for false statement.

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

(1) "Antique firearm" means a firearm or replica of a firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898, including any matchlock, flintlock, percussion cap, or similar type of ignition system and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(2) "Barrel length" means the distance from the bolt face of a closed action down the length of the axis of the bore to the crown of the muzzle, or in the case of a barrel with attach-

ments to the end of any legal device permanently attached to the end of the muzzle.

(3) "Crime of violence" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, burglary in the second degree, residential burglary, and robbery in the second degree;

(b) Any conviction for a felony offense in effect at any time prior to June 6, 1996, which is comparable to a felony classified as a crime of violence in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a crime of violence under (a) or (b) of this subsection.

(4) "Curio or relic" has the same meaning as provided in 27 C.F.R. Sec. 478.11.

(5) "Dealer" means a person engaged in the business of selling firearms at wholesale or retail who has, or is required to have, a federal firearms license under 18 U.S.C. Sec. 923(a). A person who does not have, and is not required to have, a federal firearms license under 18 U.S.C. Sec. 923(a), is not a dealer if that person makes only occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or sells all or part of his or her personal collection of firearms.

(6) "Family or household member" means "family" or "household member" as used in RCW 10.99.020.

(7) "Felony" means any felony offense under the laws of this state or any federal or out-of-state offense comparable to a felony offense under the laws of this state.

(8) "Felony firearm offender" means a person who has previously been convicted or found not guilty by reason of insanity in this state of any felony firearm offense. A person is not a felony firearm offender under this chapter if any and all qualifying offenses have been the subject of an expungement, pardon, annulment, certificate, or rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(9) "Felony firearm offense" means:

(a) Any felony offense that is a violation of this chapter;

(b) A violation of RCW 9A.36.045;

(c) A violation of RCW 9A.56.300;

(d) A violation of RCW 9A.56.310;

(e) Any felony offense if the offender was armed with a firearm in the commission of the offense.

(10) "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder. "Firearm" does not include a flare gun or other pyrotechnic visual distress signaling device, or a powder-actuated tool or other device designed solely to be used for construction purposes.

(11) "Gun" has the same meaning as firearm.

(12) "Law enforcement officer" includes a general authority Washington peace officer as defined in RCW

10.93.020, or a specially commissioned Washington peace officer as defined in RCW 10.93.020. "Law enforcement officer" also includes a limited authority Washington peace officer as defined in RCW 10.93.020 if such officer is duly authorized by his or her employer to carry a concealed pistol.

(13) "Lawful permanent resident" has the same meaning afforded a person "lawfully admitted for permanent residence" in 8 U.S.C. Sec. 1101(a)(20).

(14) "Licensed collector" means a person who is federally licensed under 18 U.S.C. Sec. 923(b).

(15) "Licensed dealer" means a person who is federally licensed under 18 U.S.C. Sec. 923(a).

(16) "Loaded" means:

(a) There is a cartridge in the chamber of the firearm;

(b) Cartridges are in a clip that is locked in place in the firearm;

(c) There is a cartridge in the cylinder of the firearm, if the firearm is a revolver;

(d) There is a cartridge in the tube or magazine that is inserted in the action; or

(e) There is a ball in the barrel and the firearm is capped or primed if the firearm is a muzzle loader.

(17) "Machine gun" means any firearm known as a machine gun, mechanical rifle, submachine gun, or any other mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into the firearm, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second.

(18) "Nonimmigrant alien" means a person defined as such in 8 U.S.C. Sec. 1101(a)(15).

(19) "Person" means any individual, corporation, company, association, firm, partnership, club, organization, society, joint stock company, or other legal entity.

(20) "Pistol" means any firearm with a barrel less than sixteen inches in length, or is designed to be held and fired by the use of a single hand.

(21) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(22) "Sale" and "sell" mean the actual approval of the delivery of a firearm in consideration of payment or promise of payment.

(23) "Serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

(a) Any crime of violence;

(b) Any felony violation of the uniform controlled substances act, chapter 69.50 RCW, that is classified as a class B felony or that has a maximum term of imprisonment of at least ten years;

(c) Child molestation in the second degree;

(d) Incest when committed against a child under age fourteen;

(e) Indecent liberties;

(f) Leading organized crime;

(g) Promoting prostitution in the first degree;

(h) Rape in the third degree;

(i) Drive-by shooting;

(j) Sexual exploitation;

(k) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(l) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(m) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under RCW 9.94A.030;

(n) Any other felony with a deadly weapon verdict under RCW 9.94A.825;

(o) Any felony offense in effect at any time prior to June 6, 1996, that is comparable to a serious offense, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious offense; or

(p) Any felony conviction under RCW 9.41.115.

(24) "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

(25) "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

(26) "Shotgun" means a weapon with one or more barrels, designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(27) "Transfer" means the intended delivery of a firearm to another person without consideration of payment or promise of payment including, but not limited to, gifts and loans. "Transfer" does not include the delivery of a firearm owned or leased by an entity licensed or qualified to do business in the state of Washington to, or return of such a firearm by, any of that entity's employees or agents, defined to include volunteers participating in an honor guard, for lawful purposes in the ordinary course of business.

(28) "Unlicensed person" means any person who is not a licensed dealer under this chapter. [2017 c 264 § 1; 2015 c 1 § 2 (Initiative Measure No. 594, approved November 4, 2014); 2013 c 183 § 2. Prior: 2009 c 216 § 1; 2001 c 300 § 2; 1997 c 338 § 46; 1996 c 295 § 1; prior: 1994 sp.s. c 7 § 401; 1994 c 121 § 1; prior: 1992 c 205 § 117; 1992 c 145 § 5; 1983 c 232 § 1; 1971 ex.s. c 302 § 1; 1961 c 124 § 1; 1935 c 172 § 1; RRS § 2516-1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Finding—2015 c 1 (Initiative Measure No. 594): "There is broad consensus that felons, persons convicted of domestic violence crimes, and per-

sons dangerously mentally ill as determined by a court should not be eligible to possess guns for public safety reasons. Criminal and public safety background checks are an effective and easy mechanism to ensure that guns are not purchased by or transferred to those who are prohibited from possessing them. Criminal and public safety background checks also reduce illegal gun trafficking. Because Washington's current background check requirements apply only to sales or transfers by licensed firearms dealers, many guns are sold or transferred without a criminal and public safety background check, allowing criminals and dangerously mentally ill individuals to gain access to guns.

Conducting criminal and public safety background checks will help ensure that all persons buying guns are legally eligible to do so. The people find that it is in the public interest to strengthen our background check system by extending the requirement for a background check to apply to all gun sales and transfers in the state, except as permitted herein. To encourage compliance with background check requirements, the sales tax imposed by RCW 82.08.020 would not apply to the sale or transfer of any firearms between two unlicensed persons if the unlicensed persons have complied with all background check requirements.

This measure would extend criminal and public safety background checks to all gun sales or transfers. Background checks would not be required for gifts between immediate family members or for antiques." [2015 c 1 § 1 (Initiative Measure No. 594, approved November 4, 2014).]

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

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

Additional notes found at www.leg.wa.gov

9.41.040 Unlawful possession of firearms—Ownership, possession by certain persons—Restoration of right to possess—Penalties. (1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

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

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

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

(ii) During any period of time that the person is subject to a court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99, 26.09, 26.10, 26.26, or 26.50 RCW that:

(A) Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;

(B) Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(I) Includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child; and

(II) By its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury;

(iii) After having previously been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

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

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

(b) (a)(ii) of this subsection does not apply to a sexual assault protection order under chapter 7.90 RCW if the order has been modified pursuant to RCW 7.90.170 to remove any restrictions on firearm purchase, transfer, or possession.

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

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted", whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted, or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-fact-finding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state. A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4)(a) Notwithstanding subsection (1) or (2) of this section, a person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401 and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction or finding of not guilty by reason of insanity. Not-

withstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(i) Under RCW 9.41.047; and/or

(ii)(A) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

(B) If the conviction or finding of not guilty by reason of insanity was for a nonfelony offense, after three or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525 and the individual has completed all conditions of the sentence.

(b) An individual may petition a court of record to have his or her right to possess a firearm restored under (a) of this subsection (4) only at:

(i) The court of record that ordered the petitioner's prohibition on possession of a firearm; or

(ii) The superior court in the county in which the petitioner resides.

(5) In addition to any other penalty provided for by law, if a person under the age of eighteen years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within twenty-four hours and the person's privilege to drive shall be revoked under RCW 46.20.265, unless the offense is the juvenile's first offense in violation of this section and has not committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.52, 69.41, or 69.50 RCW.

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

(7) Each firearm unlawfully possessed under this section shall be a separate offense.

(8) For purposes of this section, "intimate partner" includes: A spouse, a domestic partner, a former spouse, a former domestic partner, a person with whom the restrained person has a child in common, or a person with whom the restrained person has cohabitated or is cohabitating as part of a dating relationship. [2017 c 233 § 4; 2016 c 136 § 7; 2014 c 111 § 1; 2011 c 193 § 1; 2009 c 293 § 1; 2005 c 453 § 1; 2003 c 53 § 26; 1997 c 338 § 47; 1996 c 295 § 2. Prior: 1995 c 129 § 16 (Initiative Measure No. 159); 1994 sp.s. c 7 § 402; prior: 1992 c 205 § 118; 1992 c 168 § 2; 1983 c 232 § 2; 1961 c 124 § 3; 1935 c 172 § 4; RRS § 2516-4.]

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

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

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

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

Additional notes found at www.leg.wa.gov

9.41.070 Concealed pistol license—Application—Fee—Renewal. (1) The chief of police of a municipality or the sheriff of a county shall within thirty days after the filing of an application of any person, issue a license to such person to carry a pistol concealed on his or her person within this state for five years from date of issue, for the purposes of protection or while engaged in business, sport, or while traveling. However, if the applicant does not have a valid permanent Washington driver's license or Washington state identification card or has not been a resident of the state for the previous consecutive ninety days, the issuing authority shall have up to sixty days after the filing of the application to issue a license. The issuing authority shall not refuse to accept completed applications for concealed pistol licenses during regular business hours.

The applicant's constitutional right to bear arms shall not be denied, unless:

(a) He or she is ineligible to possess a firearm under the provisions of RCW 9.41.040 or 9.41.045, or is prohibited from possessing a firearm under federal law;

(b) The applicant's concealed pistol license is in a revoked status;

(c) He or she is under twenty-one years of age;

(d) He or she is subject to a court order or injunction regarding firearms pursuant to RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590;

(e) He or she is free on bond or personal recognizance pending trial, appeal, or sentencing for a felony offense;

(f) He or she has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor; or

(g) He or she has been ordered to forfeit a firearm under RCW 9.41.098(1)(e) within one year before filing an application to carry a pistol concealed on his or her person.

No person convicted of a felony may have his or her right to possess firearms restored or his or her privilege to carry a concealed pistol restored, unless the person has been

granted relief from disabilities by the attorney general under 18 U.S.C. Sec. 925(c), or RCW 9.41.040 (3) or (4) applies.

(2)(a) The issuing authority shall conduct a check through the national instant criminal background check system, the Washington state patrol electronic database, the department of social and health services electronic database, and with other agencies or resources as appropriate, to determine whether the applicant is ineligible under RCW 9.41.040 or 9.41.045 to possess a firearm, or is prohibited from possessing a firearm under federal law, and therefore ineligible for a concealed pistol license.

(b) The issuing authority shall deny a permit to anyone who is found to be prohibited from possessing a firearm under federal or state law.

(c) This subsection applies whether the applicant is applying for a new concealed pistol license or to renew a concealed pistol license.

(3) Any person whose firearms rights have been restricted and who has been granted relief from disabilities by the attorney general under 18 U.S.C. Sec. 925(c) or who is exempt under 18 U.S.C. Sec. 921(a)(20)(A) shall have his or her right to acquire, receive, transfer, ship, transport, carry, and possess firearms in accordance with Washington state law restored except as otherwise prohibited by this chapter.

(4) The license application shall bear the full name, residential address, telephone number at the option of the applicant, email address at the option of the applicant, date and place of birth, race, gender, description, a complete set of fingerprints, and signature of the licensee, and the licensee's driver's license number or state identification card number if used for identification in applying for the license. A signed application for a concealed pistol license shall constitute a waiver of confidentiality and written request that the department of social and health services, mental health institutions, and other health care facilities release information relevant to the applicant's eligibility for a concealed pistol license to an inquiring court or law enforcement agency.

The application for an original license shall include a complete set of fingerprints to be forwarded to the Washington state patrol.

The license and application shall contain a warning substantially as follows:

CAUTION: Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. A state license is not a defense to a federal prosecution.

The license shall contain a description of the major differences between state and federal law and an explanation of the fact that local laws and ordinances on firearms are preempted by state law and must be consistent with state law.

The application shall contain questions about the applicant's eligibility under RCW 9.41.040 and federal law to possess a pistol, the applicant's place of birth, and whether the applicant is a United States citizen. If the applicant is not a United States citizen, the applicant must provide the applicant's country of citizenship, United States issued alien number or admission number, and the basis on which the applicant claims to be exempt from federal prohibitions on firearm possession by aliens. The applicant shall not be required to

produce a birth certificate or other evidence of citizenship. A person who is not a citizen of the United States shall, if applicable, meet the additional requirements of RCW 9.41.173 and produce proof of compliance with RCW 9.41.173 upon application. The license may be in triplicate or in a form to be prescribed by the department of licensing.

The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent to the director of licensing and the triplicate shall be preserved for six years, by the authority issuing the license.

The department of licensing shall make available to law enforcement and corrections agencies, in an on-line format, all information received under this subsection.

(5) The nonrefundable fee, paid upon application, for the original five-year license shall be thirty-six dollars plus additional charges imposed by the federal bureau of investigation that are passed on to the applicant. No other state or local branch or unit of government may impose any additional charges on the applicant for the issuance of the license.

The fee shall be distributed as follows:

(a) Fifteen dollars shall be paid to the state general fund;

(b) Four dollars shall be paid to the agency taking the fingerprints of the person licensed;

(c) Fourteen dollars shall be paid to the issuing authority for the purpose of enforcing this chapter;

(d) Two dollars and sixteen cents to the firearms range account in the general fund; and

(e) Eighty-four cents to the concealed pistol license renewal notification account created in RCW 43.79.540.

(6) The nonrefundable fee for the renewal of such license shall be thirty-two dollars. No other branch or unit of government may impose any additional charges on the applicant for the renewal of the license.

The renewal fee shall be distributed as follows:

(a) Fifteen dollars shall be paid to the state general fund;

(b) Fourteen dollars shall be paid to the issuing authority for the purpose of enforcing this chapter;

(c) Two dollars and sixteen cents to the firearms range account in the general fund; and

(d) Eighty-four cents to the concealed pistol license renewal notification account created in RCW 43.79.540.

(7) The nonrefundable fee for replacement of lost or damaged licenses is ten dollars to be paid to the issuing authority.

(8) Payment shall be by cash, check, or money order at the option of the applicant. Additional methods of payment may be allowed at the option of the issuing authority.

(9)(a) A licensee may renew a license if the licensee applies for renewal within ninety days before or after the expiration date of the license. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license must pay a late renewal penalty of ten dollars in addition to the renewal fee specified in subsection (6) of this section. The fee shall be distributed as follows:

(i) Three dollars shall be deposited in the state wildlife account and used exclusively first for the printing and distribution of a pamphlet on the legal limits of the use of firearms, firearms safety, and the preemptive nature of state law, and subsequently the support of volunteer instructors in the basic firearms safety training program conducted by the depart-

ment of fish and wildlife. The pamphlet shall be given to each applicant for a license; and

(ii) Seven dollars shall be paid to the issuing authority for the purpose of enforcing this chapter.

(b) Beginning with concealed pistol licenses that expire on or after August 1, 2018, the department of licensing shall mail a renewal notice approximately ninety days before the license expiration date to the licensee at the address listed on the concealed pistol license application, or to the licensee's new address if the licensee has notified the department of licensing of a change of address. Alternatively, if the licensee provides an email address at the time of license application, the department of licensing may send the renewal notice to the licensee's email address. The notice must contain the date the concealed pistol license will expire, the amount of renewal fee, the penalty for late renewal, and instructions on how to renew the license.

(10) Notwithstanding the requirements of subsections (1) through (9) of this section, the chief of police of the municipality or the sheriff of the county of the applicant's residence may issue a temporary emergency license for good cause pending review under subsection (1) of this section. However, a temporary emergency license issued under this subsection shall not exempt the holder of the license from any records check requirement. Temporary emergency licenses shall be easily distinguishable from regular licenses.

(11) A political subdivision of the state shall not modify the requirements of this section or chapter, nor may a political subdivision ask the applicant to voluntarily submit any information not required by this section.

(12) A person who knowingly makes a false statement regarding citizenship or identity on an application for a concealed pistol license is guilty of false swearing under RCW 9A.72.040. In addition to any other penalty provided for by law, the concealed pistol license of a person who knowingly makes a false statement shall be revoked, and the person shall be permanently ineligible for a concealed pistol license.

(13) A person may apply for a concealed pistol license:

(a) To the municipality or to the county in which the applicant resides if the applicant resides in a municipality;

(b) To the county in which the applicant resides if the applicant resides in an unincorporated area; or

(c) Anywhere in the state if the applicant is a nonresident.

(14) Any person who, as a member of the armed forces, including the national guard and armed forces reserves, is unable to renew his or her license under subsections (6) and (9) of this section because of the person's assignment, reassignment, or deployment for out-of-state military service may renew his or her license within ninety days after the person returns to this state from out-of-state military service, if the person provides the following to the issuing authority no later than ninety days after the person's date of discharge or assignment, reassignment, or deployment back to this state:

(a) A copy of the person's original order designating the specific period of assignment, reassignment, or deployment for out-of-state military service, and (b) if appropriate, a copy of the person's discharge or amended or subsequent assignment, reassignment, or deployment order back to this state. A license so renewed under this subsection (14) shall take effect on the expiration date of the prior license. A licensee renew-

ing after the expiration date of the license under this subsection (14) shall pay only the renewal fee specified in subsection (6) of this section and shall not be required to pay a late renewal penalty in addition to the renewal fee. [2017 c 282 § 1; 2017 c 174 § 1; 2017 c 74 § 1; 2011 c 294 § 1. Prior: 2009 c 216 § 5; 2009 c 59 § 1; 2002 c 302 § 703; 1999 c 222 § 2; 1996 c 295 § 6; 1995 c 351 § 1; prior: 1994 sp.s. c 7 § 407; 1994 c 190 § 2; 1992 c 168 § 1; 1990 c 195 § 6; prior: 1988 c 263 § 10; 1988 c 223 § 1; 1988 c 219 § 1; 1988 c 36 § 1; 1985 c 428 § 3; 1983 c 232 § 3; 1979 c 158 § 1; 1971 ex.s. c 302 § 2; 1961 c 124 § 6; 1935 c 172 § 7; RRS § 2516-7.]

Reviser's note: This section was amended by 2017 c 174 § 1 and by 2017 c 282 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Hunter education program: "The legislature finds that the hunter education program offers classes that all new hunters in the state are legally required to complete, but that budget reductions have limited the assistance that may be provided to the volunteers who conduct these classes. A portion of the funds for this program is provided by statute exclusively for printing and distributing the hunter safety pamphlet. While this pamphlet should remain the highest spending priority for these funds, there is a surplus in the account which could assist with other activities by the volunteers conducting the hunter education program." [1999 c 222 § 1.]

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

Additional notes found at www.leg.wa.gov

9.41.113 Firearm sales or transfers—Background checks—Requirements—Exceptions. (1) All firearm sales or transfers, in whole or part in this state including without limitation a sale or transfer where either the purchaser or seller or transferee or transferor is in Washington, shall be subject to background checks unless specifically exempted by state or federal law. The background check requirement applies to all sales or transfers including, but not limited to, sales and transfers through a licensed dealer, at gun shows, online, and between unlicensed persons.

(2) No person shall sell or transfer a firearm unless:

(a) The person is a licensed dealer;

(b) The purchaser or transferee is a licensed dealer; or

(c) The requirements of subsection (3) of this section are met.

(3) Where neither party to a prospective firearms transaction is a licensed dealer, the parties to the transaction shall complete the sale or transfer through a licensed dealer as follows:

(a) The seller or transferor shall deliver the firearm to a licensed dealer to process the sale or transfer as if it is selling or transferring the firearm from its inventory to the purchaser or transferee, except that the unlicensed seller or transferor may remove the firearm from the business premises of the licensed dealer while the background check is being conducted. If the seller or transferor removes the firearm from the business premises of the licensed dealer while the background check is being conducted, the purchaser or transferee and the seller or transferor shall return to the business premises of the licensed dealer and the seller or transferor shall again deliver the firearm to the licensed dealer prior to completing the sale or transfer.

(b) Except as provided in (a) of this subsection, the licensed dealer shall comply with all requirements of federal and state law that would apply if the licensed dealer were

selling or transferring the firearm from its inventory to the purchaser or transferee, including but not limited to conducting a background check on the prospective purchaser or transferee in accordance with federal and state law requirements and fulfilling all federal and state recordkeeping requirements.

(c) The purchaser or transferee must complete, sign, and submit all federal, state, and local forms necessary to process the required background check to the licensed dealer conducting the background check.

(d) If the results of the background check indicate that the purchaser or transferee is ineligible to possess a firearm, then the licensed dealer shall return the firearm to the seller or transferor.

(e) The licensed dealer may charge a fee that reflects the fair market value of the administrative costs and efforts incurred by the licensed dealer for facilitating the sale or transfer of the firearm.

(4) This section does not apply to:

(a) A transfer between immediate family members, which for this subsection shall be limited to spouses, domestic partners, parents, parents-in-law, children, siblings, siblings-in-law, grandparents, grandchildren, nieces, nephews, first cousins, aunts, and uncles, that is a bona fide gift or loan;

(b) The sale or transfer of an antique firearm;

(c) A temporary transfer of possession of a firearm if such transfer is necessary to prevent imminent death or great bodily harm to the person to whom the firearm is transferred if:

(i) The temporary transfer only lasts as long as immediately necessary to prevent such imminent death or great bodily harm; and

(ii) The person to whom the firearm is transferred is not prohibited from possessing firearms under state or federal law;

(d) A temporary transfer of possession of a firearm if: (i) The transfer is intended to prevent suicide or self-inflicted great bodily harm; (ii) the transfer lasts only as long as reasonably necessary to prevent death or great bodily harm; and (iii) the firearm is not utilized by the transferee for any purpose for the duration of the temporary transfer;

(e) Any law enforcement or corrections agency and, to the extent the person is acting within the course and scope of his or her employment or official duties, any law enforcement or corrections officer, United States marshal, member of the armed forces of the United States or the national guard, or federal official;

(f) A federally licensed gunsmith who receives a firearm solely for the purposes of service or repair, or the return of the firearm to its owner by the federally licensed gunsmith;

(g) The temporary transfer of a firearm (i) between spouses or domestic partners; (ii) if the temporary transfer occurs, and the firearm is kept at all times, at an established shooting range authorized by the governing body of the jurisdiction in which such range is located; (iii) if the temporary transfer occurs and the transferee's possession of the firearm is exclusively at a lawful organized competition involving the use of a firearm, or while participating in or practicing for a performance by an organized group that uses firearms as a part of the performance; (iv) to a person who is under eighteen years of age for lawful hunting, sporting, or educational

purposes while under the direct supervision and control of a responsible adult who is not prohibited from possessing firearms; (v) under circumstances in which the transferee and the firearm remain in the presence of the transferor; or (vi) while hunting if the hunting is legal in all places where the person to whom the firearm is transferred possesses the firearm and the person to whom the firearm is transferred has completed all training and holds all licenses or permits required for such hunting, provided that any temporary transfer allowed by this subsection is permitted only if the person to whom the firearm is transferred is not prohibited from possessing firearms under state or federal law;

(h) A person who (i) acquired a firearm other than a pistol by operation of law upon the death of the former owner of the firearm or (ii) acquired a pistol by operation of law upon the death of the former owner of the pistol within the preceding sixty days. At the end of the sixty-day period, the person must either have lawfully transferred the pistol or must have contacted the department of licensing to notify the department that he or she has possession of the pistol and intends to retain possession of the pistol, in compliance with all federal and state laws; or

(i) A sale or transfer when the purchaser or transferee is a licensed collector and the firearm being sold or transferred is a curio or relic. [2017 c 264 § 2; 2015 c 1 § 3 (Initiative Measure No. 594, approved November 4, 2014).]

Finding—2015 c 1 (Initiative Measure No. 594): See note following RCW 9.41.010.

9.41.114 Firearm sales or transfers—Denial of application report—Dealer's duties. (1) A dealer shall report to the Washington association of sheriffs and police chiefs information on each instance where the dealer denies an application for the purchase or transfer of a firearm, whether under RCW 9.41.090 or 9.41.113, or the requirements of federal law, as the result of a background check or completed and submitted firearm purchase or transfer application that indicates the applicant is ineligible to possess a firearm under state or federal law. The dealer shall report the denied application information to the Washington association of sheriffs and police chiefs within five days of the denial in a format as prescribed by the Washington association of sheriffs and police chiefs. The reported information must include the identifying information of the applicant, the date of the application and denial of the application, and other information or documents as prescribed by the Washington association of sheriffs and police chiefs. In any case where the purchase or transfer of a firearm is initially denied by the dealer as the result of a background check that indicates the applicant is ineligible to possess a firearm, but the purchase or transfer is subsequently approved, the dealer shall report the subsequent approval to the Washington association of sheriffs and police chiefs within one day of the approval.

(2) Upon denying an application for the purchase or transfer of a firearm as a result of a background check or completed and submitted firearm purchase or transfer application that indicates the applicant is ineligible to possess a firearm under state or federal law, the dealer shall:

(a) Provide the applicant with a copy of a notice form generated and distributed by the Washington state patrol

under RCW 43.43.823(5), informing denied applicants of their right to appeal the denial; and

(b) Retain the original records of the attempted purchase or transfer of a firearm for a period not less than six years. [2017 c 261 § 1.]

9.41.173 Alien possession of firearms—Alien firearm license—Political subdivisions may not modify requirements—Penalty for false statement. (1) In order to obtain an alien firearm license, a nonimmigrant alien residing in Washington must apply to the sheriff of the county in which he or she resides.

(2) The sheriff of the county shall within sixty days after the filing of an application of a nonimmigrant alien residing in the state of Washington, issue an alien firearm license to such person to carry or possess a firearm for the purposes of hunting and sport shooting. The license shall be good for two years. The issuing authority shall not refuse to accept completed applications for alien firearm licenses during regular business hours. An application for a license may not be denied, unless the applicant's alien firearm license is in a revoked status, or the applicant:

(a) Is ineligible to possess a firearm under the provisions of RCW 9.41.040 or 9.41.045;

(b) Is subject to a court order or injunction regarding firearms pursuant to RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590;

(c) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a felony offense; or

(d) Has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor.

No license application shall be granted to a nonimmigrant alien convicted of a felony unless the person has been granted relief from disabilities by the attorney general under 18 U.S.C. Sec. 925(c), or unless RCW 9.41.040 (3) or (4) applies.

(3) The sheriff shall check with the national crime information center, the Washington state patrol electronic database, the department of social and health services electronic database, and with other agencies or resources as appropriate, to determine whether the applicant is ineligible under RCW 9.41.040 or 9.41.045 to possess a firearm.

(4) The license application shall bear the full name, residential address, telephone number at the option of the applicant, date and place of birth, race, gender, description, a complete set of fingerprints, and signature of the applicant, a copy of the applicant's passport and visa showing the applicant is in the country legally, and a valid Washington hunting license or documentation that the applicant is a member of a sport shooting club.

A signed application for an alien firearm license shall constitute a waiver of confidentiality and written request that the department of social and health services, mental health institutions, and other health care facilities release information relevant to the applicant's eligibility for an alien firearm license to an inquiring court or law enforcement agency.

The application for an original license shall include a complete set of fingerprints to be forwarded to the Washington state patrol.

[2017 RCW Supp—page 36]

The license and application shall contain a warning substantially as follows:

CAUTION: Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. A state license is not a defense to a federal prosecution.

The license shall contain a description of the major differences between state and federal law and an explanation of the fact that local laws and ordinances on firearms are preempted by state law and must be consistent with state law. The application shall contain questions about the applicant's eligibility under RCW 9.41.040 to possess a firearm. The nonimmigrant alien applicant shall be required to produce a passport and visa as evidence of being in the country legally.

The license may be in triplicate or in a form to be prescribed by the department of licensing. The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent to the director of licensing and the triplicate shall be preserved for six years, by the authority issuing the license.

The department of licensing shall make available to law enforcement and corrections agencies, in an online format, all information received under this section.

(5) The sheriff has the authority to collect a nonrefundable fee, paid upon application, for the two-year license. The fee shall be fifty dollars plus additional charges imposed by the Washington state patrol and the federal bureau of investigation that are passed on to the applicant. No other state or local branch or unit of government may impose any additional charges on the applicant for the issuance of the license. The fee shall be retained by the sheriff.

(6) Payment shall be by cash, check, or money order at the option of the applicant. Additional methods of payment may be allowed at the option of the sheriff.

(7) A political subdivision of the state shall not modify the requirements of this section, nor may a political subdivision ask the applicant to voluntarily submit any information not required by this section.

(8) A person who knowingly makes a false statement regarding citizenship or identity on an application for an alien firearm license is guilty of false swearing under RCW 9A.72.040. In addition to any other penalty provided for by law, the alien firearm license of a person who knowingly makes a false statement shall be revoked, and the person shall be permanently ineligible for an alien firearm license. [2017 c 174 § 2; 2009 c 216 § 3.]

Chapter 9.46 RCW GAMBLING—1973 ACT

Sections

9.46.0209	"Bona fide charitable or nonprofit organization."
9.46.212	Officers designated with police powers authorized to take action to prevent physical injury to person or substantial damage to property—Immunity from civil liability—Exception.

9.46.0209 "Bona fide charitable or nonprofit organization." (1)(a) "Bona fide charitable or nonprofit organization," as used in this chapter, means:

(i) Any organization duly existing under the provisions of chapter 24.12, 24.20, or 24.28 RCW, any agricultural fair authorized under the provisions of chapters 15.76 or 36.37 RCW, or any nonprofit corporation duly existing under the provisions of chapter 24.03 RCW for charitable, benevolent, eleemosynary, educational, civic, patriotic, political, social, fraternal, athletic or agricultural purposes only, or any nonprofit organization, whether incorporated or otherwise, when found by the commission to be organized and operating for one or more of the aforesaid purposes only, all of which in the opinion of the commission have been organized and are operated primarily for purposes other than the operation of gambling activities authorized under this chapter; or

(ii) Any corporation which has been incorporated under Title 36 U.S.C. and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same.

(b) An organization defined under (a) of this subsection must:

(i) Have been organized and continuously operating for at least twelve calendar months immediately preceding making application for any license to operate a gambling activity, or the operation of any gambling activity authorized by this chapter for which no license is required; and

(ii) Demonstrate to the commission that it has made significant progress toward the accomplishment of the purposes of the organization during the twelve consecutive month period preceding the date of application for a license or license renewal. The fact that contributions to an organization do not qualify for charitable contribution deduction purposes or that the organization is not otherwise exempt from payment of federal income taxes pursuant to the internal revenue code of 1954, as amended, shall constitute prima facie evidence that the organization is not a bona fide charitable or nonprofit organization for the purposes of this section.

(c) Any person, association or organization which pays its employees, including members, compensation other than is reasonable therefor under the local prevailing wage scale shall be deemed paying compensation based in part or whole upon receipts relating to gambling activities authorized under this chapter and shall not be a bona fide charitable or nonprofit organization for the purposes of this chapter.

(2) For the purposes of RCW 9.46.0315 and 9.46.110, a bona fide nonprofit organization also includes:

(a) A credit union organized and operating under state or federal law. All revenue less prizes and expenses received from raffles conducted by credit unions must be devoted to purposes authorized under this section for charitable and nonprofit organizations; and

(b) A group of executive branch state employees that:

(i) Has requested and received revocable approval from the agency's chief executive official, or such official's designee, to conduct one or more raffles in compliance with this section;

(ii) Conducts a raffle solely to raise funds for either the state combined fund drive, created under RCW 41.04.033; an entity approved to receive funds from the state combined fund drive; or a charitable or benevolent entity, including but not limited to a person or family in need, as determined by a majority vote of the approved group of employees. No person or other entity may receive compensation in any form from the group for services rendered in support of this purpose;

(iii) Promptly provides such information about the group's receipts, expenditures, and other activities as the agency's chief executive official or designee may periodically require, and otherwise complies with this section and RCW 9.46.0315; and

(iv) Limits the participation in the raffle such that raffle tickets are sold only to, and winners are determined only from, the employees of the agency.

(3) For the purposes of RCW 9.46.0277, a bona fide nonprofit organization also includes a county, city, or town, provided that all revenue less prizes and expenses from raffles conducted by the county, city, or town must be used for community activities or tourism promotion activities. [2017 c 133 § 1; 2009 c 137 § 1; 2007 c 452 § 1; 2000 c 233 § 1; 1987 c 4 § 4. Formerly RCW 9.46.020(3).]

9.46.212 Officers designated with police powers authorized to take action to prevent physical injury to person or substantial damage to property—Immunity from civil liability—Exception. When physical injury to a person or substantial damage to property occurs, or is about to occur, within the presence of an officer of the commission designated with police powers pursuant to RCW 9.46.210, the designated officer is authorized to take such action as is reasonably necessary to prevent physical injury to a person or substantial damage to property or prevent further injury to a person or further substantial damage to property. A designated officer shall be immune from civil liability for damages arising out of the action of the designated officer to prevent physical injury to a person or substantial damage to property or prevent further injury to a person or further substantial damage to property, unless it is shown that the designated officer acted with gross negligence or bad faith. [2017 c 111 § 1.]

Chapter 9.68A RCW

SEXUAL EXPLOITATION OF CHILDREN

Sections

9.68A.050	Dealing in depictions of minor engaged in sexually explicit conduct.
9.68A.060	Sending, bringing into state depictions of minor engaged in sexually explicit conduct.
9.68A.070	Possession of depictions of minor engaged in sexually explicit conduct.
9.68A.100	Commercial sexual abuse of a minor—Penalties—Consent of minor does not constitute defense.
9.68A.101	Promoting commercial sexual abuse of a minor—Penalty—Consent of minor does not constitute defense.

9.68A.050 Dealing in depictions of minor engaged in sexually explicit conduct. (1)(a) A person commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the first degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells a visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e); or

(ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Dealing in depictions of a minor engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

(2)(a) A person commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the second degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g); or

(ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Dealing in depictions of a minor engaged in sexually explicit conduct in the second degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of dealing in one or more depictions or images of visual or printed matter constitutes a separate offense. [2017 c 126 § 3; 2010 c 227 § 4; 1989 c 32 § 3; 1984 c 262 § 4.]

9.68A.060 Sending, bringing into state depictions of minor engaged in sexually explicit conduct. (1)(a) A person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, a visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

(2)(a) A person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, any visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second

degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of sending or bringing into the state one or more depictions or images of visual or printed matter constitutes a separate offense. [2017 c 126 § 4; 2010 c 227 § 5; 1989 c 32 § 4; 1984 c 262 § 5.]

9.68A.070 Possession of depictions of minor engaged in sexually explicit conduct. (1)(a) A person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly possesses a visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Possession of depictions of a minor engaged in sexually explicit conduct in the first degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

(2)(a) A person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly possesses any visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Possession of depictions of a minor engaged in sexually explicit conduct in the second degree is a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of possession of one or more depictions or images of visual or printed matter constitutes a separate offense. [2017 c 126 § 2; 2010 c 227 § 6; 2006 c 139 § 3; 1990 c 155 § 1; 1989 c 32 § 5; 1984 c 262 § 6.]

Additional notes found at www.leg.wa.gov

9.68A.100 Commercial sexual abuse of a minor—Penalties—Consent of minor does not constitute defense. (1) A person is guilty of commercial sexual abuse of a minor if:

(a) He or she provides anything of value to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her;

(b) He or she provides or agrees to provide anything of value to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or

(c) He or she solicits, offers, or requests to engage in sexual conduct with a minor in return for anything of value.

(2) Commercial sexual abuse of a minor is a class B felony punishable under chapter 9A.20 RCW.

(3) In addition to any other penalty provided under chapter 9A.20 RCW, a person guilty of commercial sexual abuse of a minor is subject to the provisions under RCW 9A.88.130 and 9A.88.140.

(4) Consent of a minor to the sexual conduct does not constitute a defense to any offense listed in this section.

(5) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chap-

ter 9A.44 RCW. [2017 c 231 § 3; 2013 c 302 § 2; 2010 c 289 § 13; 2007 c 368 § 2; 1999 c 327 § 4; 1989 c 32 § 8; 1984 c 262 § 9.]

Finding—2017 c 231: See note following RCW 9A.04.080.

Effective date—2013 c 302: See note following RCW 9.68A.090.

Findings—Intent—1999 c 327: See note following RCW 9A.88.130.

Additional requirements: RCW 9A.88.130.

Vehicle impoundment: RCW 9A.88.140.

9.68A.101 Promoting commercial sexual abuse of a minor—Penalty—Consent of minor does not constitute defense. (1) A person is guilty of promoting commercial sexual abuse of a minor if he or she knowingly advances commercial sexual abuse or a sexually explicit act of a minor or profits from a minor engaged in sexual conduct or a sexually explicit act.

(2) Promoting commercial sexual abuse of a minor is a class A felony.

(3) For the purposes of this section:

(a) A person "advances commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor.

(b) A person "profits from commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct, he or she accepts or receives money or anything of value pursuant to an agreement or understanding with any person whereby he or she participates or will participate in the proceeds of commercial sexual abuse of a minor.

(c) A person "advances a sexually explicit act of a minor" if he or she causes or aids a sexually explicit act of a minor, procures or solicits customers for a sexually explicit act of a minor, provides persons or premises for the purposes of a sexually explicit act of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate a sexually explicit act of a minor.

(d) A "sexually explicit act" is a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons and for which anything of value is given or received.

(e) A "patron" is a person who provides or agrees to provide anything of value to another person as compensation for a sexually explicit act of a minor or who solicits or requests a sexually explicit act of a minor in return for a fee.

(4) Consent of a minor to the sexually explicit act or sexual conduct does not constitute a defense to any offense listed in this section.

(5) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chap-

ter 9A.44 RCW. [2017 c 231 § 4; 2013 c 302 § 3; 2012 c 144 § 1; 2010 c 289 § 14; 2007 c 368 § 4.]

Finding—2017 c 231: See note following RCW 9A.04.080.

Effective date—2013 c 302: See note following RCW 9.68A.090.

Chapter 9.91 RCW MISCELLANEOUS CRIMES

Sections

9.91.170 Interfering with dog guide or service animal.

9.91.170 Interfering with dog guide or service animal. (1)(a) Any person who has received notice that his or her behavior is interfering with the use of a dog guide or service animal who continues with reckless disregard to interfere with the use of a dog guide or service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the dog guide or service animal user or his or her dog guide or service animal is guilty of a misdemeanor, except as provided in (b) of this subsection.

(b) A second or subsequent violation of this subsection is a gross misdemeanor.

(2)(a) Any person who, with reckless disregard, allows his or her dog to interfere with the use of a dog guide or service animal by obstructing, intimidating, or otherwise jeopardizing the safety of the dog guide or service animal user or his or her dog guide or service animal is guilty of a misdemeanor, except as provided in (b) of this subsection.

(b) A second or subsequent violation of this subsection is a gross misdemeanor.

(3) Any person who, with reckless disregard, injures, disables, or causes the death of a dog guide or service animal is guilty of a gross misdemeanor.

(4) Any person who, with reckless disregard, allows his or her dog to injure, disable, or cause the death of a dog guide or service animal is guilty of a gross misdemeanor.

(5) Any person who intentionally injures, disables, or causes the death of a dog guide or service animal is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(6) Any person who wrongfully obtains or exerts unauthorized control over a dog guide or service animal with the intent to deprive the dog guide or service animal user of his or her dog guide or service animal is guilty of theft in the first degree, RCW 9A.56.030.

(7)(a) In any case in which the defendant is convicted of a violation of this section, he or she shall also be ordered to make full restitution for all damages, including incidental and consequential expenses incurred by the dog guide or service animal user and the dog guide or service animal which arise out of or are related to the criminal offense.

(b) Restitution for a conviction under this section shall include, but is not limited to:

(i) The value of the replacement of an incapacitated or deceased dog guide or service animal, the training of a replacement dog guide or service animal, or retraining of the affected dog guide or service animal and all related veterinary and care expenses; and

(ii) Medical expenses of the dog guide or service animal user, training of the dog guide or service animal user, and

compensation for wages or earned income lost by the dog guide or service animal user.

(8) Nothing in this section shall affect any civil remedies available for violation of this section.

(9) For purposes of this section, the following definitions apply:

(a) "Dog guide" means a dog that is trained or in training for the purpose of guiding blind persons or a dog trained or in training for the purpose of assisting hearing impaired persons.

(b) "Service animal" means an animal that is trained or in training for the purposes of assisting or accommodating a disabled person's sensory, mental, or physical disability.

(c) "Notice" means a verbal or otherwise communicated warning prescribing the behavior of another person and a request that the person stop their behavior.

(d) "Value" means the value to the dog guide or service animal user and does not refer to cost or fair market value. [2017 c 170 § 1; 2003 c 53 § 52; 2001 c 112 § 2.]

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

Additional notes found at www.leg.wa.gov

Chapter 9.94A RCW SENTENCING REFORM ACT OF 1981

Sections

9.94A.411	Evidentiary sufficiency.
9.94A.515	Table 2—Crimes included within each seriousness level.
9.94A.525	Offender score.

9.94A.411 Evidentiary sufficiency. (1) Decision not to prosecute.

STANDARD: A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

GUIDELINE/COMMENTARY:

Examples

The following are examples of reasons not to prosecute which could satisfy the standard.

(a) **Contrary to Legislative Intent** - It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) **Antiquated Statute** - It may be proper to decline to charge where the statute in question is antiquated in that:

- (i) It has not been enforced for many years; and
- (ii) Most members of society act as if it were no longer in existence; and
- (iii) It serves no deterrent or protective purpose in today's society; and
- (iv) The statute has not been recently reconsidered by the legislature.

This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

(c) **De Minimis Violation** - It may be proper to decline to charge where the violation of law is only technical or insub-

stantial and where no public interest or deterrent purpose would be served by prosecution.

(d) **Confinement on Other Charges** - It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iii) Conviction of the new offense would not serve any significant deterrent purpose.

(e) **Pending Conviction on Another Charge** - It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another county; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) Conviction in the pending prosecution is imminent;

(iii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iv) Conviction of the new offense would not serve any significant deterrent purpose.

(f) **High Disproportionate Cost of Prosecution** - It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. This reason should be limited to minor cases and should not be relied upon in serious cases.

(g) **Improper Motives of Complainant** - It may be proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

(h) **Immunity** - It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused's information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

(i) **Victim Request** - It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:

(i) Assault cases where the victim has suffered little or no injury;

(ii) Crimes against property, not involving violence, where no major loss was suffered;

(iii) Where doing so would not jeopardize the safety of society.

Care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the accused.

The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced.

Notification

The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.

(2) **Decision to prosecute.**

(a) **STANDARD:**

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised

under the evidence, would justify conviction by a reasonable and objective fact finder. With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should avoid pre-filing agreements or diversions intended to place the accused in a program of treatment or counseling, so that treatment, if determined to be beneficial, can be provided pursuant to RCW 9.94A.670.

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

See table below for the crimes within these categories.

CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

CRIMES AGAINST PERSONS

Aggravated Murder (RCW 10.95.020)
 1st Degree Murder (RCW 9A.32.030)
 2nd Degree Murder (RCW 9A.32.050)
 1st Degree Manslaughter (RCW 9A.32.060)
 2nd Degree Manslaughter (RCW 9A.32.070)
 1st Degree Kidnapping (RCW 9A.40.020)
 2nd Degree Kidnapping (RCW 9A.40.030)
 1st Degree Assault (RCW 9A.36.011)
 2nd Degree Assault (RCW 9A.36.021)
 3rd Degree Assault (RCW 9A.36.031)
 4th Degree Assault (if a violation of RCW 9A.36.041(3))
 1st Degree Assault of a Child (RCW 9A.36.120)
 2nd Degree Assault of a Child (RCW 9A.36.130)
 3rd Degree Assault of a Child (RCW 9A.36.140)
 1st Degree Rape (RCW 9A.44.040)
 2nd Degree Rape (RCW 9A.44.050)
 3rd Degree Rape (RCW 9A.44.060)
 1st Degree Rape of a Child (RCW 9A.44.073)
 2nd Degree Rape of a Child (RCW 9A.44.076)
 3rd Degree Rape of a Child (RCW 9A.44.079)
 1st Degree Robbery (RCW 9A.56.200)
 2nd Degree Robbery (RCW 9A.56.210)
 1st Degree Arson (RCW 9A.48.020)
 1st Degree Burglary (RCW 9A.52.020)
 1st Degree Identity Theft (RCW 9.35.020(2))
 2nd Degree Identity Theft (RCW 9.35.020(3))
 1st Degree Extortion (RCW 9A.56.120)
 2nd Degree Extortion (RCW 9A.56.130)
 1st Degree Criminal Mistreatment (RCW 9A.42.020)
 2nd Degree Criminal Mistreatment (RCW 9A.42.030)
 1st Degree Theft from a Vulnerable Adult (RCW 9A.56.400(1))
 2nd Degree Theft from a Vulnerable Adult (RCW 9A.56.400(2))
 Indecent Liberties (RCW 9A.44.100)
 Incest (RCW 9A.64.020)
 Vehicular Homicide (RCW 46.61.520)
 Vehicular Assault (RCW 46.61.522)
 1st Degree Child Molestation (RCW 9A.44.083)
 2nd Degree Child Molestation (RCW 9A.44.086)
 3rd Degree Child Molestation (RCW 9A.44.089)
 1st Degree Promoting Prostitution (RCW 9A.88.070)
 Intimidating a Juror (RCW 9A.72.130)

Communication with a Minor (RCW 9.68A.090)
 Intimidating a Witness (RCW 9A.72.110)
 Intimidating a Public Servant (RCW 9A.76.180)
 Bomb Threat (if against person) (RCW 9.61.160)
 Unlawful Imprisonment (RCW 9A.40.040)
 Promoting a Suicide Attempt (RCW 9A.36.060)
 Criminal Mischief (if against person) (RCW 9A.84.010)
 Stalking (RCW 9A.46.110)
 Custodial Assault (RCW 9A.36.100)
 Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
 Counterfeiting (if a violation of RCW 9.16.035(4))
 Felony Driving a Motor Vehicle While Under the Influence of Intoxicating Liquor or Any Drug (RCW 46.61.502(6))
 Felony Physical Control of a Motor Vehicle While Under the Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))

CRIMES AGAINST PROPERTY/OTHER CRIMES

2nd Degree Arson (RCW 9A.48.030)
 1st Degree Escape (RCW 9A.76.110)
 2nd Degree Escape (RCW 9A.76.120)
 2nd Degree Burglary (RCW 9A.52.030)
 1st Degree Theft (RCW 9A.56.030)
 2nd Degree Theft (RCW 9A.56.040)
 1st Degree Perjury (RCW 9A.72.020)
 2nd Degree Perjury (RCW 9A.72.030)
 1st Degree Introducing Contraband (RCW 9A.76.140)
 2nd Degree Introducing Contraband (RCW 9A.76.150)
 1st Degree Possession of Stolen Property (RCW 9A.56.150)
 2nd Degree Possession of Stolen Property (RCW 9A.56.160)
 Bribery (RCW 9A.68.010)
 Bribing a Witness (RCW 9A.72.090)
 Bribe received by a Witness (RCW 9A.72.100)
 Bomb Threat (if against property) (RCW 9.61.160)
 1st Degree Malicious Mischief (RCW 9A.48.070)
 2nd Degree Malicious Mischief (RCW 9A.48.080)
 1st Degree Reckless Burning (RCW 9A.48.040)
 Taking a Motor Vehicle without Authorization (RCW 9A.56.070 and 9A.56.075)
 Forgery (RCW 9A.60.020)
 2nd Degree Promoting Prostitution (RCW 9A.88.080)
 Tampering with a Witness (RCW 9A.72.120)
 Trading in Public Office (RCW 9A.68.040)
 Trading in Special Influence (RCW 9A.68.050)
 Receiving/Granting Unlawful Compensation (RCW 9A.68.030)
 Bigamy (RCW 9A.64.010)
 Eluding a Pursuing Police Vehicle (RCW 46.61.024)
 Willful Failure to Return from Furlough
 Escape from Community Custody
 Criminal Mischief (if against property) (RCW 9A.84.010)
 1st Degree Theft of Livestock (RCW 9A.56.080)
 2nd Degree Theft of Livestock (RCW 9A.56.083)
 ALL OTHER UNCLASSIFIED FELONIES
 Selection of Charges/Degree of Charge

(i) The prosecutor should file charges which adequately describe the nature of defendant's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:

(A) Will significantly enhance the strength of the state's case at trial; or

(B) Will result in restitution to all victims.

(ii) The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes:

(A) Charging a higher degree;

(B) Charging additional counts.

This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a defendant's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

(b) GUIDELINES/COMMENTARY:

(i) Police Investigation

A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:

(A) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;

(B) The completion of necessary laboratory tests; and

(C) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

(ii) Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

(A) Probable cause exists to believe the suspect is guilty; and

(B) The suspect presents a danger to the community or is likely to flee if not apprehended; or

(C) The arrest of the suspect is necessary to complete the investigation of the crime.

In the event that the exception to the standard is applied, the prosecuting attorney shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.

(iii) Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

(A) Polygraph testing;

(B) Hypnosis;

(C) Electronic surveillance;

(D) Use of informants.

(iv) Prefiling Discussions with Defendant

Discussions with the defendant or his/her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached.

(v) Prefiling Discussions with Victim(s)

Discussions with the victim(s) or victims' representatives regarding the selection or disposition of charges may occur before the filing of charges. The discussions may be considered by the prosecutor in charging and disposition decisions, and should be considered before reaching any agreement with the defendant regarding these decisions. [2017 c 272 § 2; 2017 c 266 § 5. Prior: 2006 c 271 § 1; 2006 c 73 § 13; prior: 2000 c 119 § 28; 2000 c 28 § 17; prior: 1999 c 322 § 6; 1999 c 196 § 11; 1996 c 93 § 2; 1995 c 288 § 3; prior: 1992 c 145 § 11; 1992 c 75 § 5; 1989 c 332 § 2; 1988 c 145 § 13; 1986 c 257 § 30; 1983 c 115 § 15. Formerly RCW 9.94A.440.]

Reviser's note: This section was amended by 2017 c 266 § 5 and by 2017 c 272 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—2017 c 272: See note following RCW 9A.36.041.

Finding—Intent—2017 c 266: See note following RCW 9A.42.020.

Additional notes found at www.leg.wa.gov

9.94A.515 Table 2—Crimes included within each seriousness level.

TABLE 2 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
	Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2))
	Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011)
	Assault of a Child 1 (RCW 9A.36.120)
	Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
	Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101)
	Rape 1 (RCW 9A.44.040)
	Rape of a Child 1 (RCW 9A.44.073)
	Trafficking 2 (RCW 9A.40.100(3))
XI	Manslaughter 1 (RCW 9A.32.060)
	Rape 2 (RCW 9A.44.050)
	Rape of a Child 2 (RCW 9A.44.076)
	Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)

- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- X Child Molestation 1 (RCW 9A.44.083)
- Criminal Mistreatment 1 (RCW 9A.42.020)
- Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
- Kidnapping 1 (RCW 9A.40.020)
- Leading Organized Crime (RCW 9A.82.060(1)(a))
- Malicious explosion 3 (RCW 70.74.280(3))
- Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Abandonment of Dependent Person 1 (RCW 9A.42.060)
- Assault of a Child 2 (RCW 9A.36.130)
- Explosive devices prohibited (RCW 70.74.180)
- Hit and Run—Death (RCW 46.52.020(4)(a))
- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- VIII Arson 1 (RCW 9A.48.020)
- Commercial Sexual Abuse of a Minor (RCW 9.68A.100)
- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
- Manslaughter 2 (RCW 9A.32.070)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Theft of Ammonia (RCW 69.55.010)
- VII Air bag diagnostic systems (causing bodily injury or death) (RCW 46.37.660(2)(b))
- Air bag replacement requirements (causing bodily injury or death) (RCW 46.37.660(1)(b))
- Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)
- Civil Disorder Training (RCW 9A.48.120)
- Dealing in depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.050(1))
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Manufacture or import counterfeit, non-functional, damaged, or previously deployed air bag (causing bodily injury or death) (RCW 46.37.650(1)(b))
- Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)
- Sale [of], install, or reinstall counterfeit, nonfunctional, damaged, or previously deployed airbag (RCW 46.37.650(2)(b))
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.060(1))
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.070(1))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Theft from a Vulnerable Adult 1 (RCW 9A.56.400(1))
- Unlawful Storage of Ammonia (RCW 69.55.020)

- V Abandonment of Dependent Person 2 (RCW 9A.42.070)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Air bag diagnostic systems (RCW 46.37.660(2)(c))
- Air bag replacement requirements (RCW 46.37.660(1)(c))
- Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.050(2))
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Manufacture or import counterfeit, non-functional, damaged, or previously deployed air bag (RCW 46.37.650(1)(c))
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sale [of], install, or reinstall counterfeit, nonfunctional, damaged, or previously deployed airbag (RCW 46.37.650(2)(c))
- Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.060(2))
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
- Assault 4 (third domestic violence offense) (RCW 9A.36.041(3))
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Driving While Under the Influence (RCW 46.61.502(6))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2))
- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Malicious Harassment (RCW 9A.36.080)
- Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.070(2))
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Trafficking in Stolen Property 1 (RCW 9A.82.050)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))

- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(2))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicle Prowling 2 (third or subsequent offense) (RCW 9A.52.100(3))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Viewing of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.075(1))
- Willful Failure to Return from Furlough (*RCW 72.66.060)
- III Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3))
- Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
- Burglary 2 (RCW 9A.52.030)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Criminal Gang Intimidation (RCW 9A.46.120)
- Custodial Assault (RCW 9A.36.100)
- Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Harassment (RCW 9A.46.020)
- Intimidating a Public Servant (RCW 9A.76.180)
- Introducing Contraband 2 (RCW 9A.76.150)
- Malicious Injury to Railroad Property (RCW 81.60.070)
- Mortgage Fraud (RCW 19.144.080)
- Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)
- Organized Retail Theft 1 (RCW 9A.56.350(2))
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Retail Theft with Special Circumstances 1 (RCW 9A.56.360(2))
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))
- Theft of Livestock 2 (RCW 9A.56.083)
- Theft with the Intent to Resell 1 (RCW 9A.56.340(2))
- Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Hunting of Big Game 1 (RCW 77.15.410(3)(b))
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful Misbranding of Food Fish or Shellfish 1 (RCW 69.04.938(3))
- Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
- Unlawful Taking of Endangered Fish or Wildlife 1 (RCW 77.15.120(3)(b))
- Unlawful Trafficking in Fish, Shellfish, or Wildlife 1 (RCW 77.15.260(3)(b))
- Unlawful Use of a Nondesigned Vessel (RCW 77.15.530(4))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (*RCW 72.65.070)
- II Commercial Fishing Without a License 1 (RCW 77.15.500(3)(b))
- Computer Trespass 1 (RCW 9A.90.040)
- Counterfeiting (RCW 9.16.035(3))
- Electronic Data Service Interference (RCW 9A.90.060)
- Electronic Data Tampering 1 (RCW 9A.90.080)
- Electronic Data Theft (RCW 9A.90.100)
- Engaging in Fish Dealing Activity Unlicensed 1 (RCW 77.15.620(3))
- Escape from Community Custody (RCW 72.09.310)
- Failure to Register as a Sex Offender (second or subsequent offense) (RCW 9A.44.130 prior to June 10, 2010, and RCW 9A.44.132)

- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(3))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- Organized Retail Theft 2 (RCW 9A.56.350(3))
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Possession of a Stolen Vehicle (RCW 9A.56.068)
- Retail Theft with Special Circumstances 2 (RCW 9A.56.360(3))
- Scrap Processing, Recycling, or Supplying Without a License (second or subsequent offense) (RCW 19.290.100)
- Theft 1 (RCW 9A.56.030)
- Theft of a Motor Vehicle (RCW 9A.56.065)
- Theft of Rental, Leased, Lease-purchased, or Loaned Property (valued at five thousand dollars or more) (RCW 9A.56.096(5)(a))
- Theft with the Intent to Resell 2 (RCW 9A.56.340(3))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
- Unlawful Participation of Non-Indians in Indian Fishery (RCW 77.15.570(2))
- Unlawful Practice of Law (RCW 2.48.180)
- Unlawful Purchase or Use of a License (RCW 77.15.650(3)(b))
- Unlawful Trafficking in Fish, Shellfish, or Wildlife 2 (RCW 77.15.260(3)(a))
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- Voyeurism 1 (RCW 9A.44.115)
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
- Malicious Mischief 2 (RCW 9A.48.080)
- Mineral Trespass (RCW 78.44.330)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Spotlighting Big Game 1 (RCW 77.15.450(3)(b))
- Suspension of Department Privileges 1 (RCW 77.15.670(3)(b))
- Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)
- Theft 2 (RCW 9A.56.040)
- Theft from a Vulnerable Adult 2 (RCW 9A.56.400(2))
- Theft of Rental, Leased, Lease-purchased, or Loaned Property (valued at seven hundred fifty dollars or more but less than five thousand dollars) (RCW 9A.56.096(5)(b))
- Transaction of insurance business beyond the scope of licensure (RCW 48.17.063)
- Unlawful Fish and Shellfish Catch Accounting (RCW 77.15.630(3)(b))
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
- Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
- Unlawful Possession of Payment Instruments (RCW 9A.56.320)
- Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
- Unlawful Production of Payment Instruments (RCW 9A.56.320)
- Unlawful Releasing, Planting, Possessing, or Placing Deleterious Exotic Wildlife (RCW 77.15.250(2)(b))
- Unlawful Trafficking in Food Stamps (RCW 9.91.142)
- Unlawful Use of Food Stamps (RCW 9.91.144)
- Unlawful Use of Net to Take Fish 1 (RCW 77.15.580(3)(b))
- Unlawful Use of Prohibited Aquatic Animal Species (**RCW 77.15.253(3))
- Vehicle Prowl 1 (RCW 9A.52.095)
- Violating Commercial Fishing Area or Time 1 (RCW 77.15.550(3)(b))

[2017 c 335 § 4; 2017 c 292 § 3; 2017 c 272 § 10; 2017 c 266 § 8. Prior: 2016 c 213 § 5; 2016 c 164 § 13; 2016 c 6 § 1; 2015 c 261 § 11; prior: 2013 c 322 § 26; 2013 c 290 § 8; 2013 c 267 § 2; 2013 c 153 § 2; prior: 2012 c 176 § 3; 2012 c 162 § 1; prior: 2010 c 289 § 11; 2010 c 227 § 9; prior: 2008 c 108 § 23; 2008 c 38 § 1; prior: 2007 c 368 § 14; 2007 c 199 § 10; prior: 2006 c 277 § 6; 2006 c 228 § 9; 2006 c 191 § 2; 2006 c 139 § 2; 2006 c 128 § 3; 2006 c 73 § 12; prior: (2006 c 125 § 5

repealed by 2006 c 126 § 7); 2005 c 458 § 2; 2005 c 183 § 9; prior: 2004 c 176 § 2; 2004 c 94 § 3; (2004 c 94 § 2 expired July 1, 2004); prior: 2003 c 335 § 5; (2003 c 335 § 4 expired July 1, 2004); 2003 c 283 § 33; (2003 c 283 § 32 expired July 1, 2004); 2003 c 267 § 3; (2003 c 267 § 2 expired July 1, 2004); 2003 c 250 § 14; (2003 c 250 § 13 expired July 1, 2004); 2003 c 119 § 8; (2003 c 119 § 7 expired July 1, 2004); 2003 c 53 § 56; 2003 c 52 § 4; (2003 c 52 § 3 expired July 1, 2004); prior: 2002 c 340 § 2; 2002 c 324 § 2; 2002 c 290 § 7; (2002 c 290 § 2 expired July 1, 2003); 2002 c 253 § 4; 2002 c 229 § 2; 2002 c 134 § 2; 2002 c 133 § 4; prior: 2001 2nd sp.s. c 12 § 361; 2001 c 300 § 4; 2001 c 217 § 12; 2001 c 17 § 1; prior: 2001 c 310 § 4; 2001 c 287 § 3; 2001 c 224 § 3; 2001 c 222 § 24; 2001 c 207 § 3; 2000 c 225 § 5; 2000 c 119 § 17; 2000 c 66 § 2; prior: 1999 c 352 § 3; 1999 c 322 § 5; 1999 c 45 § 4; prior: 1998 c 290 § 4; 1998 c 219 § 4; 1998 c 82 § 1; 1998 c 78 § 1; prior: 1997 c 365 § 4; 1997 c 346 § 3; 1997 c 340 § 1; 1997 c 338 § 51; 1997 c 266 § 15; 1997 c 120 § 5; prior: 1996 c 302 § 6; 1996 c 205 § 3; 1996 c 36 § 2; prior: 1995 c 385 § 2; 1995 c 285 § 28; 1995 c 129 § 3 (Initiative Measure No. 159); prior: (1994 sp.s. c 7 § 510 repealed by 1995 c 129 § 19 (Initiative Measure No. 159)); 1994 c 275 § 20; 1994 c 53 § 2; prior: 1992 c 145 § 4; 1992 c 75 § 3; 1991 c 32 § 3; 1990 c 3 § 702; prior: 1989 2nd ex.s. c 1 § 3; 1989 c 412 § 3; 1989 c 405 § 1; 1989 c 271 § 102; 1989 c 99 § 1; prior: 1988 c 218 § 2; 1988 c 145 § 12; 1988 c 62 § 2; prior: 1987 c 224 § 1; 1987 c 187 § 4; 1986 c 257 § 23; 1984 c 209 § 17; 1983 c 115 § 3. Formerly RCW 9.94A.320.]

Reviser's note: *(1) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

***(2) RCW 77.15.253 was repealed by 2014 c 202 § 310.

(3) This section was amended by 2017 c 266 § 8, 2017 c 272 § 10, 2017 c 292 § 3, and by 2017 c 335 § 4, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, See RCW 1.12.025(1).

Finding—2017 c 272: See note following RCW 9A.36.041.

Finding—Intent—2017 c 266: See note following RCW 9A.42.020.

Finding—Application of consumer protection act—2016 c 213: See note following RCW 46.37.640.

Findings—Intent—Short title—2016 c 164: See RCW 9A.90.010 and 9A.90.020.

Effective date—2013 c 153: See note following RCW 9A.56.360.

Findings—2008 c 108: See RCW 19.144.005.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Intent—Severability—Effective date—2006 c 125: See notes following RCW 9A.44.190.

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

Intent—2002 c 290: See note following RCW 9.94A.517.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Purpose—Effective date—2001 c 310: See notes following RCW 2.48.180.

Purpose—Effective date—2001 c 224: See notes following RCW 9A.68.060.

Purpose—Effective date—2001 c 222: See notes following RCW 9A.82.001.

Purpose—Effective date—2001 c 207: See notes following RCW 18.130.190.

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

Findings—Intent—Severability—1997 c 266: See notes following RCW 28A.600.455.

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

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

Finding—Intent—1989 c 271 §§ 102, 109, and 110: See note following RCW 9A.36.050.

Additional notes found at www.leg.wa.gov

9.94A.525 Offender score. The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.589.

(2)(a) Class A and sex prior felony convictions shall always be included in the offender score.

(b) Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.

(c) Except as provided in (e) of this subsection, class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.

(d) Except as provided in (e) of this subsection, serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction.

(e) If the present conviction is felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate crimes for the offense as defined by RCW 46.61.5055(14) shall be included in the offender score, and prior convictions for felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)) shall always be included in the offender score. All other convictions of the defendant shall be scored according to this section.

(f) Prior convictions for a repetitive domestic violence offense, as defined in RCW 9.94A.030, shall not be included in the offender score if, since the last date of release from

confinement or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.

(g) This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

(4) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(5)(a) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently or prior juvenile offenses for which sentences were served consecutively, whether those offenses shall be counted as one offense or as separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used. The current sentencing court may presume that such other prior offenses were not the same criminal conduct from sentences imposed on separate dates, or in separate counties or jurisdictions, or in separate complaints, indictments, or informations;

(ii) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

(b) As used in this subsection (5), "served concurrently" means that: (i) The latter sentence was imposed with specific reference to the former; (ii) the concurrent relationship of the sentences was judicially imposed; and (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.

(6) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense. When these convictions are used as criminal history, score them the same as a completed crime.

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11), (12), or (13) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction

and 1/2 point for each juvenile prior nonviolent felony conviction.

(8) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), (12), or (13) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(9) If the present conviction is for a serious violent offense, count three points for prior adult and juvenile convictions for crimes in this category, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Burglary 1, count prior convictions as in subsection (8) of this section; however count two points for each prior adult Burglary 2 or residential burglary conviction, and one point for each prior juvenile Burglary 2 or residential burglary conviction.

(11) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; for each serious traffic offense, other than those used for an enhancement pursuant to RCW 46.61.520(2), count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for operation of a vessel while under the influence of intoxicating liquor or any drug.

(12) If the present conviction is for homicide by watercraft or assault by watercraft count two points for each adult or juvenile prior conviction for homicide by watercraft or assault by watercraft; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for driving under the influence of intoxicating liquor or any drug, actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, or operation of a vessel while under the influence of intoxicating liquor or any drug.

(13) If the present conviction is for manufacture of methamphetamine count three points for each adult prior manufacture of methamphetamine conviction and two points for each juvenile manufacture of methamphetamine offense. If the present conviction is for a drug offense and the offender has a criminal history that includes a sex offense or serious violent offense, count three points for each adult prior felony drug offense conviction and two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (8) of this section if the current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.

(14) If the present conviction is for Escape from Community Custody, RCW 72.09.310, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(15) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior

convictions as one point and juvenile prior convictions as 1/2 point.

(16) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (7) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.

(17) If the present conviction is for a sex offense, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(18) If the present conviction is for failure to register as a sex offender under RCW *9A.44.130 or 9A.44.132, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction, excluding prior convictions for failure to register as a sex offender under RCW *9A.44.130 or 9A.44.132, which shall count as one point.

(19) If the present conviction is for an offense committed while the offender was under community custody, add one point. For purposes of this subsection, community custody includes community placement or postrelease supervision, as defined in chapter 9.94B RCW.

(20) If the present conviction is for Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2, count priors as in subsections (7) through (18) of this section; however count one point for prior convictions of Vehicle Prowling 2, and three points for each adult and juvenile prior Theft 1 (of a motor vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2 conviction.

(21) If the present conviction is for a felony domestic violence offense where domestic violence as defined in RCW 9.94A.030 was pleaded and proven, count priors as in subsections (7) through (20) of this section; however, count points as follows:

(a) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after August 1, 2011, for any of the following offenses: A felony violation of a no-contact or protection order RCW 26.50.110, felony Harassment (RCW 9A.46.020(2)(b)), felony Stalking (RCW 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020), Kidnapping 1 (RCW 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful imprisonment (RCW 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2 (RCW 9A.56.210), Assault 1 (RCW 9A.36.011), Assault 2 (RCW 9A.36.021), Assault 3 (RCW 9A.36.031), Arson 1 (RCW 9A.48.020), or Arson 2 (RCW 9A.48.030);

(b) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after July 23, 2017, for any of the following offenses: Assault of a child in the first degree, RCW

9A.36.120; Assault of a child in the second degree, RCW 9A.36.130; Assault of a child in the third degree, RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW 9A.42.020; or Criminal Mistreatment in the second degree, RCW 9A.42.030;

(c) Count one point for each second and subsequent juvenile conviction where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after August 1, 2011, for the offenses listed in (a) of this subsection; and

(d) Count one point for each adult prior conviction for a repetitive domestic violence offense as defined in RCW 9.94A.030, where domestic violence as defined in RCW 9.94A.030, was pleaded and proven after August 1, 2011.

(22) The fact that a prior conviction was not included in an offender's offender score or criminal history at a previous sentencing shall have no bearing on whether it is included in the criminal history or offender score for the current offense. Prior convictions that were not counted in the offender score or included in criminal history under repealed or previous versions of the sentencing reform act shall be included in criminal history and shall count in the offender score if the current version of the sentencing reform act requires including or counting those convictions. Prior convictions that were not included in criminal history or in the offender score shall be included upon any resentencing to ensure imposition of an accurate sentence. [2017 c 272 § 3; 2013 2nd sp.s. c 35 § 8; 2011 c 166 § 3; 2010 c 274 § 403; 2008 c 231 § 3. Prior: 2007 c 199 § 8; 2007 c 116 § 1; prior: 2006 c 128 § 6; 2006 c 73 § 7; prior: 2002 c 290 § 3; 2002 c 107 § 3; 2001 c 264 § 5; 2000 c 28 § 15; prior: 1999 c 352 § 10; 1999 c 331 § 1; 1998 c 211 § 4; 1997 c 338 § 5; prior: 1995 c 316 § 1; 1995 c 101 § 1; prior: 1992 c 145 § 10; 1992 c 75 § 4; 1990 c 3 § 706; 1989 c 271 § 103; prior: 1988 c 157 § 3; 1988 c 153 § 12; 1987 c 456 § 4; 1986 c 257 § 25; 1984 c 209 § 19; 1983 c 115 § 7. Formerly RCW 9.94A.360.]

***Reviser's note:** 2010 c 267 removed from RCW 9A.44.130 provisions relating to the crime of "failure to register" as a sex offender or kidnapping offender, and placed similar provisions in RCW 9A.44.132.

Finding—2017 c 272: See note following RCW 9A.36.041.

Intent—2010 c 274: See note following RCW 10.31.100.

Intent—2008 c 231 §§ 2-4: See note following RCW 9.94A.500.

Application—2008 c 231 §§ 2 and 3: See note following RCW 9.94A.500.

Severability—2008 c 231: See note following RCW 9.94A.500.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Effective date—2007 c 116: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 116 § 2.]

Intent—2002 c 290: See note following RCW 9.94A.517.

Finding—Application—2002 c 107: See notes following RCW 9.94A.030.

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

Additional notes found at www.leg.wa.gov

Chapter 9.96 RCW

RESTORATION OF CIVIL RIGHTS

Sections

- 9.96.060 Misdemeanor or gross misdemeanor offenses, persons convicted of prostitution who committed the offense as a result of being a victim of trafficking, promoting prostitution in the first degree, promoting commercial sexual abuse of a minor, or trafficking in persons, or of violating a certain statute or rule regarding the regulation of fishing—Vacating records—Domestic violence records.
- 9.96.070 Vacating records of conviction—Prostitution offenses.

9.96.060 Misdemeanor or gross misdemeanor offenses, persons convicted of prostitution who committed the offense as a result of being a victim of trafficking, promoting prostitution in the first degree, promoting commercial sexual abuse of a minor, or trafficking in persons, or of violating a certain statute or rule regarding the regulation of fishing—Vacating records—Domestic violence records. (1) Every person convicted of a misdemeanor or gross misdemeanor offense who has completed all of the terms of the sentence for the misdemeanor or gross misdemeanor offense may apply to the sentencing court for a vacation of the applicant's record of conviction for the offense. If the court finds the applicant meets the tests prescribed in subsection (2) of this section, the court may in its discretion vacate the record of conviction by: (a)(i) Permitting the applicant to withdraw the applicant's plea of guilty and to enter a plea of not guilty; or (ii) if the applicant has been convicted after a plea of not guilty, the court setting aside the verdict of guilty; and (b) the court dismissing the information, indictment, complaint, or citation against the applicant and vacating the judgment and sentence.

(2) An applicant may not have the record of conviction for a misdemeanor or gross misdemeanor offense vacated if any one of the following is present:

(a) There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court;

(b) The offense was a violent offense as defined in RCW 9.94A.030 or an attempt to commit a violent offense;

(c) The offense was a violation of RCW 46.61.502 (driving while under the influence), 46.61.504 (actual physical control while under the influence), 9.91.020 (operating a railroad, etc. while intoxicated), or the offense is considered a "prior offense" under RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug violation within ten years of the date of arrest for the prior offense or less than ten years has elapsed since the date of the arrest for the prior offense;

(d) The offense was any misdemeanor or gross misdemeanor violation, including attempt, of chapter 9.68 RCW (obscenity and pornography), chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44 RCW (sex offenses);

(e) The applicant was convicted of a misdemeanor or gross misdemeanor offense as defined in RCW 10.99.020, or the court determines after a review of the court file that the offense was committed by one family member or household member against another, or the court, after considering the damage to person or property that resulted in the conviction, any prior convictions for crimes defined in RCW 10.99.020, or for comparable offenses in another state or in federal court,

and the totality of the records under review by the court regarding the conviction being considered for vacation, determines that the offense involved domestic violence, and any one of the following factors exist:

(i) The applicant has not provided written notification of the vacation petition to the prosecuting attorney's office that prosecuted the offense for which vacation is sought, or has not provided that notification to the court;

(ii) The applicant has previously had a conviction for domestic violence. For purposes of this subsection, however, if the current application is for more than one conviction that arose out of a single incident, none of those convictions counts as a previous conviction;

(iii) The applicant has signed an affidavit under penalty of perjury affirming that the applicant has not previously had a conviction for a domestic violence offense, and a criminal history check reveals that the applicant has had such a conviction; or

(iv) Less than five years have elapsed since the person completed the terms of the original conditions of the sentence, including any financial obligations and successful completion of any treatment ordered as a condition of sentencing;

(f) For any offense other than those described in (e) of this subsection, less than three years have passed since the person completed the terms of the sentence, including any financial obligations;

(g) The offender has been convicted of a new crime in this state, another state, or federal court since the date of conviction;

(h) The applicant has ever had the record of another conviction vacated; or

(i) The applicant is currently restrained, or has been restrained within five years prior to the vacation application, by a domestic violence protection order, a no-contact order, an antiharassment order, or a civil restraining order which restrains one party from contacting the other party.

(3) Subject to RCW 9.96.070, every person convicted of prostitution under RCW 9A.88.030 who committed the offense as a result of being a victim of trafficking, RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, promoting commercial sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq. may apply to the sentencing court for vacation of the applicant's record of conviction for the prostitution offense. An applicant may not have the record of conviction for prostitution vacated if any one of the following is present:

(a) There are any criminal charges against the applicant pending in any court of this state or another state, or in any federal court, for any crime other than prostitution; or

(b) The offender has been convicted of another crime, except prostitution, in this state, another state, or federal court since the date of conviction. The limitation in this subsection (3)(b) does not apply to convictions where the offender proves by a preponderance of the evidence that he or she committed the crime as a result of being a victim of trafficking, RCW 9A.40.100, promoting prostitution in the first degree, RCW 9A.88.070, promoting commercial sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons under the trafficking victims protection act of 2000, 22

U.S.C. Sec. 7101 et seq., according to the requirements provided in RCW 9.96.070 for each respective conviction.

(4) Every person convicted prior to January 1, 1975, of violating any statute or rule regarding the regulation of fishing activities, including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070, 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240 who claimed to be exercising a treaty Indian fishing right, may apply to the sentencing court for vacation of the applicant's record of the misdemeanor, gross misdemeanor, or felony conviction for the offense. If the person is deceased, a member of the person's family or an official representative of the tribe of which the person was a member may apply to the court on behalf of the deceased person. Notwithstanding the requirements of RCW 9.94A.640, the court shall vacate the record of conviction if:

(a) The applicant is a member of a tribe that may exercise treaty Indian fishing rights at the location where the offense occurred; and

(b) The state has been enjoined from taking enforcement action of the statute or rule to the extent that it interferes with a treaty Indian fishing right as determined under *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon 1969), and any posttrial orders of those courts, or any other state supreme court or federal court decision.

(5)(a) Once the court vacates a record of conviction under this section, the person shall be released from all penalties and disabilities resulting from the offense and the fact that the person has been convicted of the offense shall not be included in the person's criminal history for purposes of determining a sentence in any subsequent conviction. For all purposes, including responding to questions on employment or housing applications, a person whose conviction has been vacated under this section may state that he or she has never been convicted of that crime. Except as provided in (b) of this subsection, nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

(b) When a court vacates a record of domestic violence as defined in RCW 10.99.020 under this section, the state may not use the vacated conviction in a later criminal prosecution unless the conviction was for: (i) Violating the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going on to the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.44.063, 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145); or (ii) stalking (RCW 9A.46.110). A vacated conviction under this section is not considered a conviction of such an offense for the purposes of 27 C.F.R. 478.11.

(6) All costs incurred by the court and probation services shall be paid by the person making the motion to vacate the record unless a determination is made pursuant to chapter 10.101 RCW that the person making the motion is indigent, at the time the motion is brought.

(7) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification sec-

tion and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies. [2017 c 336 § 2; 2017 c 272 § 9; 2017 c 128 § 1. Prior: 2014 c 176 § 1; 2014 c 109 § 1; prior: 2012 c 183 § 5; 2012 c 142 § 2; 2001 c 140 § 1.]

Reviser's note: This section was amended by 2017 c 128 § 1, 2017 c 272 § 9, and by 2017 c 336 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—2017 c 336: "The legislature finds that there is significant value in diligently combating the crime of driving under the influence and promoting the safety of all persons using our public roadways. The legislature also finds that phlebotomy, also known as venipuncture, is a health care procedure that involves removing blood from the body by making an incision in a vein with a needle. The legislature finds further that the use of forensic phlebotomy can be a useful tool when investigating whether a person may be impaired while operating a motor vehicle. The legislature also finds, however, that despite the value of forensic phlebotomy, both motorists and law enforcement officers must be protected from the potentially significant health risks inherent in allowing the practice of phlebotomy without adequate and appropriate training, as defined by the department of health." [2017 c 336 § 1.]

Finding—2017 c 272: See note following RCW 9A.36.041.

Effective date—2012 c 183: See note following RCW 9.94A.475.

9.96.070 Vacating records of conviction—Prostitution offenses. (1) In order to vacate a record of conviction for a prostitution offense pursuant to RCW 9.96.060(3) as a result of being a victim of trafficking, RCW 9A.40.100, the applicant must prove each of the following elements by a preponderance of the evidence:

(a)(i) The applicant was recruited, harbored, transported, provided, obtained, bought, purchased, or received by another person;

(ii) The person who committed any of the acts in (a)(i) of this subsection against the applicant acted knowingly or in reckless disregard for the fact that force, fraud, or coercion would be used to cause the applicant to engage in a sexually explicit act or commercial sex act; and

(iii) The applicant's conviction record for prostitution and other convictions under RCW 9.96.060(3)(b), if applicable, resulted from such acts; or

(b)(i) The applicant was recruited, harbored, transported, provided, obtained, bought, purchased, or received by another person;

(ii) The person who committed any of the acts in (b)(i) of this subsection against the applicant acted knowingly or in reckless disregard for the fact that the applicant had not attained the age of eighteen and would be caused to engage in a sexually explicit act or commercial sex act; and

(iii) The applicant's record of conviction for prostitution and other convictions under RCW 9.96.060(3)(b), if applicable, resulted from such acts.

(2) In order to vacate a record of conviction for a prostitution offense pursuant to RCW 9.96.060(3) as a result of being a victim of promoting prostitution in the first degree,

RCW 9A.88.070, the applicant must prove each of the following elements by a preponderance of the evidence:

(a)(i) The applicant was compelled by threat or force to engage in prostitution;

(ii) The person who compelled the applicant acted knowingly; and

(iii) The applicant's conviction record for prostitution and other convictions under RCW 9.96.060(3)(b), if applicable, resulted from the compulsion; or

(b)(i) The applicant has a mental incapacity or developmental disability that renders the applicant incapable of consent;

(ii) The applicant was compelled to engage in prostitution;

(iii) The person who compelled the applicant acted knowingly; and

(iv) The applicant's record of conviction for prostitution and other convictions under RCW 9.96.060(3)(b), if applicable, resulted from the compulsion.

(3) In order to vacate a record of conviction for a prostitution offense pursuant to RCW 9.96.060(3) as a result of being a victim of promoting commercial sexual abuse of a minor, RCW 9.68A.101, the applicant must prove each of the following elements by a preponderance of the evidence:

(a)(i) The applicant had not attained the age of eighteen at the time of the prostitution offense;

(ii) A person advanced commercial sexual abuse or a sexually explicit act of the applicant at the time he or she had not attained the age of eighteen;

(iii) The person committing the acts in (a)(ii) of this subsection acted knowingly; and

(iv) The applicant's record of conviction for prostitution and other convictions under RCW 9.96.060(3)(b), if applicable, resulted from any of the acts in (a)(ii) of this subsection.

(b) For purposes of this subsection (3), a person:

(i) "Advanced commercial sexual abuse" of the applicant if, acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor;

(ii) "Advanced a sexually explicit act" of the applicant if he or she causes or aids a sexually explicit act of a minor, procures or solicits customers for a sexually explicit act of a minor, provides persons or premises for the purposes of a sexually explicit act of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate a sexually explicit act of a minor.

(4) In order to vacate a record of conviction for a prostitution offense pursuant to RCW 9.96.060(3) as a result of being a victim of trafficking in persons under the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq., the applicant must prove each of the following elements by a preponderance of the evidence:

(a) The applicant was induced by force, fraud, or coercion to engage in a commercial sex act and the record of conviction for prostitution and other convictions under RCW 9.96.060(3)(b), if applicable, resulted from the inducement; or

(b) The applicant was induced to engage in a commercial sex act prior to reaching the age of eighteen and the record of conviction for prostitution and other convictions under RCW 9.96.060(3)(b), if applicable, resulted from the inducement.

(5) Any motion for vacation of a conviction under RCW 9.96.060(3) and this section must be supported by the sworn testimony of the applicant at a hearing before the court. [2017 c 128 § 2; 2014 c 109 § 2.]

Chapter 9.96A RCW

RESTORATION OF EMPLOYMENT RIGHTS

Sections

9.96A.060 Exclusion—Employees dealing with children or vulnerable persons. (*Effective July 1, 2018.*)

9.96A.060 Exclusion—Employees dealing with children or vulnerable persons. (*Effective July 1, 2018.*) This chapter is not applicable to the department of social and health services or the department of children, youth, and families when employing a person, who in the course of his or her employment, has or may have unsupervised access to any person who is under the age of eighteen, who is under the age of twenty-one and has been sentenced to a term of confinement under the supervision of the department of children, youth, and families under chapter 13.40 RCW, who is a vulnerable adult under chapter 74.34 RCW, or who is a vulnerable person. For purposes of this section "vulnerable person" means an adult of any age who lacks the functional, mental, or physical ability to care for himself or herself. [2017 3rd sp.s. c 6 § 805; 2001 c 296 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Intent—2001 c 296: "It is the intent of the legislature to authorize the department of social and health services to investigate the background of current and future department employees to the same extent and with the same effect as it has authorized the state to investigate the background and exclude from the provision of service current and future care providers, contractors, volunteers, and others. The department of social and health services must coordinate with the department of personnel to develop rules that address the procedures for undertaking background checks, and specifically what action would be taken against a current employee who is disqualified from his or her current position because of a background check not previously performed." [2001 c 296 § 1.]

Chapter 9.97 RCW

CERTIFICATES OF RESTORATION OF OPPORTUNITY

Sections

9.97.020 Certificate of restoration of opportunity—Qualified applicants—States, counties, municipal departments, boards, officers, or agencies authorized may not disqualify—Exceptions—Immunity—Qualified courts have jurisdiction to issue certificates—Employers, housing providers—Department of social and health services and department of children, youth, and families—Washington state patrol—Court

records—Judicial proceedings—Department of health—
 Notice by applicant—Certain superior courts may decline to
 consider applications—Certificate transmittal—Duties of
 administrative office of the courts. (*Effective July 1, 2018.*)

9.97.020 Certificate of restoration of opportunity—Qualified applicants—States, counties, municipal departments, boards, officers, or agencies authorized may not disqualify—Exceptions—Immunity—Qualified courts have jurisdiction to issue certificates—Employers, housing providers—Department of social and health services and department of children, youth, and families—Washington state patrol—Court records—Judicial proceedings—Department of health—Notice by applicant—Certain superior courts may decline to consider applications—Certificate transmittal—Duties of administrative office of the courts. (*Effective July 1, 2018.*) (1) Except as provided in this section, no state, county, or municipal department, board, officer, or agency authorized to assess the qualifications of any applicant for a license, certificate of authority, qualification to engage in the practice of a profession or business, or for admission to an examination to qualify for such a license or certificate may disqualify a qualified applicant, solely based on the applicant's criminal history, if the qualified applicant has obtained a certificate of restoration of opportunity and the applicant meets all other statutory and regulatory requirements, except as required by federal law or exempted under this subsection. Nothing in this section is interpreted as restoring or creating a means to restore any firearms rights or eligibility to obtain a firearm dealer license pursuant to RCW 9.41.110 or requiring the removal of a protection order.

(a)(i) Criminal justice agencies, as defined in RCW 10.97.030, and the Washington state bar association are exempt from this section.

(ii) This section does not apply to the licensing, certification, or qualification of the following professionals: Accountants, RCW 18.04.295; assisted living facilities employees, RCW 18.20.125; bail bond agents, RCW 18.185.020; escrow agents, RCW 18.44.241; long-term care workers, RCW 18.88B.080; nursing home administrators, RCW 18.52.071; nursing, chapter 18.79 RCW; physicians and physician assistants, chapters 18.71 and 18.71A RCW; private investigators, RCW 18.165.030; receivers, RCW 7.60.035; teachers, chapters 28A.405 and 28A.410 RCW; notaries public, chapter 42.45 RCW; private investigators, chapter 18.165 RCW; real estate brokers and salespersons, chapters 18.85 and 18.86 RCW; security guards, chapter 18.170 RCW; and vulnerable adult care providers, RCW 43.43.842.

(iii) To the extent this section conflicts with the requirements for receipt of federal funding under the adoption and safe families act, 42 U.S.C. Sec. 671, this section does not apply.

(b) Unless otherwise addressed in statute, in cases where an applicant would be disqualified under RCW 43.20A.710, and the applicant has obtained a certificate of restoration of opportunity, the department of social and health services and the department of children, youth, and families may, after review of relevant factors, including the nature and seriousness of the offense, time that has passed since conviction, changed circumstances since the offense occurred, and the

nature of the employment or license sought, at their discretion:

(i) Allow the applicant to have unsupervised access to children, vulnerable adults, or individuals with mental illness or developmental disabilities if the applicant is otherwise qualified and suitable; or

(ii) Disqualify the applicant solely based on the applicant's criminal history.

(c) If the practice of a profession or business involves unsupervised contact with vulnerable adults, children, or individuals with mental illness or developmental disabilities, or populations otherwise defined by statute as vulnerable, the department of health may, after review of relevant factors, including the nature and seriousness of the offense, time that has passed since conviction, changed circumstances since the offense occurred, and the nature of the employment or license sought, at its discretion:

(i) Disqualify an applicant who has obtained a certificate of restoration of opportunity, for a license, certification, or registration to engage in the practice of a health care profession or business solely based on the applicant's criminal history; or

(ii) If such applicant is otherwise qualified and suitable, credential or credential with conditions an applicant who has obtained a certificate of restoration of opportunity for a license, certification, or registration to engage in the practice of a health care profession or business.

(d) The state of Washington, any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations, the department of health, and its officers, employees, contractors, and agents are immune from suit in law, equity, or any action under the administrative procedure act based upon its exercise of discretion under this section. This section does not create a protected class; private right of action; any right, privilege, or duty; or change to any right, privilege, or duty existing under law. This section does not modify a licensing or certification applicant's right to a review of an agency's decision under the administrative procedure act or other applicable statute or agency rule. A certificate of restoration of opportunity does not remove or alter citizenship or legal residency requirements already in place for state agencies and employers.

(2) A qualified court has jurisdiction to issue a certificate of restoration of opportunity to a qualified applicant.

(a) A court must determine, in its discretion whether the certificate:

(i) Applies to all past criminal history; or

(ii) Applies only to the convictions or adjudications in the jurisdiction of the court.

(b) The certificate does not apply to any future criminal justice involvement that occurs after the certificate is issued.

(c) A court must determine whether to issue a certificate by determining whether the applicant is a qualified applicant as defined in RCW 9.97.010.

(3) An employer or housing provider may, in its sole discretion, determine whether to consider a certificate of restoration of opportunity issued under this chapter in making employment or rental decisions. An employer or housing provider is immune from suit in law, equity, or under the administrative procedure act for damages based upon its exercise of discretion under this section or the refusal to exercise such

discretion. In any action at law against an employer or housing provider arising out of the employment of or provision of housing to the recipient of a certificate of restoration of opportunity, evidence of the crime for which a certificate of restoration of opportunity has been issued may not be introduced as evidence of negligence or intentionally tortious conduct on the part of the employer or housing provider. This subsection does not create a protected class, private right of action, any right, privilege, or duty, or to change any right, privilege, or duty existing under law related to employment or housing except as provided in RCW 7.60.035.

(4)(a) Department of social and health services: A certificate of restoration of opportunity does not apply to the state abuse and neglect registry. No finding of abuse, neglect, or misappropriation of property may be removed from the registry based solely on a certificate. The department must include such certificates as part of its criminal history record reports, qualifying letters, or other assessments pursuant to RCW 43.43.830 through 43.43.838. The department shall adopt rules to implement this subsection.

(b) Washington state patrol: The Washington state patrol is not required to remove any records based solely on a certificate of restoration of opportunity. The state patrol must include a certificate as part of its criminal history record report.

(c) Court records:

(i) A certificate of restoration of opportunity has no effect on any other court records, including records in the judicial information system. The court records related to a certificate of restoration of opportunity must be processed and recorded in the same manner as any other record.

(ii) The qualified court where the applicant seeks the certificate of restoration of opportunity must administer the court records regarding the certificate in the same manner as it does regarding all other proceedings.

(d) Effect in other judicial proceedings: A certificate of restoration of opportunity may only be submitted to a court to demonstrate that the individual met the specific requirements of this section and not for any other procedure, including evidence of character, reputation, or conduct. A certificate is not an equivalent procedure under Rule of Evidence 609(c).

(e) Department of health: The department of health must include a certificate of restoration of opportunity on its public web site if:

(i) Its web site includes an order, stipulation to informal disposition, or notice of decision related to the conviction identified in the certificate of restoration of opportunity; and

(ii) The credential holder has provided a certified copy of the certificate of restoration of opportunity to the department of health.

(f) Department of children, youth, and families: A certificate of restoration of opportunity does not apply to founded findings of child abuse or neglect. No finding of child abuse or neglect may be destroyed based solely on a certificate. The department of children, youth, and families must include such certificates as part of its criminal history record reports, qualifying letters, or other assessments pursuant to RCW 43.43.830 through 43.43.838. The department of children, youth, and families shall adopt rules to implement this subsection (4)(f).

(5) In all cases, an applicant must provide notice to the prosecutor in the county where he or she seeks a certificate of restoration of opportunity of the pendency of such application. If the applicant has been sentenced by any other jurisdiction in the five years preceding the application for a certificate, the applicant must also notify the prosecuting attorney in those jurisdictions. The prosecutor in the county where an applicant applies for a certificate shall provide the court with a report of the applicant's criminal history.

(6) Application for a certificate of restoration of opportunity must be filed as a civil action.

(7) A superior court in the county in which the applicant resides may decline to consider the application for certificate of restoration of opportunity. If the superior court in which the applicant resides declines to consider the application, the court must dismiss the application without prejudice and the applicant may refile the application in another qualified court. The court must state the reason for the dismissal on the order. If the court determines that the applicant does not meet the required qualifications, then the court must dismiss the application without prejudice and state the reason(s) on the order. The superior court in the county of the applicant's conviction or adjudication may not decline to consider the application.

(8) Unless the qualified court determines that a hearing on an application for certificate of restoration is necessary, the court must decide without a hearing whether to grant the certificate of restoration of opportunity based on a review of the application filed by the applicant and pleadings filed by the prosecuting attorney.

(9) The clerk of the court in which the certificate of restoration of opportunity is granted shall transmit the certificate of restoration of opportunity to the Washington state patrol identification section, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol shall update its records to reflect the certificate of restoration of opportunity.

(10)(a) The administrative office of the courts shall develop and prepare instructions, forms, and an informational brochure designed to assist applicants applying for a certificate of restoration of opportunity.

(b) The instructions must include, at least, a sample of a standard application and a form order for a certificate of restoration of opportunity.

(c) The administrative office of the courts shall distribute a master copy of the instructions, informational brochure, and sample application and form order to all county clerks and a master copy of the application and order to all superior courts by January 1, 2017.

(d) The administrative office of the courts shall determine the significant non-English-speaking or limited English-speaking populations in the state. The administrator shall then arrange for translation of the instructions, which shall contain a sample of the standard application and order, and the informational brochure into languages spoken by those significant non-English-speaking populations and shall distribute a master copy of the translated instructions and informational brochures to the county clerks by January 1, 2017.

(e) The administrative office of the courts shall update the instructions, brochures, standard application and order,

and translations when changes in the law make an update necessary. [2017 3rd sp.s. c 6 § 806; 2017 c 281 § 35; 2016 c 81 § 3.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—2017 c 281: See RCW 42.45.905.

Finding—Conflict with federal requirements—2016 c 81: See notes following RCW 9.97.010.

Title 9A

WASHINGTON CRIMINAL CODE

Chapters

9A.04	Preliminary article.
9A.36	Assault—Physical harm.
9A.40	Kidnapping, unlawful imprisonment, custodial interference, luring, trafficking, and coercion of involuntary servitude.
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Chapter 9A.04 RCW

PRELIMINARY ARTICLE

Sections

9A.04.080 Limitation of actions.

9A.04.080 Limitation of actions. (1) Prosecutions for criminal offenses shall not be commenced after the periods prescribed in this section.

(a) The following offenses may be prosecuted at any time after their commission:

- (i) Murder;
- (ii) Homicide by abuse;
- (iii) Arson if a death results;
- (iv) Vehicular homicide;
- (v) Vehicular assault if a death results;
- (vi) Hit-and-run injury-accident if a death results (RCW 46.52.020(4)).

(b) Except as provided in (c) of this subsection, the following offenses shall not be prosecuted more than ten years after their commission:

(i) Any felony committed by a public officer if the commission is in connection with the duties of his or her office or constitutes a breach of his or her public duty or a violation of the oath of office;

(ii) Arson if no death results;

(iii)(A) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is reported to a law enforcement agency within one year of its commission.

(B) If a violation of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape may not be prosecuted more than three years after its commission;

(iv) Indecent liberties under RCW 9A.44.100(1)(b); or

(v) Attempted murder; or

(vi) Trafficking under RCW 9A.40.100.

(c) Violations of the following statutes, when committed against a victim under the age of eighteen, may be prosecuted up to the victim's thirtieth birthday: RCW 9A.44.040 (rape in the first degree), 9A.44.050 (rape in the second degree), 9A.44.073 (rape of a child in the first degree), 9A.44.076 (rape of a child in the second degree), 9A.44.079 (rape of a child in the third degree), 9A.44.083 (child molestation in the first degree), 9A.44.086 (child molestation in the second degree), 9A.44.089 (child molestation in the third degree), 9A.44.100(1)(b) (indecent liberties), 9A.64.020 (incest), or 9.68A.040 (sexual exploitation of a minor).

(d) A violation of any offense listed in this subsection (1)(d) may be prosecuted up to ten years after its commission or, if committed against a victim under the age of eighteen, up to the victim's thirtieth birthday, whichever is later:

(i) RCW 9.68A.100 (commercial sexual abuse of a minor);

(ii) RCW 9.68A.101 (promoting commercial sexual abuse of a minor); or

(iii) RCW 9.68A.102 (promoting travel for commercial sexual abuse of a minor).

(e) The following offenses shall not be prosecuted more than six years after their commission or their discovery, whichever occurs later:

(i) Violations of RCW 9A.82.060 or 9A.82.080;

(ii) Any felony violation of chapter 9A.83 RCW;

(iii) Any felony violation of chapter 9.35 RCW;

(iv) Theft in the first or second degree under chapter 9A.56 RCW when accomplished by color or aid of deception;

(v) Theft from a vulnerable adult under RCW 9A.56.400; or

(vi) Trafficking in stolen property in the first or second degree under chapter 9A.82 RCW in which the stolen property is a motor vehicle or major component part of a motor vehicle as defined in RCW 46.80.010.

(f) The following offenses shall not be prosecuted more than five years after their commission: Any class C felony under chapter 74.09, *82.36, or 82.38 RCW.

(g) Bigamy shall not be prosecuted more than three years after the time specified in RCW 9A.64.010.

(h) A violation of RCW 9A.56.030 must not be prosecuted more than three years after the discovery of the offense when the victim is a tax exempt corporation under 26 U.S.C. Sec. 501(c)(3).

(i) No other felony may be prosecuted more than three years after its commission; except that in a prosecution under RCW 9A.44.115, if the person who was viewed, photographed, or filmed did not realize at the time that he or she was being viewed, photographed, or filmed, the prosecution must be commenced within two years of the time the person who was viewed or in the photograph or film first learns that he or she was viewed, photographed, or filmed.

(j) No gross misdemeanor may be prosecuted more than two years after its commission.

(k) No misdemeanor may be prosecuted more than one year after its commission.

(2) The periods of limitation prescribed in subsection (1) of this section do not run during any time when the person charged is not usually and publicly resident within this state.

(3) In any prosecution for a sex offense as defined in RCW 9.94A.030, the periods of limitation prescribed in subsection (1) of this section run from the date of commission or one year from the date on which the identity of the suspect is conclusively established by deoxyribonucleic acid testing or by photograph as defined in RCW 9.68A.011, whichever is later.

(4) If, before the end of a period of limitation prescribed in subsection (1) of this section, an indictment has been found or a complaint or an information has been filed, and the indictment, complaint, or information is set aside, then the period of limitation is extended by a period equal to the length of time from the finding or filing to the setting aside. [2017 c 266 § 9; 2017 c 231 § 2; 2017 c 125 § 1; 2013 c 17 § 1; 2012 c 105 § 1. Prior: 2009 c 61 § 1; 2009 c 53 § 1; 2006 c 132 § 1; 1998 c 221 § 2; prior: 1997 c 174 § 1; 1997 c 97 § 1; prior: 1995 c 287 § 5; 1995 c 17 § 1; 1993 c 214 § 1; 1989 c 317 § 3; 1988 c 145 § 14; prior: 1986 c 257 § 13; 1986 c 85 § 1; prior: 1985 c 455 § 19; 1985 c 186 § 1; 1984 c 270 § 18; 1982 c 129 § 1; 1981 c 203 § 1; 1975 1st ex.s. c 260 § 9A.04.080.]

Reviser's note: *(1) Chapter 82.36 RCW was repealed in its entirety by 2013 c 225 § 501, effective July 1, 2016.

(2) This section was amended by 2017 c 125 § 1, 2017 c 231 § 2, and by 2017 c 266 § 9, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2017 c 266: See note following RCW 9A.42.020.

Finding—2017 c 231: "(1) Because of the serious nature of human trafficking related offenses, and the power, control, and exploitation exerted over victims, the legislature finds the statute of limitations on these offenses should be extended. Victims are often under the control of their trafficker for significant periods of time and may not be willing or able to report their perpetrator until they are free from their control.

(2) The legislature finds that statutes governing commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, and promoting prostitution should be consistent with all human trafficking related statutes, and reflect the practical reality of the crimes, which often involve an exchange of drugs or gifts for the commercial sex act." [2017 c 231 § 1.]

Effective date—2017 c 125: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 25, 2017]." [2017 c 125 § 2.]

Intent—1989 c 317: See note following RCW 4.16.340.

Additional notes found at www.leg.wa.gov

Chapter 9A.36 RCW ASSAULT—PHYSICAL HARM

Sections

9A.36.041 Assault in the fourth degree.

9A.36.041 Assault in the fourth degree. (1) A person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another.

(2) Assault in the fourth degree is a gross misdemeanor, except as provided in subsection (3) of this section.

(3) Assault in the fourth degree, where domestic violence was pleaded and proven after July 23, 2017, is a class C felony if the person has two or more prior adult convictions

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within ten years for any of the following offenses where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after July 23, 2017:

(a) Repetitive domestic violence offense as defined in RCW 9.94A.030;

(b) Crime of harassment as defined by RCW 9A.46.060;

(c) Assault in the third degree;

(d) Assault in the second degree;

(e) Assault in the first degree; or

(f) An out-of-state comparable offense.

(4) For purposes of subsection (3) of this section, family or household members means spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, and persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship. [2017 c 272 § 1; 1987 c 188 § 2; 1986 c 257 § 7.]

Finding—2017 c 272: "(1) The legislature finds that Washington state has a serious problem with domestic violence offender recidivism and lethality. The Washington state institute for public policy studied domestic violence offenders finding not just high rates of domestic violence recidivism but among the highest rates of general criminal and violent recidivism. The Washington state coalition against domestic violence has issued fatality reviews of domestic violence homicides in Washington under chapter 43.235 RCW for over fifteen years. These fatality reviews demonstrate the significant impact of domestic violence on our communities as well as the barriers and high rates of lethality faced by victims. The legislature further notes there have been several high profile domestic violence homicides with multiple prior domestic violence incidents not accounted for in the legal response. Many jurisdictions nationally have encountered the same challenges as Washington and now utilize risk assessment as a best practice to assist in the response to domestic violence.

The Washington domestic violence risk assessment work group is established to study how and when risk assessment can best be used to improve the response to domestic violence offenders and victims and find effective strategies to reduce domestic violence homicides, serious injuries, and recidivism that are a result of domestic violence incidents in Washington state.

(2)(a) The Washington state gender and justice commission, in collaboration with the Washington state coalition against domestic violence and the Washington State University criminal justice program, shall coordinate the work group and provide staff support.

(b) The work group must include a representative from each of the following organizations:

(i) The Washington state gender and justice commission;

(ii) The department of corrections;

(iii) The department of social and health services;

(iv) The Washington association of sheriffs and police chiefs;

(v) The superior court judges' association;

(vi) The district and municipal court judges' association;

(vii) The Washington state association of counties;

(viii) The Washington association of prosecuting attorneys;

(ix) The Washington defender association;

(x) The Washington association of criminal defense lawyers;

(xi) The Washington state association of cities;

(xii) The Washington state coalition against domestic violence;

(xiii) The Washington state office of civil legal aid; and

(xiv) The family law section of the Washington state bar association.

(c) The work group must additionally include representation from:

(i) Treatment providers;

(ii) City law enforcement;

(iii) County law enforcement;

(iv) Court administrators; and

(v) Domestic violence victims or family members of a victim.

(3) At a minimum, the work group shall research, review, and make recommendations on the following:

- (a) How to best develop and use risk assessment in domestic violence response utilizing available research and Washington state data;
 - (b) Providing effective strategies for incorporating risk assessment in domestic violence response to reduce deaths, serious injuries, and recidivism due to domestic violence;
 - (c) Promoting access to domestic violence risk assessment for advocates, police, prosecutors, corrections, and courts to improve domestic violence response;
 - (d) Whether or how risk assessment could be used as an alternative to mandatory arrest in domestic violence;
 - (e) Whether or how risk assessment could be used in bail determinations in domestic violence cases, and in civil protection order hearings;
 - (f) Whether or how offender risk, needs, and responsivity could be used in determining eligibility for diversion, sentencing alternatives, and treatment options;
 - (g) Whether or how victim risk, needs, and responsivity could be used in improving domestic violence response;
 - (h) Whether or how risk assessment can improve prosecution and encourage prosecutors to aggressively enforce domestic violence laws; and
 - (i) Encouraging private sector collaboration.
- (4) The work group shall compile its findings and recommendations into a final report and provide its report to the appropriate committees of the legislature and governor by June 30, 2018.
- (5) The work group must operate within existing funds.
- (6) This section expires June 30, 2019." [2017 c 272 § 8.]
- Additional notes found at www.leg.wa.gov

Chapter 9A.40 RCW
KIDNAPPING, UNLAWFUL IMPRISONMENT,
CUSTODIAL INTERFERENCE, LURING,
TRAFFICKING, AND COERCION OF
INVOLUNTARY SERVITUDE

Sections

- 9A.40.100 Trafficking.
- 9A.40.102 Trafficking—Court appearance—No-contact orders—Entry of order into computer-based criminal intelligence information system.
- 9A.40.104 Trafficking—Court may prohibit defendant's contact with victim—No-contact orders—Issuance, termination, modification—Entry of order into computer-based criminal intelligence information system.
- 9A.40.106 Trafficking—Condition of sentence restricting contact—No-contact orders—Entry of order into computer-based criminal intelligence information system.
- 9A.40.120 Enforcement of orders restricting contact.

9A.40.100 Trafficking. (1) A person is guilty of trafficking in the first degree when:

- (a) Such person:
 - (i) Recruits, harbors, transports, transfers, provides, obtains, buys, purchases, or receives by any means another person knowing, or in reckless disregard of the fact, (A) that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in:
 - (I) Forced labor;
 - (II) Involuntary servitude;
 - (III) A sexually explicit act; or
 - (IV) A commercial sex act, or (B) that the person has not attained the age of eighteen years and is caused to engage in a sexually explicit act or a commercial sex act; or
 - (ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i) of this subsection; and
- (b) The acts or venture set forth in (a) of this subsection:
 - (i) Involve committing or attempting to commit kidnapping;
 - (ii) Involve a finding of sexual motivation under RCW 9.94A.835;

- (ii) Involve the illegal harvesting or sale of human organs; or
 - (iv) Result in a death.
- (2) Trafficking in the first degree is a class A felony.
- (3)(a) A person is guilty of trafficking in the second degree when such person:
- (i) Recruits, harbors, transports, transfers, provides, obtains, buys, purchases, or receives by any means another person knowing, or in reckless disregard of the fact, that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act, or a commercial sex act, or that the person has not attained the age of eighteen years and is caused to engage in a sexually explicit act or a commercial sex act; or
 - (ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i) of this subsection.
- (b) Trafficking in the second degree is a class A felony.
- (4)(a) In any prosecution under this chapter in which the offense or degree of the offense depends on the victim's age, it is not a defense that the perpetrator did not know the victim's age, or that the perpetrator believed the victim to be older, as the case may be.
- (b) A person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for a violation of a trafficking crime shall be assessed a ten thousand dollar fee.

(c) The court shall not reduce, waive, or suspend payment of all or part of the fee assessed in this section unless it finds, on the record, that the offender does not have the ability to pay the fee in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(d) Fees assessed under this section shall be collected by the clerk of the court and remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides for its own law enforcement, in which case these amounts shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fees must be used for local efforts to reduce the commercial sale of sex including, but not limited to, increasing enforcement of commercial sex laws.

(i) At least fifty percent of the revenue from fees imposed under this section must be spent on prevention, including education programs for offenders, such as john school, and rehabilitative services, such as mental health and substance abuse counseling, parenting skills, training, housing relief, education, vocational training, drop-in centers, and employment counseling.

(ii) Revenues from these fees are not subject to the distribution requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 35.20.220.

(5) If the victim of any offense identified in this section is a minor, force, fraud, or coercion are not necessary elements of an offense and consent to the sexually explicit act or commercial sex act does not constitute a defense.

(6) For purposes of this section:

(a) "Commercial sex act" means any act of sexual contact or sexual intercourse, both as defined in chapter 9A.44

RCW, for which something of value is given or received by any person; and

(b) "Sexually explicit act" means a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons for which something of value is given or received. [2017 c 126 § 1; 2014 c 188 § 1; 2013 c 302 § 6. Prior: 2012 c 144 § 2; 2012 c 134 § 1; 2011 c 111 § 1; 2003 c 267 § 1.]

Effective date—2013 c 302: See note following RCW 9.68A.090.

9A.40.102 Trafficking—Court appearance—No-contact orders—Entry of order into computer-based criminal intelligence information system. (1) A defendant who is charged by citation, complaint, or information with an offense involving trafficking, as described in RCW 9A.40.100, and is not arrested, shall appear in court for arraignment or initial appearance in person as soon as practicable, but in no event later than fourteen days after the defendant is served with the citation, complaint, or information. At that appearance, the court shall determine the necessity of imposing or extending a no-contact order, and consider the provisions of RCW 9.41.800 or other conditions of pretrial release according to the procedures established by court rule for preliminary appearance or an arraignment.

(2) Whenever a no-contact order is issued under this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system. [2017 c 230 § 1.]

9A.40.104 Trafficking—Court may prohibit defendant's contact with victim—No-contact orders—Issuance, termination, modification—Entry of order into computer-based criminal intelligence information system. (1) Because of the likelihood of repeated harassment and intimidation directed at those who have been victims of trafficking as described in RCW 9A.40.100, before any defendant charged with or arrested, for a crime involving trafficking, is released from custody, or at any time the case remains unresolved, the court may prohibit that person from having any contact with the victim whether directly or through third parties.

At the initial preliminary appearance, the court shall determine whether to extend any existing prohibition on the defendant's contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim or from know-

ingly coming within, or knowingly remaining within, a specified distance of a location. The court may also consider the provisions of RCW 9.41.800 or other conditions of pretrial release according to the procedures established by court rule for preliminary appearance or an arraignment.

(2) At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended. So long as the court finds probable cause, the court may issue or extend a no-contact order. The no-contact order shall terminate if the defendant is acquitted or the charges are dismissed.

(3)(a) Willful violation of a court order issued under this section is punishable under RCW 26.50.110.

(b) The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 26.50 RCW and the violator is subject to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.

(4) Upon a motion with notice to all parties and after a hearing, the court may terminate or modify the terms of an existing no-contact order, including terms entered pursuant to RCW 9.41.800 related to firearms or other dangerous weapons or to concealed pistol licenses.

(5)(a) A defendant's motion to terminate or modify a no-contact order must include a declaration setting forth facts supporting the requested order for termination or modification. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the declarations. If the court finds that the defendant established adequate cause, the court shall set a date for hearing the defendant's motion.

(b) The court may terminate or modify the terms of a no-contact order, including terms entered pursuant to RCW 9.41.800 related to firearms or other dangerous weapons or to concealed pistol licenses, if the defendant proves by a preponderance of the evidence that there has been a material change in circumstances such that the defendant is not likely to engage in or attempt to engage in physical or nonphysical contact with the victim if the order is terminated or modified. The victim bears no burden of proving that he or she has a current reasonable fear of harm by the defendant.

(c) A defendant may file a motion to terminate or modify pursuant to this section no more than once in every twelve-month period that the order is in effect, starting from the date of the order and continuing through any renewal.

(6) Whenever a no-contact order is issued, modified, or terminated under this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system. [2017 c 230 § 3.]

9A.40.106 Trafficking—Condition of sentence restricting contact—No-contact orders—Entry of order into computer-based criminal intelligence information system. (1) If a defendant is found guilty of the crime of trafficking under RCW 9A.40.100 and a condition of the sentence restricts the defendant's ability to have contact with the victim, the condition must be recorded and a written certified copy of that order must be provided to the victim by the clerk of the court. Willful violation of a court order issued under this section is punishable under RCW 26.50.110. The written order must contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 26.50 RCW and the violator is subject to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.

(2) Whenever a no-contact order is issued under this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system. [2017 c 230 § 4.]

9A.40.120 Enforcement of orders restricting contact. Any general authority Washington peace officer as defined in RCW 10.93.020 in this state may enforce this chapter as it relates to orders restricting the defendants' ability to have contact with the victim or others. [2017 c 230 § 2.]

Chapter 9A.42 RCW CRIMINAL MISTREATMENT

Sections

9A.42.020	Criminal mistreatment in the first degree.
9A.42.030	Criminal mistreatment in the second degree.
9A.42.035	Criminal mistreatment in the third degree.

9A.42.020 Criminal mistreatment in the first degree. (1) A parent of a child, the person entrusted with the physical custody of a child or dependent person, a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide to the child or dependent person the basic necessities of life is guilty of criminal mistreatment in the first degree if he or she with criminal negligence, as defined in RCW 9A.08.010, causes great bodily harm to a child or dependent person by withholding any of the basic necessities of life.

(2) Criminal mistreatment in the first degree is a class B felony. [2017 c 266 § 2; 2006 c 228 § 2; 1997 c 392 § 510; 1986 c 250 § 2.]

Finding—Intent—2017 c 266: "The legislature finds that seniors and people with disabilities face a growing threat of financial exploitation and physical neglect. The legislature intends with this act to hold accountable

those perpetrators who commit theft and physical neglect of seniors and people with disabilities by increasing penalties, reducing barriers to prosecution, and expanding the scope of protection for vulnerable persons." [2017 c 266 § 1.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

9A.42.030 Criminal mistreatment in the second degree. (1) A parent of a child, the person entrusted with the physical custody of a child or dependent person, a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide to the child or dependent person the basic necessities of life is guilty of criminal mistreatment in the second degree if he or she with criminal negligence, as defined in RCW 9A.08.010, either (a) creates an imminent and substantial risk of death or great bodily harm by withholding any of the basic necessities of life, or (b) causes substantial bodily harm by withholding any of the basic necessities of life.

(2) Criminal mistreatment in the second degree is a class C felony. [2017 c 266 § 3; 2006 c 228 § 3; 1997 c 392 § 511; 1986 c 250 § 3.]

Finding—Intent—2017 c 266: See note following RCW 9A.42.020.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

9A.42.035 Criminal mistreatment in the third degree. (1) A person is guilty of the crime of criminal mistreatment in the third degree if the person is the parent of a child, is a person entrusted with the physical custody of a child or other dependent person, is a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or is a person employed to provide to the child or dependent person the basic necessities of life and, with criminal negligence, creates an imminent and substantial risk of substantial bodily harm to a child or dependent person by withholding any of the basic necessities of life.

(2) For purposes of this section, "a person who has assumed the responsibility to provide to a dependent person the basic necessities of life" means a person other than: (a) A government agency that regularly provides assistance or services to dependent persons, including but not limited to the department of social and health services; or (b) a good samaritan as defined in RCW 9A.42.010.

(3) Criminal mistreatment in the third degree is a gross misdemeanor. [2017 c 266 § 4; 2006 c 228 § 4; 2000 c 76 § 1.]

Finding—Intent—2017 c 266: See note following RCW 9A.42.020.

Chapter 9A.44 RCW SEX OFFENSES

Sections

9A.44.115	Voyeurism.
9A.44.130	Registration of sex offenders and kidnapping offenders—Procedures—Definition—Penalties.
9A.44.142	Relief from duty to register—Petition—Exceptions.
9A.44.143	Relief from duty to register for sex offense or kidnapping offense committed when offender was a juvenile and who has not been determined to be a sexually violent predator—Petition—Exception.

9A.44.115 Voyeurism. (1) As used in this section:

(a) "Intimate areas" means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view;

(b) "Photographs" or "films" means the making of a photograph, motion picture film, videotape, digital image, or any other recording or transmission of the image of a person;

(c) "Place where he or she would have a reasonable expectation of privacy" means:

(i) A place where a reasonable person would believe that he or she could disrobe in privacy, without being concerned that his or her undressing was being photographed or filmed by another; or

(ii) A place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance;

(d) "Surveillance" means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person;

(e) "Views" means the intentional looking upon of another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or with a device designed or intended to improve visual acuity.

(2)(a) A person commits the crime of voyeurism in the first degree if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films:

(i) Another person without that person's knowledge and consent while the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy; or

(ii) The intimate areas of another person without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

(b) Voyeurism in the first degree is a class C felony.

(3)(a) A person commits the crime of voyeurism in the second degree if he or she intentionally photographs or films another person for the purpose of photographing or filming the intimate areas of that person with the intent to distribute or disseminate the photograph or film, without that person's knowledge and consent, and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

(b) Voyeurism in the second degree is a gross misdemeanor.

(c) Voyeurism in the second degree is not a sex offense for the purposes of sentencing or sex offender registration requirements under this chapter.

(4) This section does not apply to viewing, photographing, or filming by personnel of the department of corrections or of a local jail or correctional facility for security purposes or during investigation of alleged misconduct by a person in the custody of the department of corrections or the local jail or correctional facility.

(5) If a person is convicted of a violation of this section, the court may order the destruction of any photograph, motion picture film, digital image, videotape, or any other recording of an image that was made by the person in violation of this section. [2017 c 292 § 1; 2003 c 213 § 1; 1998 c 221 § 1.]

Additional notes found at www.leg.wa.gov

9A.44.130 Registration of sex offenders and kidnapping offenders—Procedures—Definition—Penalties.

(1)(a) Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section. When a person required to register under this section is in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person.

(b) Any adult or juvenile who is required to register under (a) of this subsection must give notice to the county sheriff of the county with whom the person is registered within three business days:

(i) Prior to arriving at a school or institution of higher education to attend classes;

(ii) Prior to starting work at an institution of higher education; or

(iii) After any termination of enrollment or employment at a school or institution of higher education.

(2)(a) A person required to register under this section must provide the following information when registering: (i) Name and any aliases used; (ii) complete and accurate residential address or, if the person lacks a fixed residence, where he or she plans to stay; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) social security number; (viii) photograph; and (ix) fingerprints.

(b) A person may be required to update any of the information required in this subsection in conjunction with any address verification conducted by the county sheriff or as part of any notice required by this section.

(c) A photograph or copy of an individual's fingerprints, which may include palmprints may be taken at any time to update an individual's file.

(3) Any person required to register under this section who intends to travel outside the United States must provide, by certified mail, with return receipt requested, or in person, signed written notice of the plan to travel outside the country to the county sheriff of the county with whom the person is registered at least twenty-one days prior to travel. The notice shall include the following information: (a) Name; (b) passport number and country; (c) destination; (d) itinerary details including departure and return dates; (e) means of travel; and (f) purpose of travel. If the offender subsequently cancels or postpones travel outside the United States, the offender must notify the county sheriff not later than three days after cancellation or postponement of the intended travel outside the United States or on the departure date provided in the notification, whichever is earlier. The county sheriff shall notify the United States marshals service as soon as practicable after

receipt of the notification. In cases of unexpected travel due to family or work emergencies, or for offenders who travel routinely across international borders for work-related purposes, the notice must be submitted in person at least twenty-four hours prior to travel to the sheriff of the county where such offenders are registered with a written explanation of the circumstances that make compliance with this subsection (3) impracticable.

(4)(a) Offenders shall register with the county sheriff within the following deadlines:

(i) **OFFENDERS IN CUSTODY.** Sex offenders or kidnapping offenders who are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within three business days from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

When a person required to register under this section is in the custody of the state department of corrections or a local corrections or probations agency and has been approved for partial confinement as defined in RCW 9.94A.030, the person must register at the time of transfer to partial confinement with the official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county in which the offender is in partial confinement. The offender must also register within three business days from the time of the termination of partial confinement or release from confinement with the county sheriff for the county of the person's residence. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register.

(ii) **OFFENDERS UNDER FEDERAL JURISDICTION.** Sex offenders or kidnapping offenders who are in the custody of the United States bureau of prisons or other federal or military correctional agency must register within three business days from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation.

(iii) **OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED.** Sex offenders who are convicted of a sex offense and kidnapping offenders who are convicted for a kidnapping offense but who are not sentenced to serve a term of confinement immediately upon sentencing shall report to the county sheriff to register within three business days of being sentenced.

(iv) **OFFENDERS WHO ARE NEW RESIDENTS, TEMPORARY RESIDENTS, OR RETURNING WASHINGTON RESIDENTS.** Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country must register within three business days of establishing residence or reestablishing residence if the person is a former Washington resident. If the offender is under the jurisdiction of an agency of this state when the offender moves to Washington, the agency shall provide notice to the offender of the duty to register.

Sex offenders and kidnapping offenders who are visiting Washington state and intend to reside or be present in the state for ten days or more shall register his or her temporary address or where he or she plans to stay with the county sheriff of each county where the offender will be staying within three business days of arrival. Registration for temporary residents shall include the information required by subsection (2)(a) of this section, except the photograph and fingerprints.

(v) **OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY.** Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing a sex offense or a kidnapping offense and who is in custody, as a result of that finding, of the state department of social and health services, must register within three business days from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register.

(vi) **OFFENDERS WHO LACK A FIXED RESIDENCE.** Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than three business days after entering the county and provide the information required in subsection (2)(a) of this section.

(vii) **OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION.** Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(viii) **OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE.** Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within three business days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(b) The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of RCW 9A.44.132, or arraignment on charges for a violation of RCW 9A.44.132, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under RCW 9A.44.132 who asserts as a defense the lack of notice of the duty to register shall register within three business days following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (4)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address to the county sheriff within three business days of moving.

(b) If any person required to register pursuant to this section moves to a new county, within three business days of moving the person must register with the county sheriff of the county into which the person has moved and provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered is responsible for address verification pursuant to RCW 9A.44.135 until the person completes registration of his or her new residence address.

(6)(a) Any person required to register under this section who lacks a fixed residence shall provide signed written notice to the sheriff of the county where he or she last registered within three business days after ceasing to have a fixed residence. The notice shall include the information required by subsection (2)(a) of this section, except the photograph, fingerprints, and palmprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The person must keep an accurate accounting of where he or she stays during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within three business days of ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vi) or (vii) and (6) of

this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within three business days of the entry of the order.

(8) Except as may otherwise be provided by law, nothing in this section shall impose any liability upon a peace officer, including a county sheriff, or law enforcement agency, for failing to release information authorized under this section. [2017 c 174 § 3; 2015 c 261 § 3; 2011 c 337 § 3. Prior: 2010 c 267 § 2; 2010 c 265 § 1; 2008 c 230 § 1; prior: 2006 c 129 § 2; (2006 c 129 § 1 expired September 1, 2006); 2006 c 128 § 2; (2006 c 128 § 1 expired September 1, 2006); 2006 c 127 § 2; 2006 c 126 § 2; (2006 c 126 § 1 expired September 1, 2006); 2005 c 380 § 1; prior: 2003 c 215 § 1; 2003 c 53 § 68; 2002 c 31 § 1; prior: 2001 c 169 § 1; 2001 c 95 § 2; 2000 c 91 § 2; prior: 1999 sp.s. c 6 § 2; 1999 c 352 § 9; prior: 1998 c 220 § 1; 1998 c 139 § 1; prior: 1997 c 340 § 3; 1997 c 113 § 3; 1996 c 275 § 11; prior: 1995 c 268 § 3; 1995 c 248 § 1; 1995 c 195 § 1; 1994 c 84 § 2; 1991 c 274 § 2; 1990 c 3 § 402.]

Application—2010 c 267: See note following RCW 9A.44.128.

Delayed effective date—2008 c 230 § 1-3: "Sections 1 through 3 of this act take effect ninety days after adjournment sine die of the 2010 legislative session." [2008 c 230 § 5.]

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

Intent—1999 sp.s. c 6: "It is the intent of this act to revise the law on registration of sex and kidnapping offenders in response to the case of *State v. Pickett*, Docket number 41562-0-I. The legislature intends that all sex and kidnapping offenders whose history requires them to register shall do so regardless of whether the person has a fixed residence. The lack of a residential address is not to be construed to preclude registration as a sex or kidnapping offender. The legislature intends that persons who lack a residential address shall have an affirmative duty to report to the appropriate county sheriff, based on the level of risk of offending." [1999 sp.s. c 6 § 1.]

Findings—1997 c 113: See note following RCW 4.24.550.

Finding—1996 c 275: See note following RCW 9.94A.505.

Purpose—1995 c 268: See note following RCW 9.94A.030.

Intent—1994 c 84: "This act is intended to clarify existing law and is not intended to reflect a substantive change in the law." [1994 c 84 § 1.]

Finding and intent—1991 c 274: "The legislature finds that sex offender registration has assisted law enforcement agencies in protecting their communities. This act is intended to clarify and amend the deadlines for sex offenders to register. This act's clarification or amendment of RCW 9A.44.130 does not relieve the obligation of sex offenders to comply with the registration requirements of RCW 9A.44.130 as that statute exists before July 28, 1991." [1991 c 274 § 1.]

Finding—Policy—1990 c 3 § 402: "The legislature finds that sex offenders often pose a high risk of reoffense, and that law enforcement's

efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses, are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the law enforcement agency's jurisdiction. Therefore, this state's policy is to assist local law enforcement agencies' efforts to protect their communities by regulating sex offenders by requiring sex offenders to register with local law enforcement agencies as provided in RCW 9A.44.130." [1990 c 3 § 401.]

Additional notes found at www.leg.wa.gov

9A.44.142 Relief from duty to register—Petition—

Exceptions. (1) A person who is required to register under RCW 9A.44.130 may petition the superior court to be relieved of the duty to register:

(a) If the person has a duty to register for a sex offense or kidnapping offense committed when the offender was a juvenile, regardless of whether the conviction was in this state, as provided in RCW 9A.44.143;

(b) If the person is required to register for a conviction in this state and is not prohibited from petitioning for relief from registration under subsection (2) of this section, when the person has spent ten consecutive years in the community without being convicted of a disqualifying offense during that time period; or

(c) If the person is required to register for a federal, tribal, or out-of-state conviction, when the person has spent fifteen consecutive years in the community without being convicted of a disqualifying offense during that time period.

(2)(a) A person may not petition for relief from registration if the person has been:

(i) Determined to be a sexually violent predator pursuant to chapter 71.09 RCW; or

(ii) Convicted as an adult of a sex offense or kidnapping offense that is a class A felony and that was committed with forcible compulsion on or after June 8, 2000.

(b) Any person who may not be relieved of the duty to register may petition the court to be exempted from any community notification requirements that the person may be subject to fifteen years after the later of the entry of the judgment and sentence or the last date of release from confinement, including full-time residential treatment, pursuant to the conviction, if the person has spent the time in the community without being convicted of a disqualifying offense.

(3) A petition for relief from registration or exemption from notification under this section shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register or, in the case of convictions in other states, a foreign country, or a federal, tribal, or military court, to the court in the county where the person is registered at the time the petition is sought. The prosecuting attorney of the county shall be named and served as the respondent in any such petition. The prosecuting attorney must make reasonable efforts to notify the victim via the victim's choice of telephone, letter, or email, if known.

(4)(a) The court may relieve a petitioner of the duty to register only if the petitioner shows by clear and convincing evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.

(b) In determining whether the petitioner is sufficiently rehabilitated to warrant removal from the registry, the follow-

ing factors are provided as guidance to assist the court in making its determination:

(i) The nature of the registrable offense committed including the number of victims and the length of the offense history;

(ii) Any subsequent criminal history;

(iii) The petitioner's compliance with supervision requirements;

(iv) The length of time since the charged incident(s) occurred;

(v) Any input from community corrections officers, law enforcement, or treatment providers;

(vi) Participation in sex offender treatment;

(vii) Participation in other treatment and rehabilitative programs;

(viii) The offender's stability in employment and housing;

(ix) The offender's community and personal support system;

(x) Any risk assessments or evaluations prepared by a qualified professional;

(xi) Any updated polygraph examination;

(xii) Any input of the victim;

(xiii) Any other factors the court may consider relevant.

(5) If a person is relieved of the duty to register pursuant to this section, the relief of registration does not constitute a certificate of rehabilitation, or the equivalent of a certificate of rehabilitation, for the purposes of restoration of firearm possession under RCW 9.41.040. [2017 c 86 § 1; 2015 c 261 § 8; 2011 c 337 § 7; 2010 c 267 § 6.]

Application—2010 c 267: See note following RCW 9A.44.128.

9A.44.143 Relief from duty to register for sex offense or kidnapping offense committed when offender was a juvenile and who has not been determined to be a sexually violent predator—Petition—Exception.

(1) An offender having a duty to register under RCW 9A.44.130 for a sex offense or kidnapping offense committed when the offender was a juvenile, and who has not been determined to be a sexually violent predator pursuant to chapter 71.09 RCW may petition the superior court to be relieved of that duty as provided in this section.

(2) For class A sex offenses or kidnapping offenses committed when the petitioner was fifteen years of age or older, the court may relieve the petitioner of the duty to register if:

(a) At least sixty months have passed since the petitioner's adjudication and completion of any term of confinement for the offense giving rise to the duty to register and the petitioner has not been adjudicated or convicted of any additional sex offenses or kidnapping offenses within the sixty months before the petition;

(b) The petitioner has not been adjudicated or convicted of a violation of RCW 9A.44.132 (failure to register) during the sixty months prior to filing the petition; and

(c) The petitioner shows by a preponderance of the evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.

(3) For all other sex offenses or kidnapping offenses committed by a juvenile not included in subsection (2) of this

section, the court may relieve the petitioner of the duty to register if:

(a) At least twenty-four months have passed since the petitioner's adjudication and completion of any term of confinement for the offense giving rise to the duty to register and the petitioner has not been adjudicated or convicted of any additional sex offenses or kidnapping offenses within the twenty-four months before the petition;

(b) The petitioner has not been adjudicated or convicted of a violation of RCW 9A.44.132 (failure to register) during the twenty-four months prior to filing the petition; and

(c) The petitioner shows by a preponderance of the evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.

(4) A petition for relief from registration under this section shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register or, in the case of convictions in other states, a foreign country, or a federal or military court, to the court in the county in which the juvenile is registered at the time a petition is sought. The prosecuting attorney of the county shall be named and served as the respondent in any such petition. The prosecuting attorney must make reasonable efforts to notify the victim via the victim's choice of telephone, letter, or email, if known.

(5) In determining whether the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders, the following factors are provided as guidance to assist the court in making its determination, to the extent the factors are applicable considering the age and circumstances of the petitioner:

(a) The nature of the registrable offense committed including the number of victims and the length of the offense history;

(b) Any subsequent criminal history;

(c) The petitioner's compliance with supervision requirements;

(d) The length of time since the charged incident(s) occurred;

(e) Any input from community corrections officers, juvenile parole or probation officers, law enforcement, or treatment providers;

(f) Participation in sex offender treatment;

(g) Participation in other treatment and rehabilitative programs;

(h) The offender's stability in employment and housing;

(i) The offender's community and personal support system;

(j) Any risk assessments or evaluations prepared by a qualified professional;

(k) Any updated polygraph examination;

(l) Any input of the victim;

(m) Any other factors the court may consider relevant.

(6) If a person is relieved of the duty to register pursuant to this section, the relief of registration does not constitute a certificate of rehabilitation, or the equivalent of a certificate of rehabilitation, for the purposes of restoration of firearm possession under RCW 9A.10.040.

(7) A juvenile prosecuted and convicted of a sex offense or kidnapping offense as an adult pursuant to RCW

13.40.110 or 13.04.030 may not petition to the superior court under this section and must follow the provisions of RCW 9A.44.142.

(8) An adult prosecuted for an offense committed as a juvenile once the juvenile court has lost jurisdiction due to the passage of time between the date of the offense and the date of filing of charges may petition the superior court under the provisions of this section. [2017 c 86 § 2; 2015 c 261 § 9; 2011 c 338 § 1; 2010 c 267 § 7.]

Application—2010 c 267: See note following RCW 9A.44.128.

Chapter 9A.48 RCW

ARSON, RECKLESS BURNING, AND MALICIOUS MISCHIEF

Sections

9A.48.070 Malicious mischief in the first degree.

9A.48.080 Malicious mischief in the second degree.

9A.48.070 Malicious mischief in the first degree. (1)

A person is guilty of malicious mischief in the first degree if he or she knowingly and maliciously:

(a) Causes physical damage to the property of another in an amount exceeding five thousand dollars;

(b) Causes an interruption or impairment of service rendered to the public by physically damaging or tampering with an emergency vehicle or property of the state, a political subdivision thereof, or a public utility or mode of public transportation, power, or communication;

(c) Causes an impairment of the safety, efficiency, or operation of an aircraft by physically damaging or tampering with the aircraft or aircraft equipment, fuel, lubricant, or parts; or

(d) Causes an interruption or impairment of service rendered to the public by, without lawful authority, physically damaging, destroying, or removing an official ballot deposit box or ballot drop box or, without lawful authority, damaging, destroying, removing, or tampering with the contents thereof.

(2) Malicious mischief in the first degree is a class B felony. [2017 c 283 § 1; 2009 c 431 § 4; 1983 1st ex.s. c 4 § 1; 1975 1st ex.s. c 260 § 9A.48.070.]

Applicability—2009 c 431: See note following RCW 4.24.230.

Property crime database, liability: RCW 4.24.340.

Additional notes found at www.leg.wa.gov

9A.48.080 Malicious mischief in the second degree.

(1) A person is guilty of malicious mischief in the second degree if he or she knowingly and maliciously:

(a) Causes physical damage to the property of another in an amount exceeding seven hundred fifty dollars;

(b) Creates a substantial risk of interruption or impairment of service rendered to the public, by physically damaging or tampering with an emergency vehicle or property of the state, a political subdivision thereof, or a public utility or mode of public transportation, power, or communication; or

(c) Creates a substantial risk of interruption or impairment of service rendered to the public by, without lawful authority, physically damaging, destroying, or removing an official ballot deposit box or ballot drop box or, without law-

ful authority, damaging, destroying, removing, or tampering with the contents thereof.

(2) Malicious mischief in the second degree is a class C felony. [2017 c 283 § 2; 2009 c 431 § 5; 1994 c 261 § 17; 1979 c 145 § 2; 1975 1st ex.s. c 260 § 9A.48.080.]

Applicability—2009 c 431: See note following RCW 4.24.230.

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Action by owner of stolen livestock: RCW 4.24.320.

Property crime database, liability: RCW 4.24.340.

Chapter 9A.52 RCW BURGLARY AND TRESPASS

Sections

- 9A.52.105 Removal of unauthorized persons—Declaration—Liability—Rights.
9A.52.115 Removal of unauthorized persons—Declaration form—Penalty for false swearing.

9A.52.105 Removal of unauthorized persons—Declaration—Liability—Rights. (1) Subject to subsections (2) and (3) of this section and upon the receipt of a declaration signed under penalty of perjury, in the form prescribed in RCW 9A.52.115, declaring the truth of all of the required elements set forth in subsection (4) of this section, a peace officer shall have the authority to:

(a) Remove the person or persons from the premises, with or without arresting the person or persons; and

(b) Order the person or persons to remain off the premises or be subject to arrest for criminal trespass.

(2) Only a peace officer having probable cause to believe that a person is guilty of criminal trespass under RCW 9A.52.070 for knowingly entering or remaining unlawfully in a building considered residential real property, as defined in RCW 61.24.005, has the authority and discretion to make an arrest or exclude anyone under penalty of criminal trespass.

(3) While a peace officer can take into account a declaration from the property owner signed under penalty of perjury containing all of the required elements and in the form prescribed in RCW 9A.52.115, the peace officer must provide the occupant or occupants with a reasonable opportunity to secure and present any credible evidence provided by the person or persons on the premises, which the peace officer must consider, showing that the person or persons are tenants, legal occupants, or the guests or invitees of tenants or legal occupants.

(4) The declaration must include the following elements:

(a) That the declarant is the owner of the premises or the authorized agent of the owner of the premises;

(b) That an unauthorized person or persons have entered and are remaining unlawfully on the premises;

(c) That the person or persons were not authorized to enter or remain;

(d) That the person or persons are not a tenant or tenants and have not been a tenant or tenants, or a homeowner or homeowners who have been on title, within the last twelve months on the property;

(e) That the declarant has demanded that the unauthorized person or persons vacate the premises but they have not done so;

(f) That the premises were not abandoned at the time the unauthorized person or persons entered;

(g) That the premises were not open to members of the public at the time the unauthorized person or persons entered;

(h) That the declarant understands that a person or persons removed from the premises pursuant to this section may bring a cause of action under RCW 4.24.355 against the declarant for any false statements made in the declaration, and that as a result of such action the declarant may be held liable for actual damages, costs, and reasonable attorneys' fees;

(i) That the declarant understands and acknowledges the prohibitions in RCW 59.18.230 and 59.18.290 against taking or detaining an occupant's personal property or removing or excluding an occupant from a dwelling unit or rental premises without an authorizing court order; and

(j) That the declarant agrees to indemnify and hold harmless law enforcement for its actions or omissions made in good faith pursuant to the declaration.

(5) Neither the peace officer nor his or her law enforcement agency shall be held liable for actions or omissions made in good faith under this section.

(6) This section may not be construed to in any way limit rights under RCW 61.24.060 or to allow a peace officer to remove or exclude an occupant who is entitled to occupy a dwelling unit under a rental agreement or the occupant's guests or invitees. [2017 c 284 § 1.]

9A.52.115 Removal of unauthorized persons—Declaration form—Penalty for false swearing. The owner of premises, or his or her authorized agent, may initiate the investigation and request the removal of an unauthorized person or persons from the premises by providing to law enforcement a declaration containing all of the following required elements and in substantially the following form:

REQUEST TO REMOVE TRESPASSER(S) FORM

The undersigned owner, or authorized agent of the owner, of the premises located at hereby represents and declares under the penalty of perjury that (initial each box):

(1) [] The declarant is the owner of the premises or the authorized agent of the owner of the premises;

(2) [] An unauthorized person or persons have entered and are remaining unlawfully on the premises;

(3) [] The person or persons were not authorized to enter or remain;

(4) [] The person or persons are not a tenant or tenants and have not been a tenant or tenants, or a homeowner or homeowners who have been on title, within the last twelve months on the property;

(5) [] The declarant has demanded that the unauthorized person or persons vacate the premises but they have not done so;

(6) [] The premises were not abandoned at the time the unauthorized person or persons entered;

(7) [] The premises were not open to members of the public at the time the unauthorized person or persons entered;

(8) [] The declarant understands that a person or persons removed from the premises pursuant to RCW 9A.52.105 may bring a cause of action under RCW 4.24.355 against the

declarant for any false statements made in this declaration, and that as a result of such action the declarant may be held liable for actual damages, costs, and reasonable attorneys' fees;

(9) [] The declarant understands and acknowledges the prohibitions in RCW 59.18.230 and 59.18.290 against taking or detaining an occupant's personal property or removing or excluding an occupant from a dwelling unit or rental premises without an authorizing court order;

(10) [] The declarant agrees to indemnify and hold harmless law enforcement for its actions or omissions made in good faith pursuant to this declaration; and

(11) [] Additional Optional Explanatory Comments:
.....
.....

A declarant of premises who falsely swears on a declaration provided under this section may be guilty of false swearing under RCW 9A.72.040 or of making a false or misleading statement to a public servant under RCW 9A.76.175, both of which are gross misdemeanors. [2017 c 284 § 2.]

**Chapter 9A.56 RCW
THEFT AND ROBBERY**

Sections

- 9A.56.010 Definitions.
- 9A.56.030 Theft in the first degree.
- 9A.56.040 Theft in the second degree.
- 9A.56.350 Organized retail theft.
- 9A.56.360 Retail theft with special circumstances.
- 9A.56.400 Theft from a vulnerable adult in the first degree—Theft from a vulnerable adult in the second degree.

9A.56.010 Definitions. The following definitions are applicable in this chapter unless the context otherwise requires:

- (1) "Access device" means any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument;
- (2) "Appropriate lost or misdelivered property or services" means obtaining or exerting control over the property or services of another which the actor knows to have been lost or mislaid, or to have been delivered under a mistake as to identity of the recipient or as to the nature or amount of the property;
- (3) "Beverage crate" means a plastic or metal box-like container used by a manufacturer or distributor in the transportation or distribution of individually packaged beverages to retail outlets, and affixed with language stating "property of," "owned by," or other markings or words identifying ownership;
- (4) "By color or aid of deception" means that the deception operated to bring about the obtaining of the property or services; it is not necessary that deception be the sole means of obtaining the property or services;
- (5) "Deception" occurs when an actor knowingly:
 - (a) Creates or confirms another's false impression which the actor knows to be false; or

(b) Fails to correct another's impression which the actor previously has created or confirmed; or

(c) Prevents another from acquiring information material to the disposition of the property involved; or

(d) Transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance which the actor does not intend to perform or knows will not be performed;

(6) "Deprive" in addition to its common meaning means to make unauthorized use or an unauthorized copy of records, information, data, trade secrets, or computer programs;

(7) "Mail," in addition to its common meaning, means any letter, postal card, package, bag, or other item that is addressed to a specific address for delivery by the United States postal service or any commercial carrier performing the function of delivering similar items to residences or businesses, provided the mail:

(a)(i) Is addressed with a specific person's name, family name, or company, business, or corporation name on the outside of the item of mail or on the contents inside; and

(ii) Is not addressed to a generic unnamed occupant or resident of the address without an identifiable person, family, or company, business, or corporation name on the outside of the item of mail or on the contents inside; and

(b) Has been left for collection or delivery in any letter box, mailbox, mail receptacle, or other authorized depository for mail, or given to a mail carrier, or left with any private business that provides mailboxes or mail addresses for customers or when left in a similar location for collection or delivery by any commercial carrier; or

(c) Is in transit with a postal service, mail carrier, letter carrier, commercial carrier, or that is at or in a postal vehicle, postal station, mailbox, postal airplane, transit station, or similar location of a commercial carrier; or

(d) Has been delivered to the intended address, but has not been received by the intended addressee.

Mail, for purposes of chapter 164, Laws of 2011, does not include magazines, catalogs, direct mail inserts, newsletters, advertising circulars, or any mail that is considered third-class mail by the United States postal service;

(8) "Mailbox," in addition to its common meaning, means any authorized depository or receptacle of mail for the United States postal service or authorized depository for a commercial carrier that provides services to the general public, including any address to which mail is or can be addressed, or a place where the United States postal service or equivalent commercial carrier delivers mail to its addressee;

(9) "Merchandise pallet" means a wood or plastic carrier designed and manufactured as an item on which products can be placed before or during transport to retail outlets, manufacturers, or contractors, and affixed with language stating "property of . . .," "owned by . . .," or other markings or words identifying ownership;

(10) "Obtain control over" in addition to its common meaning, means:

(a) In relation to property, to bring about a transfer or purported transfer to the obtainer or another of a legally recognized interest in the property; or

(b) In relation to labor or service, to secure performance thereof for the benefits of the obtainer or another;

(11) "Owner" means a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services;

(12) "Parking area" means a parking lot or other property provided by retailers for use by a customer for parking an automobile or other vehicle;

(13) "Receive" includes, but is not limited to, acquiring title, possession, control, or a security interest, or any other interest in the property;

(14) "Received by the intended addressee" means that the addressee, owner of the delivery mailbox, or authorized agent has removed the delivered mail from its delivery mailbox;

(15) "Services" includes, but is not limited to, labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam, and water;

(16) "Shopping cart" means a basket mounted on wheels or similar container generally used in a retail establishment by a customer for the purpose of transporting goods of any kind;

(17) "Stolen" means obtained by theft, robbery, or extortion;

(18) "Subscription television service" means cable or encrypted video and related audio and data services intended for viewing on a home television by authorized members of the public only, who have agreed to pay a fee for the service. Subscription services include but are not limited to those video services presently delivered by coaxial cable, fiber optic cable, terrestrial microwave, television broadcast, and satellite transmission;

(19) "Telecommunication device" means (a) any type of instrument, device, machine, or equipment that is capable of transmitting or receiving telephonic or electronic communications; or (b) any part of such an instrument, device, machine, or equipment, or any computer circuit, computer chip, electronic mechanism, or other component, that is capable of facilitating the transmission or reception of telephonic or electronic communications;

(20) "Telecommunication service" includes any service other than subscription television service provided for a charge or compensation to facilitate the transmission, transfer, or reception of a telephonic communication or an electronic communication;

(21) Value. (a) "Value" means the market value of the property or services at the time and in the approximate area of the criminal act.

(b) Whether or not they have been issued or delivered, written instruments, except those having a readily ascertained market value, shall be evaluated as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;

(ii) The value of a ticket or equivalent instrument which evidences a right to receive transportation, entertainment, or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon, the value shall be deemed the price of such ticket or equivalent instrument which the issuer charged the general public;

(iii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(c) Except as provided in RCW 9A.56.340(4) and 9A.56.350(4), whenever any series of transactions which constitute theft, would, when considered separately, constitute theft in the third degree because of value, and said series of transactions are a part of a criminal episode or a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all said transactions shall be the value considered in determining the degree of theft involved.

For purposes of this subsection, "criminal episode" means a series of thefts committed by the same person from one or more mercantile establishments on three or more occasions within a five-day period.

(d) Whenever any person is charged with possessing stolen property and such person has unlawfully in his possession at the same time the stolen property of more than one person, then the stolen property possessed may be aggregated in one count and the sum of the value of all said stolen property shall be the value considered in determining the degree of theft involved. Thefts committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which one of the thefts occurred.

(e) Property or services having value that cannot be ascertained pursuant to the standards set forth above shall be deemed to be of a value not exceeding two hundred and fifty dollars;

(22) "Vulnerable adult" includes a person eighteen years of age or older who:

(a) Is functionally, mentally, or physically unable to care for himself or herself; or

(b) Is suffering from a cognitive impairment other than voluntary intoxication;

(23) "Wrongfully obtains" or "exerts unauthorized control" means:

(a) To take the property or services of another;

(b) Having any property or services in one's possession, custody or control as bailee, factor, lessee, pledgee, renter, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto; or

(c) Having any property or services in one's possession, custody, or control as partner, to secrete, withhold, or appropriate the same to his or her use or to the use of any person other than the true owner or person entitled thereto, where the use is unauthorized by the partnership agreement. [2017 c

266 § 7; 2011 c 164 § 2; 2006 c 277 § 4; 2002 c 97 § 1; 1999 c 143 § 36; 1998 c 236 § 1; 1997 c 346 § 2; 1995 c 92 § 1; 1987 c 140 § 1; 1986 c 257 § 2; 1985 c 382 § 1; 1984 c 273 § 6; 1975-76 2nd ex.s. c 38 § 8; 1975 1st ex.s. c 260 § 9A.56.010.]

Finding—Intent—2017 c 266: See note following RCW 9A.42.020.

Intent—2011 c 164: "It is important to the citizens of this state to have confidence in the security of the mail. Mail contains personal information, medical records, and financial documents. Theft of mail has become a serious problem in our state because mail is a key source of information for identity thieves. Currently, there is no law that adequately addresses the seriousness of this crime. This act is intended to accurately recognize the seriousness of taking personal, medical, or financial identifying information and compromising the integrity of our mail system." [2011 c 164 § 1.]

Additional notes found at www.leg.wa.gov

9A.56.030 Theft in the first degree. (1) Except as provided in RCW 9A.56.400, a person is guilty of theft in the first degree if he or she commits theft of:

(a) Property or services which exceed(s) five thousand dollars in value other than a firearm as defined in RCW 9.41.010;

(b) Property of any value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle, taken from the person of another;

(c) A search and rescue dog, as defined in RCW 9.91.175, while the search and rescue dog is on duty; or

(d) Commercial metal property, nonferrous metal property, or private metal property, as those terms are defined in RCW 19.290.010, and the costs of the damage to the owner's property exceed five thousand dollars in value.

(2) Theft in the first degree is a class B felony. [2017 c 266 § 10; 2013 c 322 § 2; 2012 c 233 § 2; 2009 c 431 § 7; 2007 c 199 § 3; 2005 c 212 § 2; 1995 c 129 § 11 (Initiative Measure No. 159); 1975 1st ex.s. c 260 § 9A.56.030.]

Finding—Intent—2017 c 266: See note following RCW 9A.42.020.

Applicability—2009 c 431: See note following RCW 4.24.230.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

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

Civil action for shoplifting by adults, minors: RCW 4.24.230.

Property crime database, liability: RCW 4.24.340.

9A.56.040 Theft in the second degree. (1) Except as provided in RCW 9A.56.400, a person is guilty of theft in the second degree if he or she commits theft of:

(a) Property or services which exceed(s) seven hundred fifty dollars in value but does not exceed five thousand dollars in value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle;

(b) A public record, writing, or instrument kept, filed, or deposited according to law with or in the keeping of any public office or public servant;

(c) Commercial metal property, nonferrous metal property, or private metal property, as those terms are defined in RCW 19.290.010, and the costs of the damage to the owner's property exceed seven hundred fifty dollars but does not exceed five thousand dollars in value; or

(d) An access device.

(2) Theft in the second degree is a class C felony. [2017 c 266 § 11; 2013 c 322 § 3; 2012 c 233 § 3; 2009 c 431 § 8;

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2007 c 199 § 4; 1995 c 129 § 12 (Initiative Measure No. 159); 1994 sp.s. c 7 § 433; 1987 c 140 § 2; 1982 1st ex.s. c 47 § 15; 1975 1st ex.s. c 260 § 9A.56.040.]

Finding—Intent—2017 c 266: See note following RCW 9A.42.020.

Applicability—2009 c 431: See note following RCW 4.24.230.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

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

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

Civil action for shoplifting by adults, minors: RCW 4.24.230.

Property crime database, liability: RCW 4.24.340.

Additional notes found at www.leg.wa.gov

9A.56.350 Organized retail theft. (1) A person is guilty of organized retail theft if he or she:

(a) Commits theft of property with a value of at least seven hundred fifty dollars from a mercantile establishment with an accomplice;

(b) Possesses stolen property, as defined in RCW 9A.56.140, with a value of at least seven hundred fifty dollars from a mercantile establishment with an accomplice;

(c) Commits theft of property with a cumulative value of at least seven hundred fifty dollars from one or more mercantile establishments within a period of up to one hundred eighty days; or

(d) Commits theft of property with a cumulative value of at least seven hundred fifty dollars from a mercantile establishment with no less than six accomplices and makes or sends at least one electronic communication seeking participation in the theft in the course of planning or commission of the theft. For the purposes of this subsection, "electronic communication" has the same meaning as defined in RCW 9.61.260(5).

(2) A person is guilty of organized retail theft in the first degree if the property stolen or possessed has a value of five thousand dollars or more. Organized retail theft in the first degree is a class B felony.

(3) A person is guilty of organized retail theft in the second degree if the property stolen or possessed has a value of at least seven hundred fifty dollars, but less than five thousand dollars. Organized retail theft in the second degree is a class C felony.

(4) For purposes of this section, a series of thefts committed by the same person from one or more mercantile establishments over a period of one hundred eighty days may be aggregated in one count and the sum of the value of all the property shall be the value considered in determining the degree of the organized retail theft involved. Theft committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which any one of the thefts occurred. For purposes of subsection (1)(d) of this section, thefts committed by the principal and accomplices may be aggregated into one count and the value of all the property shall be the value considered in determining the degree of organized retail theft involved.

(5) The mercantile establishment or establishments whose property is alleged to have been stolen may request that the charge be aggregated with other thefts of property about which the mercantile establishment or establishments

is aware. In the event a request to aggregate the prosecution is declined, the mercantile establishment or establishments shall be promptly advised by the prosecuting jurisdiction making the decision to decline aggregating the prosecution of the decision and the reasons for such decision. [2017 c 329 § 1; 2009 c 431 § 15; 2006 c 277 § 2.]

Applicability—2009 c 431: See note following RCW 4.24.230.

Property crime database, liability: RCW 4.24.340.

9A.56.360 Retail theft with special circumstances.

(1) A person commits retail theft with special circumstances if he or she commits theft of property from a mercantile establishment with one of the following special circumstances:

(a) To facilitate the theft, the person leaves the mercantile establishment through a designated emergency exit;

(b) The person was, at the time of the theft, in possession of an item, article, implement, or device used, under circumstances evincing an intent to use or employ, or designed to overcome security systems including, but not limited to, lined bags or tag removers; or

(c) The person committed theft at three or more separate and distinct mercantile establishments within a one hundred eighty-day period.

(2) A person is guilty of retail theft with special circumstances in the first degree if the theft involved constitutes theft in the first degree. Retail theft with special circumstances in the first degree is a class B felony.

(3) A person is guilty of retail theft with special circumstances in the second degree if the theft involved constitutes theft in the second degree. Retail theft with special circumstances in the second degree is a class C felony.

(4) A person is guilty of retail theft with special circumstances in the third degree if the theft involved constitutes theft in the third degree. Retail theft with special circumstances in the third degree is a class C felony.

(5) For the purposes of this section, "special circumstances" means the particular aggravating circumstances described in subsection (1)(a) through (c) of this section.

(6)(a) A series of thefts committed by the same person from one or more mercantile establishments over a period of one hundred eighty days may be aggregated in one count and the sum of the value of all the property shall be the value considered in determining the degree of the retail theft with special circumstances involved. Thefts committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which any one of the thefts occurred. In no case may an aggregated series of thefts, or a single theft that has been aggregated in one county, be prosecuted in more than one county.

(b) The mercantile establishment or establishments whose property is alleged to have been stolen may request that the charge be aggregated with other thefts of property about which the mercantile establishment or establishments is aware. In the event a request to aggregate the prosecution is declined, the mercantile establishment or establishments shall be promptly advised by the prosecuting jurisdiction making the decision to decline aggregating the prosecution of the decision and the reasons for the decision. [2017 c 224 § 1; 2013 c 153 § 1; 2006 c 277 § 3.]

Effective date—2013 c 153: "This act takes effect January 1, 2014." [2013 c 153 § 3.]

9A.56.400 Theft from a vulnerable adult in the first degree—Theft from a vulnerable adult in the second degree.

(1)(a) A person is guilty of theft from a vulnerable adult in the first degree if he or she commits theft of property or services that exceed(s) five thousand dollars in value, other than a firearm as defined in RCW 9.41.010, of a vulnerable adult. The defendant must have known or should have known that the victim was a vulnerable adult.

(b) Theft from a vulnerable adult in the first degree is a class B felony.

(2)(a) A person is guilty of theft from a vulnerable adult in the second degree if he or she commits theft of property or services that exceed(s) seven hundred fifty dollars in value but does not exceed five thousand dollars in value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle, of a vulnerable adult. The defendant must have known or should have known that the victim was a vulnerable adult.

(b) Theft from a vulnerable adult in the second degree is a class C felony. [2017 c 266 § 6.]

Finding—Intent—2017 c 266: See note following RCW 9A.42.020.

Chapter 9A.88 RCW

INDECENT EXPOSURE—PROSTITUTION

Sections

9A.88.060	Promoting prostitution—Definitions.
9A.88.110	Patronizing a prostitute.
9A.88.160	Promoting prostitution in the first degree, second degree—Court appearance—No-contact orders—Entry of order into computer-based criminal intelligence information system.
9A.88.170	Promoting prostitution in the first degree, second degree—Court may prohibit defendant's contact with victim—No-contact orders—Issuance, termination, modification—Entry of order into computer-based criminal intelligence information system.
9A.88.180	Promoting prostitution in the first degree, second degree—Condition of sentence restricting contact—No-contact orders—Entry of order into computer-based criminal intelligence information system.
9A.88.190	Enforcement of rules restricting contact.

9A.88.060 Promoting prostitution—Definitions. The following definitions are applicable in RCW 9A.88.070 through 9A.88.090:

(1) "Advances prostitution." A person "advances prostitution" if, acting other than as a prostitute or as a customer thereof, he or she causes or aids a person to commit or engage in prostitution, procures or solicits customers for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

(2) "Profits from prostitution." A person "profits from prostitution" if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she accepts or receives money or anything of value pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of prostitution activity. [2017 c 231 § 5; 2011 c 336 § 412; 1975 1st ex.s. c 260 § 9A.88.060.]

Finding—2017 c 231: See note following RCW 9A.04.080.

9A.88.110 Patronizing a prostitute. (1) A person is guilty of patronizing a prostitute if:

(a) Pursuant to a prior understanding, he or she pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him or her; or

(b) He or she pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person will engage in sexual conduct with him or her; or

(c) He or she solicits or requests another person to engage in sexual conduct with him or her in return for a fee.

(2) The crime of patronizing a prostitute may be committed in more than one location. The crime is deemed to have been committed in any location in which the defendant commits any act under subsection (1)(a), (b), or (c) of this section that constitutes part of the crime. A person who sends a communication to patronize a prostitute is considered to have committed the crime both at the place from which the contact was made pursuant to subsection (1)(a), (b), or (c) of this section and where the communication is received, provided that this section must be construed to prohibit anyone from being prosecuted twice for substantially the same crime.

(3) For purposes of this section, "sexual conduct" has the meaning given in RCW 9A.88.030.

(4) Patronizing a prostitute is a misdemeanor. [2017 c 232 § 1; 1988 c 146 § 4.]

Additional notes found at www.leg.wa.gov

9A.88.160 Promoting prostitution in the first degree, second degree—Court appearance—No-contact orders—Entry of order into computer-based criminal intelligence information system. (1) A defendant who is charged by citation, complaint, or information with an offense involving promoting prostitution in the first degree as described in RCW 9A.88.070 or promoting prostitution in the second degree as described in RCW 9A.88.080 and not arrested shall appear in court for arraignment or initial appearance in person as soon as practicable, but in no event later than fourteen days after the defendant is served with the citation, complaint, or information. At that appearance, the court shall determine the necessity of imposing or extending a no-contact order, and consider the provisions of RCW 9.41.800 or other conditions of pretrial release according to the procedures established by court rule for preliminary appearance or an arraignment.

(2) Whenever a no-contact order is issued under this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system. [2017 c 230 § 5.]

9A.88.170 Promoting prostitution in the first degree, second degree—Court may prohibit defendant's contact with victim—No-contact orders—Issuance, termination, modification—Entry of order into computer-based criminal intelligence information system. (1) Because of the likelihood of repeated harassment and intimidation directed at those who have been victims of promoting prostitution in the first degree under RCW 9A.88.070 or promoting prostitution in the second degree under RCW 9A.88.080, before any defendant charged with or arrested, for a crime involving promoting prostitution is released from custody, or at any time the case remains unresolved, the court may prohibit that person from having any contact with the victim whether directly or through third parties. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location. The court may also consider the provisions of RCW 9.41.800 or other conditions of pretrial release according to the procedures established by court rule for preliminary appearance or an arraignment.

(2) At the time of arraignment, the court shall determine whether a no-contact order shall be issued or extended. So long as the court finds probable cause, the court may issue or extend a no-contact order. The no-contact order shall terminate if the defendant is acquitted or the charges are dismissed.

(3)(a) Willful violation of a court order issued under this section is punishable under RCW 26.50.110.

(b) The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 26.50 RCW and the violator is subject to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.

(4) Upon a motion with notice to all parties and after a hearing, the court may terminate or modify the terms of an existing no-contact order, including terms entered pursuant to RCW 9.41.800 related to firearms or other dangerous weapons or to concealed pistol licenses.

(5)(a) A defendant's motion to terminate or modify a no-contact order must include a declaration setting forth facts supporting the requested order for termination or modification. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the declarations. If the court finds that the defendant established adequate cause, the court shall set a date for hearing the defendant's motion.

(b) The court may terminate or modify the terms of a no-contact order, including terms entered pursuant to RCW 9.41.800 related to firearms or other dangerous weapons or to concealed pistol licenses, if the defendant proves by a preponderance of the evidence that there has been a material change in circumstances such that the defendant is not likely to engage in or attempt to engage in physical or nonphysical contact with the victim if the order is terminated or modified. The victim bears no burden of proving that he or she has a current reasonable fear of harm by the defendant.

(c) A defendant may file a motion to terminate or modify pursuant to this section no more than once in every twelve-

month period that the order is in effect, starting from the date of the order and continuing through any renewal.

(6) Whenever a no-contact order is issued, modified, or terminated under this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system. [2017 c 230 § 7.]

9A.88.180 Promoting prostitution in the first degree, second degree—Condition of sentence restricting contact—No-contact orders—Entry of order into computer-based criminal intelligence information system. (1) If a defendant is found guilty of the crime of promoting prostitution in the first degree under RCW 9A.88.070 or promoting prostitution in the second degree under RCW 9A.88.080, and a condition of the sentence restricts the defendant's ability to have contact with the victim or witnesses, the condition must be recorded and a written certified copy of that order must be provided to the victim or witnesses by the clerk of the court. Willful violation of a court order issued under this section is punishable under RCW 26.50.110. The written order must contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 26.50 RCW and the violator is subject to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony.

(2) Whenever a no-contact order is issued under this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system. [2017 c 230 § 8.]

9A.88.190 Enforcement of rules restricting contact. Any general authority Washington peace officer as defined in RCW 10.93.020 in this state may enforce this chapter as it relates to orders restricting the defendants' ability to have contact with the victim or others. [2017 c 230 § 6.]

Chapter 9A.90 RCW WASHINGTON CYBERCRIME ACT

Sections

9A.90.100 Electronic data theft.

9A.90.100 Electronic data theft. (1) A person is guilty of electronic data theft if he or she intentionally, without authorization, and without reasonable grounds to believe that he or she has such authorization, **obtains any electronic data with the intent to:**

(a) Devise or execute any scheme to defraud, deceive, extort, or commit any other crime in violation of a state law not included in this chapter; or

(b) Wrongfully control, gain access to, or obtain money, property, or electronic data.

(2) Electronic data theft is a class C felony. [2016 c 164 § 10.]

Reviser's note: The language in bold print was a part of the underlying Session Law but was inadvertently omitted from the original publication of this section in the Revised Code of Washington. The Code Reviser has restored the language to accurately reflect the law.

Title 10

CRIMINAL PROCEDURE

Chapters

10.19 Bail and appearance bonds.
10.27 Grand juries—Criminal investigations.
10.31 Warrants and arrests.
10.77 Criminally insane—Procedures.
10.112 Sexual exploitation of children.

Chapter 10.19 RCW

BAIL AND APPEARANCE BONDS

Sections

10.19.160 Surrender of person under surety's bond.

10.19.160 Surrender of person under surety's bond. The surety on the bond may return to custody a person in a criminal case under the surety's bond if the surrender is accompanied by a notice of forfeiture or a notarized affidavit specifying the reasons for the surrender. The surrender shall be made to the county or city jail affiliated with the jurisdiction issuing the warrant resulting in bail. Upon surrender, a person must be held until the next judicial day or until another bond is posted. [2017 c 78 § 1; 1986 c 322 § 5.]

Additional notes found at www.leg.wa.gov

Chapter 10.27 RCW

GRAND JURIES—CRIMINAL INVESTIGATIONS

Sections

10.27.170 Special inquiry judge—Petition for order—Investigation of sexual exploitation of children.

10.27.170 Special inquiry judge—Petition for order—Investigation of sexual exploitation of children. (1) When any public attorney, corporation counsel or city attorney has reason to suspect crime or corruption, within the jurisdiction of such attorney, and there is reason to believe

that there are persons who may be able to give material testimony or provide material evidence concerning such suspected crime or corruption, such attorney may petition the judge designated as a special inquiry judge pursuant to RCW 10.27.050 for an order directed to such persons commanding them to appear at a designated time and place in said county and to then answer such questions concerning the suspected crime or corruption as the special inquiry judge may approve, or provide evidence as directed by the special inquiry judge.

(2) Upon petition of a prosecuting attorney for the establishment of a special inquiry judge proceeding in an investigation of sexual exploitation of children under RCW 10.112.010, the court shall establish the special inquiry judge proceeding, if appropriate, as soon as practicable but no later than seventy-two hours after the filing of the petition. [2017 c 114 § 3; 1971 ex.s. c 67 § 17.]

Findings—2017 c 114: See note following RCW 10.112.010.

Chapter 10.31 RCW WARRANTS AND ARRESTS

Sections

10.31.100 Arrest without warrant.

10.31.100 Arrest without warrant. A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of an officer, except as provided in subsections (1) through (11) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070 or 9A.52.080, shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 26.44.063, or chapter 7.92, 7.90, 9A.46, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) A foreign protection order, as defined in RCW 26.52.010, has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order prohibiting the person under restraint from contacting or communicating with another person, or excluding the person under restraint from a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime; or

(c) The person is eighteen years or older and within the preceding four hours has assaulted a family or household member as defined in RCW 10.99.020 and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (A) The intent to protect victims of domestic violence under RCW 10.99.010; (B) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (C) the history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse.

(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.61.503 or 46.25.110, relating to persons having alcohol or THC in their system;

(f) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

(g) RCW 46.61.5249, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5)(a) A law enforcement officer investigating at the scene of a motor vessel accident may arrest the operator of a motor vessel involved in the accident if the officer has probable cause to believe that the operator has committed, in con-

nection with the accident, a criminal violation of chapter 79A.60 RCW.

(b) A law enforcement officer investigating at the scene of a motor vessel accident may issue a citation for an infraction to the operator of a motor vessel involved in the accident if the officer has probable cause to believe that the operator has committed, in connection with the accident, a violation of any boating safety law of chapter 79A.60 RCW.

(6) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 79A.60.040 shall have the authority to arrest the person.

(7) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the state of Washington.

(8) Any police officer having probable cause to believe that a person has committed or is committing any act of indecent exposure, as defined in RCW 9A.88.010, may arrest the person.

(9) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the person has knowledge under chapter 10.14 RCW and the person has violated the terms of that order.

(10) Any police officer having probable cause to believe that a person has, within twenty-four hours of the alleged violation, committed a violation of RCW 9A.50.020 may arrest such person.

(11) A police officer having probable cause to believe that a person illegally possesses or illegally has possessed a firearm or other dangerous weapon on private or public elementary or secondary school premises shall have the authority to arrest the person.

For purposes of this subsection, the term "firearm" has the meaning defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

(12) A law enforcement officer having probable cause to believe that a person has committed a violation under *RCW 77.15.160(4) may issue a citation for an infraction to the person in connection with the violation.

(13) A law enforcement officer having probable cause to believe that a person has committed a criminal violation under RCW 77.15.809 or 77.15.811 may arrest the person in connection with the violation.

(14) Except as specifically provided in subsections (2), (3), (4), and (7) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

(15) No police officer may be held criminally or civilly liable for making an arrest pursuant to subsection (2) or (9) of this section if the police officer acts in good faith and without malice.

(16)(a) Except as provided in (b) of this subsection, a police officer shall arrest and keep in custody, until release by a judicial officer on bail, personal recognizance, or court

order, a person without a warrant when the officer has probable cause to believe that the person has violated RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and the police officer: (i) Has knowledge that the person has a prior offense as defined in RCW 46.61.5055 within ten years; or (ii) has knowledge, based on a review of the information available to the officer at the time of arrest, that the person is charged with or is awaiting arraignment for an offense that would qualify as a prior offense as defined in RCW 46.61.5055 if it were a conviction.

(b) A police officer is not required to keep in custody a person under (a) of this subsection if the person requires immediate medical attention and is admitted to a hospital. [2017 c 336 § 3; 2017 c 223 § 1. Prior: 2016 c 203 § 9; 2016 c 113 § 1; prior: 2014 c 202 § 307; 2014 c 100 § 2; 2014 c 5 § 1; 2013 2nd sp.s. c 35 § 22; prior: 2013 c 278 § 4; 2013 c 84 § 32; 2010 c 274 § 201; 2006 c 138 § 23; 2000 c 119 § 4; 1999 c 184 § 14; 1997 c 66 § 10; 1996 c 248 § 4; prior: 1995 c 246 § 20; 1995 c 184 § 1; 1995 c 93 § 1; prior: 1993 c 209 § 1; 1993 c 128 § 5; 1988 c 190 § 1; prior: 1987 c 280 § 20; 1987 c 277 § 2; 1987 c 154 § 1; 1987 c 66 § 1; prior: 1985 c 303 § 9; 1985 c 267 § 3; 1984 c 263 § 19; 1981 c 106 § 1; 1980 c 148 § 8; 1979 ex.s. c 28 § 1; 1969 ex.s. c 198 § 1.]

Reviser's note: *(1) RCW 77.15.160 was amended by 2017 3rd sp.s. c 8 § 42, changing subsection (4) to subsection (5), effective January 1, 2018.

(2) This section was amended by 2017 c 223 § 1 and by 2017 c 336 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—2017 c 336: See note following RCW 9.96.060.

Findings—2014 c 202: See note following RCW 77.135.010.

Intent—2010 c 274: "The legislature intends to improve the lives of persons who suffer from the adverse effects of domestic violence and to require reasonable, coordinated measures to prevent domestic violence from occurring. The legislature intends to give law enforcement and the courts better tools to identify violent perpetrators of domestic violence and hold them accountable. The legislature intends to: Increase the safety afforded to individuals who seek protection of public and private agencies involved in domestic violence prevention; improve the ability of agencies to address the needs of victims and their children and the delivery of services; upgrade the quality of treatment programs; and enhance the ability of the justice system to respond quickly and fairly to domestic violence. In order to improve the lives of persons who have, or may suffer, the effects of domestic violence the legislature intends to achieve more uniformity in the decision-making processes at public and private agencies that address domestic violence by reducing inconsistencies and duplications allowing domestic violence victims to achieve safety and stability in their lives." [2010 c 274 § 101.]

Arrest procedure involving traffic violations: Chapter 46.64 RCW.

Domestic violence, peace officers—Immunity: RCW 26.50.140.

Uniform Controlled Substances Act: Chapter 69.50 RCW.

Additional notes found at www.leg.wa.gov

Chapter 10.77 RCW CRIMINALLY INSANE—PROCEDURES

Sections

10.77.810	Repealed.
10.77.820	Repealed.
10.77.900	through 10.77.930 Decoded.

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

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

10.77.900 through 10.77.930 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 10.112 RCW

SEXUAL EXPLOITATION OF CHILDREN

Sections

10.112.010 Special inquiry judge process—Subpoena for records.

10.112.010 Special inquiry judge process—Subpoena for records. (1) In a criminal investigation of an offense involving the sexual exploitation of children under chapter 9.68A RCW, the prosecuting attorney shall use the special inquiry judge process established under chapter 10.27 RCW when the prosecuting attorney determines it is necessary to the investigation to subpoena a provider of electronic communication services or remote computing services to obtain records relevant to the investigation, including, but not limited to, records or information that provide the following subscriber or customer information: (a) Name and address; (b) local and long distance telephone connection records, or records of session times and durations; (c) length of service and types of service utilized; (d) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and (e) means and source of payment for such service, including any credit card or bank account number.

(2) A provider who receives a subpoena for records as provided under subsection (1) of this section may not disclose the existence of the subpoena to the subscribers or customers whose records or information are requested or released under the subpoena.

(3) For the purposes of this section:

(a) "Electronic communication service" means any service that provides to users the ability to send or receive wire or electronic communications.

(b) "Provider" means a provider of electronic communications services or remote computing services.

(c) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system. [2017 c 114 § 2.]

Findings—2017 c 114: "The legislature must continue to act to aid law enforcement in their efforts to prevent the unthinkable acts of sexual abuse of children and the horrendous social and emotional trauma experienced by victims of child pornography by expanding the tools available for law enforcement. The legislature finds that the expansion of the internet and computer-related technologies have led to a dramatic increase in the production and availability of child pornography by simplifying how it can be created, distributed, and collected. Between 2005 and 2009, the national center for missing and exploited children's child victim identification program has seen a four hundred thirty-two percent increase in child pornography films and files submitted for identification of the children depicted. The United States department of justice estimates that pornographers have recorded the abuse of more than one million children in the United States alone. Furthermore, there is a direct correlation between individuals who possess, download, and trade graphic images of child pornography and those who molest children. A well-known study conducted by crimes against children research center for the national center for missing and exploited children concluded that an estimated forty percent of those who possess child pornography have also directly victimized a child and fifteen percent have attempted to entice a child over the internet.

Victims of child pornography often experience severe and lasting harm from the permanent memorialization of the crimes committed against them.

[2017 RCW Supp—page 74]

Child victims endure depression, withdrawal, anger, and other psychological disorders. Each and every time such an image is viewed, traded, printed, or downloaded, the child in that image is victimized again.

Investigators and prosecutors report serious challenges with combating child pornography because offenders can act anonymously on the internet. Investigators track the trading of child pornography by using internet protocol addresses, which are unique identifiers that each computer is assigned when it accesses the internet. Under federal law, if an internet service provider is presented with a subpoena and an internet protocol address by law enforcement, the provider must turn over the names and addresses of account holders matched to it. Access to such information allows investigators to efficiently evaluate investigative leads and determine whether to request a warrant for a specific internet user. The legislature finds that in investigations of child exploitation, the use of a special inquiry judge is the appropriate process for obtaining subpoenas for the production of records from electronic communications providers under a less than probable cause standard while maintaining judicial oversight." [2017 c 114 § 1.]

Title 11

PROBATE AND TRUST LAW

Chapters

11.88 Guardianship—Appointment, qualification, removal of guardians.

11.92 Guardianship—Powers and duties of guardian or limited guardian.

11.107 Trusts—Decanting power.

Chapter 11.88 RCW

GUARDIANSHIP—APPOINTMENT, QUALIFICATION, REMOVAL OF GUARDIANS

Sections

11.88.120 Modification or termination of guardianship—Procedure.

11.88.120 Modification or termination of guardianship—Procedure. (1)(a) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian or modify the authority of a guardian or limited guardian. Such action may be taken based on the court's own motion, based on a motion by an attorney for a person or entity, based on a motion of a person or entity representing themselves, or based on a written complaint, as described in this section. The court may grant relief under this section as it deems just and in the best interest of the incapacitated person. For any hearing to modify or terminate a guardianship, the incapacitated person shall be given reasonable notice of the hearing and of the incapacitated person's right to be represented at the hearing by counsel of his or her own choosing.

(b) The court must modify or terminate a guardianship when a less restrictive alternative, such as a power of attorney or a trust, will adequately provide for the needs of the incapacitated person. In any motion to modify or terminate a guardianship with a less restrictive alternative, the court should consider any recent medical reports; whether a condition is reversible; testimony of the incapacitated person; testimony of persons most closely related by blood, marriage, or state registered domestic partnership to the incapacitated person; testimony of persons entitled to notice of special proceedings under RCW 11.92.150; and other needs of the incapacitated person that are not adequately served in a guardianship or limited guardianship that may be better served with a

less restrictive alternative. All motions under the provisions of this subsection (1)(b) must be heard within sixty days unless an extension of time is requested by a party or a guardian ad litem within such sixty-day period and granted for good cause shown. An extension granted for good cause should not exceed an additional sixty days from the date of the request of the extension, and the court must set a new hearing date.

(2)(a) An unrepresented person or entity may submit a complaint to the court. Complaints must be addressed to one of the following designees of the court: The clerk of the court having jurisdiction in the guardianship, the court administrator, or the guardianship monitoring program, and must identify the complainant and the incapacitated person who is the subject of the guardianship. The complaint must also provide the complainant's address, the case number (if available), and the address of the incapacitated person (if available). The complaint must state facts to support the claim.

(b) By the next judicial day after receipt of a complaint from an unrepresented person, the court's designee must ensure the original complaint is filed and deliver the complaint to the court.

(c) Within fourteen days of being presented with a complaint, the court must enter an order to do one or more of the following actions:

(i) To show cause, with fourteen days' notice, directing the guardian to appear at a hearing set by the court in order to respond to the complaint;

(ii) To appoint a guardian ad litem to investigate the issues raised by the complaint or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held;

(iii) To dismiss the complaint without scheduling a hearing, if it appears to the court that the complaint: Is without merit on its face; is filed in other than good faith; is filed for an improper purpose; regards issues that have already been adjudicated; or is frivolous. In making a determination, the court may review the matter and consider previous behavior of the complainant that is documented in the guardianship record;

(iv) To direct the guardian to provide, in not less than fourteen days, a written report to the court on the issues raised in the complaint;

(v) To defer consideration of the complaint until the next regularly scheduled hearing in the guardianship, if the date of that hearing is within the next three months, provided that there is no indication that the incapacitated person will suffer physical, emotional, financial, or other harm as a result of the court's deferral of consideration;

(vi) To order other action, in the court's discretion, in addition to doing one or more of the actions set out in this subsection.

(d) If after consideration of the complaint, the court believes that the complaint is made without justification or for reason to harass or delay or with malice or other bad faith, the court has the power to levy necessary sanctions, including but not limited to the imposition of reasonable attorney fees, costs, fees, striking pleadings, or other appropriate relief.

(3) The court may order persons who have been removed as guardians to deliver any property or records belonging to the incapacitated person in accordance with the court's order.

Similarly, when guardians have died or been removed and property or records of an incapacitated person are being held by any other person, the court may order that person to deliver it in accordance with the court's order. Disobedience of an order to deliver is punishable as contempt of court.

(4) The administrative office of the courts must develop and prepare, in consultation with interested persons, a model form for the complaint described in subsection (2)(a) of this section and a model form for the order that must be issued by the court under subsection (2)(c) of this section.

(5) The board may send a grievance it has received regarding an active guardian case to the court's designee with a request that the court review the grievance and take any action the court deems necessary. This type of request from the board must be treated as a complaint under this section and the person who sent the complaint must be treated as the complainant. The court must direct the clerk to transmit a copy of its order to the board. The board must consider the court order when taking any further action and note the court order in any final determination.

(6) In any court action under this section that involves a professional guardian, the court must direct the clerk of the court to send a copy of the order entered under this section to the board.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Board" means the certified professional guardianship board.

(b) "Complaint" means a written submission by an unrepresented person or entity, who is referred to as the complainant. [2017 c 271 § 2; 2015 c 293 § 1; 1991 c 289 § 7; 1990 c 122 § 14; 1977 ex.s. c 309 § 9; 1975 1st ex.s. c 95 § 14; 1965 c 145 § 11.88.120. Prior: 1917 c 156 § 209; RRS § 1579; prior: Code 1881 § 1616; 1860 p 227 § 333; 1855 p 17 § 11.]

Findings—2017 c 271: "The legislature finds that an incapacitated person should retain basic rights enjoyed by the public, including the freedom of associating with family and friends. A court or guardian should not remove or restrict the rights of an incapacitated person under a guardianship except when absolutely necessary to protect the incapacitated person. The legislature finds that less restrictive alternatives are preferred to guardianships and limited guardianships when they provide adequate support for an incapacitated person's needs. The legislature also recognizes that less restrictive alternatives are typically less expensive to administer than a guardianship, thereby preserving state resources, court resources, and the incapacitated person's estate. A less restrictive alternative may be in the form of a power of attorney, or a trust, or other legal, financial, or medical directives that allow an incapacitated person to enjoy a greater degree of individual liberty and decision making than for persons under a guardianship." [2017 c 271 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 11.92 RCW

GUARDIANSHIP—POWERS AND DUTIES OF GUARDIAN OR LIMITED GUARDIAN

Sections

11.92.043	Additional duties.
11.92.195	Incapacitated persons—Right to associate with persons of their choosing.

11.92.043 Additional duties. (1) It is the duty of the guardian or limited guardian of the person:

(a) To file within three months after appointment a personal care plan for the incapacitated person, which must

include (i) an assessment of the incapacitated person's physical, mental, and emotional needs and of such person's ability to perform or assist in activities of daily living, and (ii) the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.

(b) To file annually or, where a guardian of the estate has been appointed, at the time an account is required to be filed under RCW 11.92.040, a report on the status of the incapacitated person, which shall include:

(i) The address and name of the incapacitated person and all residential changes during the period;

(ii) The services or programs that the incapacitated person receives;

(iii) The medical status of the incapacitated person;

(iv) The mental status of the incapacitated person, including reports from mental health professionals on the status of the incapacitated person, if any exist;

(v) Changes in the functional abilities of the incapacitated person;

(vi) Activities of the guardian for the period;

(vii) Any recommended changes in the scope of the authority of the guardian;

(viii) The identity of any professionals who have assisted the incapacitated person during the period;

(ix)(A) Evidence of the guardian or limited guardian's successful completion of any standardized training video or web cast for guardians or limited guardians made available by the administrative office of the courts and the superior court when the guardian or limited guardian: (I) Was appointed prior to July 22, 2011; (II) is not a certified professional guardian or financial institution authorized under RCW 11.88.020; and (III) has not previously completed the requirements of RCW 11.88.020(3). The training video or web cast must be provided at no cost to the guardian or limited guardian.

(B) The superior court may, upon petition by the guardian or limited guardian or any other method as provided by local court rule:

(I) For good cause, waive this requirement for guardians appointed prior to July 22, 2011. Good cause requires evidence that the guardian already possesses the requisite knowledge to serve as a guardian without completing the training. When determining whether there is good cause to waive the training requirement, the court must consider, among other facts, the length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian; or

(II) Extend the time period for completion of the training requirement for ninety days; and

(x) Evidence of the guardian or limited guardian's successful completion of any additional or updated training video or web cast offered by the administrative office of the courts and the superior court as is required at the discretion of the superior court unless the guardian or limited guardian is a certified professional guardian or financial institution authorized under RCW 11.88.020. The training video or web cast must be provided at no cost to the guardian or limited guardian.

(c) To report to the court within thirty days any substantial change in the incapacitated person's condition, or any changes in residence of the incapacitated person.

(d) To inform any person entitled to special notice of proceedings under RCW 11.92.150 and any other person designated by the incapacitated person as soon as possible, but in no case more than five business days, after the incapacitated person:

(i) Makes a change in residence that is intended or likely to last more than fourteen calendar days;

(ii) Has been admitted to a medical facility for acute care in response to a life-threatening injury or medical condition that requires inpatient care;

(iii) Has been treated in an emergency room setting or kept for hospital observation for more than twenty-four hours; or

(iv) Dies, in which case the notification must be made in person, by telephone, or by certified mail.

(e) Consistent with the powers granted by the court, to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, assert the incapacitated person's rights and best interests, and if the incapacitated person is a minor or where otherwise appropriate, to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession.

(f) Consistent with RCW 7.70.065, to provide timely, informed consent for health care of the incapacitated person, except in the case of a limited guardian where such power is not expressly provided for in the order of appointment or subsequent modifying order as provided in RCW 11.88.125 as now or hereafter amended, the standby guardian or standby limited guardian may provide timely, informed consent to necessary medical procedures if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. No guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incapacitated person who is unable or unwilling to give informed consent to such commitment unless the procedures for involuntary commitment set forth in chapter 71.05 or 72.23 RCW are followed. Nothing in this section may be construed to allow a guardian, limited guardian, or standby guardian to consent to:

(i) Therapy or other procedure which induces convulsion;

(ii) Surgery solely for the purpose of psychosurgery;

(iii) Other psychiatric or mental health procedures that restrict physical freedom of movement, or the rights set forth in RCW 71.05.217.

(2) A guardian, limited guardian, or standby guardian who believes these procedures are necessary for the proper care and maintenance of the incapacitated person shall petition the court for an order unless the court has previously approved the procedure within the past thirty days. The court may order the procedure only after an attorney is appointed in accordance with RCW 11.88.045 if no attorney has previously appeared, notice is given, and a hearing is held in accordance with RCW 11.88.040. [2017 c 268 § 3; 2011 c 329 § 3; 1991 c 289 § 11; 1990 c 122 § 21.]

Additional notes found at www.leg.wa.gov

11.92.195 Incapacitated persons—Right to associate with persons of their choosing. (1) Except as otherwise provided in this section, an incapacitated person retains the right to associate with persons of the incapacitated person's choosing. This right includes, but is not limited to, the right to freely communicate and interact with other persons, whether through in-person visits, telephone calls, electronic communication, personal mail, or other means. If the incapacitated person is unable to express consent for communication, visitation, or interaction with another person, or is otherwise unable to make a decision regarding association with another person, a guardian of the incapacitated person, whether full or limited, must:

(a) Personally inform the incapacitated person of the decision under consideration, using plain language, in a manner calculated to maximize the understanding of the incapacitated person;

(b) Maximize the incapacitated person's participation in the decision-making process to the greatest extent possible, consistent with the incapacitated person's abilities; and

(c) Give substantial weight to the incapacitated person's preferences, both expressed and historical.

(2) A guardian or limited guardian may not restrict an incapacitated person's right to communicate, visit, interact, or otherwise associate with persons of the incapacitated person's choosing, unless:

(a) The restriction is specifically authorized by the guardianship court in the court order establishing or modifying the guardianship or limited guardianship under chapter 11.88 RCW;

(b) The restriction is pursuant to a protection order issued under chapter 74.34 RCW, chapter 26.50 RCW, or other law, that limits contact between the incapacitated person and other persons; or

(c)(i) The guardian or limited guardian has good cause to believe that there is an immediate need to restrict an incapacitated person's right to communicate, visit, interact, or otherwise associate with persons of the incapacitated person's choosing in order to protect the incapacitated person from abuse, neglect, abandonment, or financial exploitation, as those terms are defined in RCW 74.34.020, or to protect the incapacitated person from activities that unnecessarily impose significant distress on the incapacitated person; and

(ii) Within fourteen calendar days of imposing the restriction under (c)(i) of this subsection, the guardian or limited guardian files a petition for a protection order under chapter 74.34 RCW. The immediate need restriction may remain in place until the court has heard and issued an order or decision on the petition.

(3) A protection order under chapter 74.34 RCW issued to protect an incapacitated person as described in subsection (2)(c)(ii) of this section:

(a) Must include written findings of fact and conclusions of law;

(b) May not be more restrictive than necessary to protect the incapacitated person from abuse, neglect, abandonment, or financial exploitation as those terms are defined in RCW 74.34.020; and

(c) May not deny communication, visitation, interaction, or other association between the incapacitated person and another person unless the court finds that placing reasonable time, place, or manner restrictions is unlikely to sufficiently protect the incapacitated person from abuse, neglect, abandonment, or financial exploitation as those terms are defined in RCW 74.34.020. [2017 c 268 § 1.]

Chapter 11.107 RCW TRUSTS—DECANTING POWER

Sections

11.107.010	Definitions.
11.107.020	Decanting power under expanded discretion.
11.107.030	Decanting power under limited discretion.
11.107.040	Decanting statute—Procedure to exercise decanting power.
11.107.050	Decanting statute—Effects and consequences of an exercise of the decanting power.
11.107.060	Decanting statute—Trust for beneficiary with a disability.
11.107.070	Decanting statute—Specific prohibitions.
11.107.080	Application—Miscellaneous.

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

(1) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of Title 26 U.S.C. Sec. 2041(b)(1)(A) or 2514(c)(1) of the federal internal revenue code and any applicable regulations, as amended, as of July 23, 2017.

(2) "Charitable interest" means an interest in a trust that:

(a) Is held by a charitable organization;

(b) Benefits charitable organizations;

(c) Is held for charitable purposes; or

(d) Holds assets subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes.

(3) "Charitable purpose" means a purpose that is for: The relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which are beneficial to a community.

(4) "Decanting power" or "the decanting power" means the power of a trustee under this chapter to distribute income and principal of a first trust to one or more second trusts or to modify the terms of the first trust.

(5) "Expanded discretion" means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

(6) "First trust" means a trust over which a trustee may exercise the decanting power.

(7) "Limited discretion" means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

(8) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(9) "Qualified beneficiary" means a beneficiary that on the date of qualification is described in RCW 11.98.002(2).

(10) "Reasonably definite standard" means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of Title

26 U.S.C. Sec. 674(b)(5)(A) of the federal internal revenue code and any applicable regulations, as amended, as of July 23, 2017.

(11) "Second trust" means:

- (a) A first trust after modification under this chapter; or
- (b) A trust to which a distribution of income and principal from a first trust is or may be made under this chapter. [2017 c 29 § 1.]

11.107.020 Decanting power under expanded discretion. (1) Subject to (a) of this subsection and RCW 11.107.070, a trustee that has expanded discretion to distribute the principal of a first trust to one or more current beneficiaries may exercise the decanting power over the principal of the first trust, subject to the following:

(a) Except as provided in RCW 11.107.060, a second trust may not in an exercise of the decanting power under this section:

(i) Include as a current beneficiary a person that is not a current beneficiary of the first trust, except as otherwise provided in (b) of this subsection;

(ii) Include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust, except as otherwise provided in (b) of this subsection; or

(iii) Reduce or eliminate a vested interest;

(b) Subject to (a)(iii) of this subsection and RCW 11.107.070, a second trust may in an exercise of the decanting power under this section:

(i) Retain a power of appointment granted in the first trust;

(ii) Omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;

(iii) Create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the trustee has expanded discretion to distribute principal to the current beneficiary; and

(iv) Create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary;

(c) A power of appointment described in (b) of this subsection may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust;

(d) In an exercise of the decanting power under this section, a second trust may be a trust created or administered under the law of any jurisdiction; and

(e) If a trustee has expanded discretion to distribute part but not all of the principal of a first trust, the trustee may exercise the decanting power under this section only over that part of the principal.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Presumptive remainder beneficiary" means a qualified beneficiary other than a current beneficiary.

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(b) "Successor beneficiary" means a beneficiary that on the date of the beneficiary's qualification is determined not to be a qualified beneficiary. The term does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

(c) "Vested interest" means:

(i) A right to a mandatory distribution that is noncontingent as of the date of the exercise of the decanting power;

(ii) A current and noncontingent right, annually or more frequently, to either a mandatory distribution of income or to withdraw income, a specified dollar amount, or a percentage of value of some or all of the trust income or principal;

(iii) A presently exercisable general power of appointment; or

(iv) A right to receive an ascertainable part of the trust principal on trust termination that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. [2017 c 29 § 2.]

11.107.030 Decanting power under limited discretion. Subject to RCW 11.107.070, a trustee that has limited discretion to distribute the principal of a first trust to one or more current beneficiaries may exercise the decanting power over the principal of the first trust, subject to the following:

(1) Second trusts under this section, in the aggregate, must grant each beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficial interests of the beneficiary in the first trust;

(2) A power to make a distribution under the second trust for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

(a) The distribution is made for the benefit of the beneficiary;

(b) The beneficiary is incapacitated or otherwise under a legal disability or the trustee reasonably believes the beneficiary is incapacitated or under a legal disability, and the distribution is made as permitted by the first trust instrument or otherwise as permitted by law; or

(c) The distribution is made as permitted under the terms of the first trust instrument and the second trust instrument for the benefit of the beneficiary;

(3) In an exercise of the decanting power under this section, a second trust may be a trust created or administered under the law of any jurisdiction; and

(4) If a trustee has limited discretion to distribute part but not all of the principal of a first trust, the trustee may exercise the decanting power under this section only over that part of the principal. [2017 c 29 § 3.]

11.107.040 Decanting statute—Procedure to exercise decanting power. (1) The trustee of the first trust may exercise the decanting power under RCW 11.107.020 and 11.107.030 if:

(a) The trustee determines that the exercise of the decanting power is consistent with the trustee's fiduciary duties described in RCW 11.107.080(1);

(b) In the event that the first trust contains a charitable interest, the trustee gives written notice to the attorney gen-

eral of the trustee's intention to exercise the decanting power; and

(c) The trustee gives written notice of the trustee's intention to exercise the decanting power to each qualified beneficiary, each holder of a presently exercisable power of appointment over any part of the first trust, and each person that currently has the right to remove or replace the trustee not less than sixty days prior to the effective date of the exercise.

(2) The trustee of the first trust, qualified beneficiaries, and any other party as defined by RCW 11.96A.030(5) may agree to exercise by the trustee of the decanting power by means of a binding agreement under RCW 11.96A.220.

(3) The trustee of the first trust, a qualified beneficiary, a holder of a presently exercisable power of appointment over any part of the first trust, and a person that currently has the right to remove or replace the trustee may petition the court under chapter 11.96A RCW regarding exercise of the decanting power for the following relief, to:

(a) Provide instructions to the trustee regarding whether a proposed exercise of the decanting power is permitted under this chapter and consistent with the fiduciary duties of the trustee;

(b) Approve an exercise of the decanting power;

(c) Determine that a proposed or attempted exercise of the decanting power is ineffective because the proposed or attempted exercise does not or did comply with this chapter or the proposed or attempted exercise would be or was an abuse of the trustee's discretion or a breach of fiduciary duty; or

(d) Order other relief to carry out the purposes of this chapter.

(4) The trustee of the first trust may petition the court under chapter 11.96A RCW regarding exercise of the decanting power for the following relief:

(a) An increase of the trustee's compensation under RCW 11.107.070(2)(a)(ii); or

(b) Modification under RCW 11.107.070(4)(b) of a provision granting a person the right to remove or replace the trustee.

(5) If there is at least one qualified beneficiary who is not a minor or who has a representative, the trustee is not required to give notice under subsection (1)(c) of this section to a qualified beneficiary who is a minor and has no representative. If all qualified beneficiaries are minors and none has a representative, the trustee must petition for appointment of a guardian ad litem under RCW 11.98A.160 [11.96A.160].

(6) The trustee is not required to give notice under this section to a person who is not known to the trustee or is known to the trustee but cannot be located by the trustee after reasonable diligence.

(7) A notice under subsection (1) of this section or petition under subsection (3) or (4) of this section must:

(a) Specify the manner in which the trustee must exercise the decanting power;

(b) Specify the proposed effective date for exercise of the decanting power;

(c) Include a copy of all governing instruments of the first trust; and

(d) Include a copy of all governing instruments of the second trust. An exercise of the decanting power under this

section must be made in a record signed by the trustee; for this purpose, a "record signed by the trustee" must include a court order under subsection (3) of this section.

(8) The decanting power may be exercised before expiration of the notice period under subsection (1) of this section if all persons entitled to receive notice waive the period in writing. An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection (1) of this section if the trustee acted with reasonable care to comply with this section. [2017 c 29 § 4.]

11.107.050 Decanting statute—Effects and consequences of an exercise of the decanting power. (1) A trustee or other person that reasonably relies on the validity of a distribution of part or all of the income and principal of a trust to another trust, or a modification of a trust, under this chapter or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance.

(2) A debt, liability, or other obligation enforceable against income and principal of a first trust is enforceable to the same extent against that income and principal when held by the second trust after exercise of the decanting power.

(3) For purposes of the law of this state other than this chapter and subject to this subsection, a settlor of a first trust is deemed to be the settlor of the second trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power. In determining settlor intent with respect to a second trust, the intent of a settlor of the first trust and the intent of a settlor of the second trust, if different, may be considered. The intent of the trustee may also be considered.

(4) If the trustee intends to distribute all of the principal of a first trust to a second trust and the trustee makes a good faith effort to do so, the distribution of all of the principal of a first trust to a second trust includes subsequently discovered assets otherwise belonging to the first trust and principal paid to or acquired by the first trust after the distribution of the first trust's principal. If the trustee does not intend to distribute all of the principal of a first trust to a second trust, the distribution of part of the principal of a first trust to a second trust does not include subsequently discovered assets belonging to the first trust or principal paid to or acquired by the first trust after the distribution of principal from the first trust to the second trust, and those assets or that principal remain the assets or principal of the first trust.

(5) A reference under this title to a trust instrument or to terms of the trust includes the second trust, the second trust instrument, and the terms of the second trust.

(6) The title to all real estate and other property, both tangible and intangible, owned by the first trust remains vested in the second trust without reversion or impairment.

(7) An action or proceeding pending by or against the first trust may be continued by or against the second trust as if the decanting had not occurred.

(8) Except as otherwise provided by this chapter, all of the rights, privileges, immunities, powers, and purposes of the first trust remain vested in the second trust. [2017 c 29 § 5.]

11.107.060 Decanting statute—Trust for beneficiary with a disability. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Beneficiary with a disability" means a beneficiary of the first trust who the trustee believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an individual who is incapacitated within the meaning of RCW 11.88.010.

(b) "Governmental benefits" means financial aid or services from a state, federal, or other public agency.

(c) "Special needs trust" means a trust the trustee believes would not be considered a resource for purposes of determining whether the beneficiary with a disability is eligible for governmental benefits.

(2) A trustee may exercise the decanting power under RCW 11.107.020 and 11.107.030 over the property of the first trust as if the trustee had authority to distribute principal to a beneficiary with a disability subject to expanded discretion if:

(a) The second trust is a special needs trust that benefits the beneficiary with a disability; and

(b) The trustee determines that exercise of the decanting power will further the purposes of the first trust.

(3) In an exercise of the decanting power under this section, the following rules apply:

(a) The provisions of the second trust for a beneficiary with a disability may:

(i) Meet the medicaid law requirements for an account in a pooled trust for a beneficiary with a disability under 42 U.S.C. Sec. 1369p(d)(4)(C), as amended, including requiring a payback to the state of medicaid expenditures of funds not retained by the pooled trust; or

(ii) Meet the medicaid law requirements for a trust for the sole benefit of a beneficiary with a disability under age sixty-five under 42 U.S.C. Sec. 1369(d)(4)(A), as amended, including requiring a payback to the state of medicaid expenditures.

(b) RCW 11.107.020(1)(a)(iii) does not apply to the interests of the beneficiary with a disability.

(c) Except as affected by any change to the interests of the beneficiary with a disability, the second trusts, in the aggregate, must grant each other beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficiary's beneficial interests in the first trust unless inconsistent with (a)(i) or (ii) of this subsection (3). [2017 c 29 § 6.]

11.107.070 Decanting statute—Specific prohibitions.

(1) A trustee may not exercise the decanting power to the extent the first trust instrument expressly prohibits exercise of the decanting power or a power granted by state law to the trustee to modify the trust including, but not limited to, modification pursuant to chapter 11.96A RCW, and any exercise of the decanting power is subject to the prohibition and the prohibition must be included in the second trust instrument or modified first trust instrument. If the first trust instrument contains an express restriction on exercise of the decanting power or such a power to modify the trust, the exercise of the decanting power is subject to the restriction and the restric-

tion must be included in the second trust instrument or modified first trust instrument.

(2)(a) Whether or not a first trust instrument specifies a trustee's compensation, the trustee may not exercise the decanting power to increase the trustee's compensation beyond any compensation specified or above the compensation permitted by RCW 11.98.070(26) unless:

(i) All qualified beneficiaries of the second trust consent to the increase in a signed record; or

(ii) The increase is approved by the court.

(b) A change in a trustee's compensation which is incidental to other changes made by the exercise of the decanting power is not an increase in the trustee's compensation for purposes of this subsection (2).

(3) Except as otherwise provided in subsection (2)(a)(i) or (ii) or (b) of this section, a second trust instrument may not relieve a trustee from liability for breach of trust to a greater extent than the first trust instrument.

(a) A second trust instrument may provide for indemnification of a trustee of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

(b) A second trust instrument may not reduce fiduciary liability in the aggregate.

(c) Subject to (b) of this subsection, a second trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees or statutory trust advisors, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by law of this state other than this chapter. This includes but is not limited to directed trusts.

(4) A trustee may not exercise the decanting power to modify a provision in the first trust instrument granting another person power to remove or replace the trustee unless:

(a) All qualified beneficiaries of the second trust consent to the modification in a signed record; or

(b) The court approves the modification and the modification grants a substantially similar power to another person.

(5) A second trust may have a duration that is the same as or different from the duration of the first trust. Notwithstanding the foregoing, to the extent that income and principal of a second trust is attributable to income and principal of the first trust, the second trust is subject to any maximum perpetuity, accumulation, or suspension of the power of alienation rules that were applicable to income and principal of the first trust.

(6) If a first trust contains a charitable interest, the attorney general has the rights of a qualified beneficiary and may represent and bind the charitable interest and the attorney general has the authority to participate in any proceedings in accordance with chapter 11.110 RCW. If a first trust contains a charitable interest, the second trusts, in the aggregate, may not:

(a) Diminish the charitable interest;

(b) Diminish the interest of any entity that holds the charitable interest; or

(c) Alter any charitable purpose stated in the first trust instrument.

(7) If the first trust contains assets that qualified, or would have qualified but for the provisions of this chapter

other than this subsection, for a tax benefit as defined in this subsection, the second trust instrument must not include or omit a term which would have prevented the first trust from qualifying in the same manner for, or would have reduced the amount of, that tax benefit.

(a) For the purposes of this subsection, "tax benefit" includes any federal or state tax deduction, exemption, exclusion, or other tax benefit under federal or state statute, regulation, or other law, except for the benefit of being a grantor trust other than under Title 26 U.S.C. Sec. 672(f)(2)(A) of the federal internal revenue code, as amended, as of July 23, 2017, including but not limited to the following:

(i) The marital deduction for gift, estate, or inheritance tax purposes, including but not limited to the deductions under Title 26 U.S.C. Sec. 2056 of the federal internal revenue code, as amended, as of July 23, 2017, and RCW 83.100.047;

(ii) The charitable deduction for purposes of the income, gift, or estate tax under the internal revenue code or a state income, gift, estate, or inheritance tax;

(iii) The exclusion from the gift tax described in 26 U.S.C. Sec. 2503(b), including by application of Title 26 U.S.C. Sec. 2503(c) of the internal revenue code, as amended;

(iv) Status as a permitted shareholder in an S corporation, as defined in Title 26 U.S.C. Sec. 1361 of the federal internal revenue code, as amended, as of July 23, 2017, including as a qualified subchapter S trust within the meaning of Title 26 U.S.C. Sec. 1361(c)(2) of the federal internal revenue code;

(v) Qualification for a zero inclusion ratio for purposes of the generation-skipping transfer tax under Title 26 U.S.C. Sec. 2642(c) of the federal internal revenue code, as amended, as of July 23, 2017;

(vi) Meeting required minimum distribution and any similar requirements under Title 26 U.S.C. Sec. 401(a)(9) of the federal internal revenue code, as amended, as of July 23, 2017, and any applicable regulations; or

(vii) Qualification as a grantor trust because of the application of Title 26 U.S.C. Sec. 672(f)(2)(A) of the federal internal revenue code, as amended, as of July 23, 2017.

(b) Subject to (a)(vii) of this subsection, the second trust may be a nongrantor trust, even if the first trust is a grantor trust, and except as otherwise provided in this subsection (7)(b) the second trust may be a grantor trust, even if the first trust is a nongrantor trust. The trustee may not exercise the decanting power if the settlor objects in a written instrument delivered to the trustee within the notice period under RCW 11.107.040(1)(c); and

(i)(A) The first trust and second trust are both grantor trusts, in whole or in part;

(B) The first trust grants the settlor or another person the power to cause the first trust to cease to be a grantor trust; and

(C) The second trust does not grant an equivalent power to the settlor or other person; or

(ii) The first trust is a nongrantor trust and the second trust is a grantor trust, in whole or in part, with respect to the settlor unless:

(A) The settlor has the power at all times to cause the second trust to cease to be a grantor trust; or

(B) The first trust instrument contains a provision granting the settlor or another person the power to cause the first trust to cease to be a grantor trust and the second trust instrument contains the same provision.

(8) A trustee may not exercise the decanting power if RCW 11.98.200 applies to the first trust and exercise would cause RCW 11.98.200 not to apply to the second trust or modified first trust instrument.

(9) A general prohibition of the amendment or revocation of a first trust, a spendthrift clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power. [2017 c 29 § 7.]

11.107.080 Application—Miscellaneous. (1) This chapter applies to any express trust, within the meaning of RCW 11.98.009, other than a trust during such time as the grantor has retained the right to revoke or amend. In exercising the decanting power, the trustee must act in accordance with the trustee's fiduciary duties, including the duty to act in accordance with the purposes of the first trust. Except as otherwise provided in the first trust instrument, for purposes of this chapter the terms of the first trust are deemed to include the decanting power.

(2) This chapter does not limit the power of a trustee, powerholder, or other person to distribute or appoint income and principal in further trust or to modify a trust under the trust instrument, law of this state other than this title, a court order, or a nonjudicial agreement. This chapter does not increase or modify the requirements for a binding agreement under RCW 11.96A.220 or the requirements for a directed trust under chapter 11.98A RCW. This chapter does not affect the ability of a settlor to provide in a trust instrument for the distribution or appointment in further trust of the trust income and principal or for modification of the trust instrument.

(3) This chapter does not apply to a trust held solely for charitable purposes.

(4) This chapter does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of this chapter.

(5) This chapter applies to a trust created before, on, or after July 23, 2017, that:

(a) Has its situs in this state, including a trust whose situs has been changed to this state; or

(b) Provides by its trust instrument that it is governed by the law of this state or is governed by the law of this state for purposes of:

(i) Administration, including a trust whose governing law for purposes of administration has been changed to the law of this state;

(ii) Construction of terms of the trust; or

(iii) Determining the meaning or effect of terms of the trust.

(6) A trustee may exercise the decanting power whether or not the trustee would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

(7) If exercise of the decanting power would be effective under this chapter except that the second trust instrument in part does not comply with this chapter, the exercise of the

decanting power is effective and the following rules apply to the principal of the first trust subject to the exercise of the power:

(a) A provision in the second trust instrument which is not permitted under this chapter is void to the extent necessary to comply with this chapter.

(b) A provision required by this chapter to be in the second trust instrument which is not contained in the instrument is deemed to be included in the instrument to the extent necessary to comply with this chapter.

(8) If a trustee of a second trust discovers that subsection (7) of this section applies to a prior exercise of the decanting power, the trustee must take such appropriate corrective action as is consistent with the trustee's duties. [2017 c 29 § 8.]

Title 13

JUVENILE COURTS AND JUVENILE OFFENDERS

Chapters

13.04	Basic juvenile court act.
13.06	Juvenile offenders—Consolidated juvenile services programs.
13.16	Places of detention.
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Chapter 13.04 RCW

BASIC JUVENILE COURT ACT

Sections

13.04.011	Definitions. (<i>Effective until July 1, 2019.</i>)
13.04.011	Definitions. (<i>Effective July 1, 2019.</i>)
13.04.030	Juvenile court—Exclusive original jurisdiction—Exceptions. (<i>Effective July 1, 2019.</i>)
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13.04.145	Educational program for juveniles in detention facilities—Application of chapter 28A.190 RCW. (<i>Effective July 1, 2019.</i>)

13.04.011 Definitions. (*Effective until July 1, 2019.*)

For purposes of this title:

(1) "Adjudication" has the same meaning as "conviction" in RCW 9.94A.030, but only for the purposes of sentencing under chapter 9.94A RCW;

(2) Except as specifically provided in RCW 13.40.020 and chapters 13.24 and 13.34 RCW, "juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years;

(3) "Juvenile offender" and "juvenile offense" have the meaning ascribed in RCW 13.40.020;

(4) "Court" when used without further qualification means the juvenile court judge(s) or commissioner(s);

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(5) "Parent" or "parents," except as used in chapter 13.34 RCW, means that parent or parents who have the right of legal custody of the child;

(6) "Custodian" means that person who has the legal right to custody of the child. [2017 c 276 § 1; 2011 c 330 § 2; 2010 c 150 § 4; 1997 c 338 § 6; 1992 c 205 § 119; 1979 c 155 § 1; 1977 ex.s. c 291 § 2.]

Intent—2013 c 39; 2011 c 330: "The Washington state legislature has consistently provided national leadership on safe housing and support to foster youth transitioning out of foster care. Since 2006, the legislature has addressed the needs of foster youth aging out of care with medicaid to twenty-one (2007), foster care to twenty-one (2006), the independent youth housing program (2007), and Washington's alignment with the federal fostering connections act (2009). As a result of this national leadership to provide safe and basic housing to youth aging out of foster care, the programs have demonstrated the significant cost-benefit to providing safe housing to our youth exiting foster care.

The United States congress passed the fostering connections to success and increasing adoptions act of 2008 in order to give states another financial tool to continue to provide foster care services to dependent youth who turn eighteen years old while in foster care. However, substantially declining revenues have resulted in markedly decreased funds for states to use to meet the federal requirements necessary to help these youth. Current fiscal realities require that the scope of programs must be narrowed.

The Washington state legislature intends to serve, within the resources available, the maximum number of foster youth who are legally dependent on the state and who reach the age of eighteen while still in foster care. The legislature intends to provide these youth continued foster care services to support basic and healthy transition into adulthood. The legislature recognizes the extremely poor outcomes of unsupported foster youth aging out of the foster care system and is committed to ensuring that those foster youth who engage in positive, age-appropriate activities receive support. It is the intent of the legislature to fully engage in the fostering connections act by providing support, including extended court supervision to foster youth pursuing a high school diploma or high school equivalency certificate as provided in RCW 28B.50.536 to age twenty-one with the goal of increasing support to all children up to age twenty-one who are eligible under the federal fostering connections to success act as resources become available." [2013 c 39 § 1; 2011 c 330 § 1.]

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

Additional notes found at www.leg.wa.gov

13.04.011 Definitions. (*Effective July 1, 2019.*) For purposes of this title:

(1) "Adjudication" has the same meaning as "conviction" in RCW 9.94A.030, but only for the purposes of sentencing under chapter 9.94A RCW;

(2) "Court" when used without further qualification means the juvenile court judge(s) or commissioner(s);

(3) "Custodian" means that person who has the legal right to custody of the child;

(4) "Department" means the department of children, youth, and families;

(5) Except as specifically provided in RCW 13.40.020 and chapters 13.24 and 13.34 RCW, "juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years;

(6) "Juvenile offender" and "juvenile offense" have the meaning ascribed in RCW 13.40.020;

(7) "Parent" or "parents," except as used in chapter 13.34 RCW, means that parent or parents who have the right of legal custody of the child. [2017 3rd sp.s. c 6 § 601; 2017 c 276 § 1; 2011 c 330 § 2; 2010 c 150 § 4; 1997 c 338 § 6; 1992 c 205 § 119; 1979 c 155 § 1; 1977 ex.s. c 291 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: "Sections 601 through 631, 701 through 728, and 804 of this act take effect July 1, 2019." [2017 3rd sp.s. c 6 § 826.]

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Intent—2013 c 39; 2011 c 330: "The Washington state legislature has consistently provided national leadership on safe housing and support to foster youth transitioning out of foster care. Since 2006, the legislature has addressed the needs of foster youth aging out of care with medicaid to twenty-one (2007), foster care to twenty-one (2006), the independent youth housing program (2007), and Washington's alignment with the federal fostering connections act (2009). As a result of this national leadership to provide safe and basic housing to youth aging out of foster care, the programs have demonstrated the significant cost-benefit to providing safe housing to our youth exiting foster care.

The United States congress passed the fostering connections to success and increasing adoptions act of 2008 in order to give states another financial tool to continue to provide foster care services to dependent youth who turn eighteen years old while in foster care. However, substantially declining revenues have resulted in markedly decreased funds for states to use to meet the federal requirements necessary to help these youth. Current fiscal realities require that the scope of programs must be narrowed.

The Washington state legislature intends to serve, within the resources available, the maximum number of foster youth who are legally dependent on the state and who reach the age of eighteen while still in foster care. The legislature intends to provide these youth continued foster care services to support basic and healthy transition into adulthood. The legislature recognizes the extremely poor outcomes of unsupported foster youth aging out of the foster care system and is committed to ensuring that those foster youth who engage in positive, age-appropriate activities receive support. It is the intent of the legislature to fully engage in the fostering connections act by providing support, including extended court supervision to foster youth pursuing a high school diploma or high school equivalency certificate as provided in RCW 28B.50.536 to age twenty-one with the goal of increasing support to all children up to age twenty-one who are eligible under the federal fostering connections to success act as resources become available." [2013 c 39 § 1; 2011 c 330 § 1.]

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

Additional notes found at www.leg.wa.gov

13.04.030 Juvenile court—Exclusive original jurisdiction—Exceptions. (Effective July 1, 2019.) (1) Except as provided in this section, the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings:

(a) Under the interstate compact on placement of children as provided in chapter 26.34 RCW;

(b) Relating to children alleged or found to be dependent as provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.161;

(c) Relating to the termination of a parent and child relationship as provided in RCW 13.34.180 through 13.34.210;

(d) To approve or disapprove out-of-home placement as provided in RCW 13.32A.170;

(e) Relating to juveniles alleged or found to have committed offenses, traffic or civil infractions, or violations as provided in RCW 13.40.020 through 13.40.230, unless:

(i) The juvenile court transfers jurisdiction of a particular juvenile to adult criminal court pursuant to RCW 13.40.110;

(ii) The statute of limitations applicable to adult prosecution for the offense, traffic or civil infraction, or violation has expired;

(iii) The alleged offense or infraction is a traffic, fish, boating, or game offense, or traffic or civil infraction committed by a juvenile sixteen years of age or older and would, if committed by an adult, be tried or heard in a court of limited jurisdiction, in which instance the appropriate court of limited jurisdiction shall have jurisdiction over the alleged

offense or infraction, and no guardian ad litem is required in any such proceeding due to the juvenile's age. If such an alleged offense or infraction and an alleged offense or infraction subject to juvenile court jurisdiction arise out of the same event or incident, the juvenile court may have jurisdiction of both matters. The jurisdiction under this subsection does not constitute "transfer" or a "decline" for purposes of RCW 13.40.110 (1) or (2) or (e)(i) of this subsection. Courts of limited jurisdiction which confine juveniles for an alleged offense or infraction may place juveniles in juvenile detention facilities under an agreement with the officials responsible for the administration of the juvenile detention facility in RCW 13.04.035 and 13.20.060;

(iv) The alleged offense is a traffic or civil infraction, a violation of compulsory school attendance provisions under chapter 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has assumed concurrent jurisdiction over those offenses as provided in *RCW 13.04.0301; or

(v) The juvenile is sixteen or seventeen years old on the date the alleged offense is committed and the alleged offense is:

(A) A serious violent offense as defined in RCW 9.94A.030;

(B) A violent offense as defined in RCW 9.94A.030 and the juvenile has a criminal history consisting of: (I) One or more prior serious violent offenses; (II) two or more prior violent offenses; or (III) three or more of any combination of the following offenses: Any class A felony, any class B felony, vehicular assault, or manslaughter in the second degree, all of which must have been committed after the juvenile's thirteenth birthday and prosecuted separately;

(C) Robbery in the first degree, rape of a child in the first degree, or drive-by shooting, committed on or after July 1, 1997;

(D) Burglary in the first degree committed on or after July 1, 1997, and the juvenile has a criminal history consisting of one or more prior felony or misdemeanor offenses; or

(E) Any violent offense as defined in RCW 9.94A.030 committed on or after July 1, 1997, and the juvenile is alleged to have been armed with a firearm.

(I) In such a case the adult criminal court shall have exclusive original jurisdiction, except as provided in (e)(v)(E)(II) and (III) of this subsection.

(II) The juvenile court shall have exclusive jurisdiction over the disposition of any remaining charges in any case in which the juvenile is found not guilty in the adult criminal court of the charge or charges for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense that is not also an offense listed in (e)(v) of this subsection. The juvenile court shall enter an order extending juvenile court jurisdiction if the juvenile has turned eighteen years of age during the adult criminal court proceedings pursuant to RCW 13.40.300. However, once the case is returned to juvenile court, the court may hold a decline hearing pursuant to RCW 13.40.110 to determine whether to retain the case in juvenile court for the purpose of disposition or return the case to adult criminal court for sentencing.

(III) The prosecutor and respondent may agree to juvenile court jurisdiction and waive application of exclusive adult criminal jurisdiction in (e)(v)(A) through (E) of this

subsection and remove the proceeding back to juvenile court with the court's approval.

If the juvenile challenges the state's determination of the juvenile's criminal history under (e)(v) of this subsection, the state may establish the offender's criminal history by a preponderance of the evidence. If the criminal history consists of adjudications entered upon a plea of guilty, the state shall not bear a burden of establishing the knowing and voluntariness of the plea;

(f) Under the interstate compact on juveniles as provided in chapter 13.24 RCW;

(g) Relating to termination of a diversion agreement under RCW 13.40.080, including a proceeding in which the divertee has attained eighteen years of age;

(h) Relating to court validation of a voluntary consent to an out-of-home placement under chapter 13.34 RCW, by the parent or Indian custodian of an Indian child, except if the parent or Indian custodian and child are residents of or domiciled within the boundaries of a federally recognized Indian reservation over which the tribe exercises exclusive jurisdiction;

(i) Relating to petitions to compel disclosure of information filed by the department of social and health services pursuant to RCW 74.13.042; and

(j) Relating to judicial determinations and permanency planning hearings involving developmentally disabled children who have been placed in out-of-home care pursuant to a voluntary placement agreement between the child's parent, guardian, or legal custodian and the department of social and health services and the department of children, youth, and families.

(2) The family court shall have concurrent original jurisdiction with the juvenile court over all proceedings under this section if the superior court judges of a county authorize concurrent jurisdiction as provided in RCW 26.12.010.

(3) The juvenile court shall have concurrent original jurisdiction with the family court over child custody proceedings under chapter 26.10 RCW and parenting plans or residential schedules under chapters 26.09 and 26.26 RCW as provided for in RCW 13.34.155.

(4) A juvenile subject to adult superior court jurisdiction under subsection (1)(e)(i) through (v) of this section, who is detained pending trial, may be detained in a detention facility as defined in RCW 13.40.020 pending sentencing or a dismissal. [2017 3rd sp.s. c 6 § 602. Prior: 2009 c 526 § 1; 2009 c 454 § 1; prior: 2005 c 290 § 1; 2005 c 238 § 1; 2000 c 135 § 2; prior: 1997 c 386 § 17; 1997 c 341 § 3; 1997 c 338 § 7; prior: 1995 c 312 § 39; 1995 c 311 § 15; 1994 sp.s. c 7 § 519; 1988 c 14 § 1; 1987 c 170 § 1; 1985 c 354 § 29; 1984 c 272 § 1; 1981 c 299 § 1; 1980 c 128 § 6; 1979 c 155 § 3; 1977 ex.s. c 291 § 4; 1937 c 65 § 1; 1929 c 176 § 1; 1921 c 135 § 1; 1913 c 160 § 2; RRS § 1987-2.]

*Reviser's note: RCW 13.04.0301 was decodified September 2003.

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Finding—Intent—1997 c 341: "The legislature finds that a swift and certain response to a juvenile who begins engaging in acts of delinquency may prevent the offender from becoming a chronic or more serious offender. However, given pressing demands to address serious offenders, the system does not always respond to minor offenders expeditiously and effectively.

[2017 RCW Supp—page 84]

Consequently, this act is adopted to implement an experiment to determine whether granting courts of limited jurisdiction concurrent jurisdiction over certain juvenile offenses will improve the system's effectiveness in curbing delinquency. The legislature may ascertain whether this approach might be successful on a larger scale by conducting an experiment with local governments, which are the laboratories of democracy." [1997 c 341 § 1.]

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

Application of 1994 sp.s. c 7 amendments: "Provisions governing exceptions to juvenile court jurisdiction in the amendments to RCW 13.04.030 contained in section 519, chapter 7, Laws of 1994 sp. sess. shall apply to serious violent and violent offenses committed on or after June 13, 1994. The criminal history which may result in loss of juvenile court jurisdiction upon the alleged commission of a serious violent or violent offense may have been acquired on, before, or after June 13, 1994." [1994 sp.s. c 7 § 540.]

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Court commissioners: Chapter 2.24 RCW, state Constitution Art. 4 § 23.

Jurisdiction of superior courts: State Constitution Art. 4 § 6 (Amendment 65).

Additional notes found at www.leg.wa.gov

13.04.035 Administrator of juvenile court, probation counselor, and detention services—Appointment. Juvenile court shall be administered by the superior court, except that by local court rule and agreement with the legislative authority of the county this service may be administered by the legislative authority of the county. Juvenile probation counselor and detention services shall be administered by the superior court, except that (1) by local court rule and agreement with the county legislative authority, these services may be administered by the county legislative authority; (2) for the consortium in existence on July 23, 2017, if a consortium of three or more counties, located east of the Cascade mountains and whose combined population exceeds two hundred thousand, jointly operates a juvenile correctional facility, the county legislative authorities may prescribe for alternative administration of the juvenile correctional facility by ordinance; and (3) in any county with a population of one million or more, probation and detention services shall be administered in accordance with chapter 13.20 RCW. The administrative body shall appoint an administrator of juvenile court, probation counselor, and detention services who shall be responsible for day-to-day administration of such services, and who may also serve in the capacity of a probation counselor. One person may, pursuant to the agreement of more than one administrative body, serve as administrator of more than one juvenile court. If a county participating in a consortium authorized under subsection (2) of this section withdraws from participation, the withdrawing county may rejoin the consortium at a later time so long as a majority of the consortium members agree. [2017 c 278 § 1; 1996 c 284 § 1; 1991 c 363 § 10; 1979 c 155 § 5; 1977 ex.s. c 291 § 6.]

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

Prosecuting attorney as party to juvenile court proceedings—Exception, procedure: RCW 13.40.090.

Additional notes found at www.leg.wa.gov

13.04.116 Juvenile not to be confined in jail or holding facility for adults, exceptions—Enforcement. (Effective July 1, 2019.) (1) A juvenile shall not be confined in a jail or holding facility for adults, except:

(a) For a period not exceeding twenty-four hours excluding weekends and holidays and only for the purpose of an initial court appearance in a county where no juvenile detention facility is available, a juvenile may be held in an adult facility provided that the confinement is separate from the sight and sound of adult inmates; or

(b) For not more than six hours and pursuant to a lawful detention in the course of an investigation, a juvenile may be held in an adult facility provided that the confinement is separate from the sight and sound of adult inmates.

(2) For purposes of this section a juvenile is an individual under the chronological age of eighteen years who has not been transferred previously to adult courts.

(3) The department shall monitor and enforce compliance with this section.

(4) This section shall not be construed to expand or limit the authority to lawfully detain juveniles. [2017 3rd sp.s. c 6 § 603; 1987 c 462 § 1; 1985 c 50 § 1.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Places of detention: Chapter 13.16 RCW.

Transfer of juvenile to department of corrections facility: RCW 13.40.280.

Additional notes found at www.leg.wa.gov

13.04.145 Educational program for juveniles in detention facilities—Application of chapter 28A.190 RCW. (Effective July 1, 2019.) A program of education shall be provided for by the several counties and school districts of the state for common school-age persons confined in each of the detention facilities staffed and maintained by the several counties of the state under this chapter and chapters 13.16 and 13.20 RCW. The division of duties, authority, and liabilities of the several counties and school districts of the state respecting the educational programs is the same in all respects as set forth in chapter 28A.190 RCW respecting programs of education for state residential school residents. For the purposes of this section, the terms "department of children, youth, and families," "residential school" or "schools," and "superintendent or chief administrator of a residential school" as used in chapter 28A.190 RCW shall be respectively construed to mean "the several counties of the state," "detention facilities," and "the administrator of juvenile court detention services." Nothing in this section shall prohibit a school district from utilizing the services of an educational service district subject to RCW 28A.310.180. [2017 3rd sp.s. c 6 § 604; 2014 c 157 § 5; 1990 c 33 § 551; 1983 c 98 § 1.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Juvenile facilities, educational programs: RCW 28A.190.010.

Chapter 13.06 RCW

JUVENILE OFFENDERS—CONSOLIDATED JUVENILE SERVICES PROGRAMS

Sections

- 13.06.020 State to share in cost. (Effective July 1, 2019.)
- 13.06.030 Rules—Standards—"Consolidated juvenile services" defined. (Effective July 1, 2019.)
- 13.06.040 Application by county or counties for state financial aid. (Effective July 1, 2019.)
- 13.06.050 Conditions for receiving state funds—Criteria for distribution of funds—Annual report on programs to reduce racial disproportionality. (Effective July 1, 2019.)

13.06.020 State to share in cost. (Effective July 1, 2019.) From any state moneys made available for such purpose, the state of Washington, through the department of children, youth, and families, shall, in accordance with this chapter and applicable departmental rules, share in the cost of providing services to juveniles. [2017 3rd sp.s. c 6 § 716; 1983 c 191 § 2; 1979 c 141 § 13; 1969 ex.s. c 165 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

13.06.030 Rules—Standards—"Consolidated juvenile services" defined. (Effective July 1, 2019.) The department of children, youth, and families shall adopt rules prescribing minimum standards for the operation of consolidated juvenile services programs for juvenile offenders and such other rules as may be necessary for the administration of the provisions of this chapter. Consolidated juvenile services is a mechanism through which the department of children, youth, and families supports local county comprehensive program plans in providing services to offender groups. Standards shall be sufficiently flexible to support current programs which have demonstrated effectiveness and efficiency, to foster development of innovative and improved services for juvenile offenders, to permit direct contracting with private vendors, and to encourage community support for and assistance to local programs. The secretary of children, youth, and families shall seek advice from appropriate juvenile justice system participants in developing standards and procedures for the operation of consolidated juvenile services programs and the distribution of funds under this chapter. [2017 3rd sp.s. c 6 § 717; 1983 c 191 § 3; 1979 c 141 § 14; 1969 ex.s. c 165 § 3.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

13.06.040 Application by county or counties for state financial aid. (Effective July 1, 2019.) Any county or group of counties may make application to the department of children, youth, and families in the manner and form prescribed by the department for financial aid for the cost of consolidated juvenile services programs. Any such application must include a plan or plans for providing consolidated services to juvenile offenders in accordance with standards of the department. [2017 3rd sp.s. c 6 § 718; 1983 c 191 § 4; 1979 c 141 § 15; 1969 ex.s. c 165 § 4.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

13.06.050 Conditions for receiving state funds—Criteria for distribution of funds—Annual report on programs to reduce racial disproportionality. (Effective July 1, 2019.) No county shall be entitled to receive any state funds provided by this chapter until its application and plan are approved, and unless and until the minimum standards prescribed by the department of children, youth, and families are complied with and then only on such terms as are set forth in this section. In addition, any county making application for state funds under this chapter that also operates a juvenile detention facility must have standards of operations in place that include: Intake and admissions, medical and health care, communication, correspondence, visiting and telephone use, security and control, sanitation and hygiene, juvenile rights, rules and discipline, property, juvenile records, safety and emergency procedures, programming, release and transfer, training and staff development, and food service.

(1) The distribution of funds to a county or a group of counties shall be based on criteria including but not limited to the county's per capita income, regional or county at-risk populations, juvenile crime or arrest rates, rates of poverty, size of racial minority populations, existing programs, and the effectiveness and efficiency of consolidating local programs towards reducing commitments to state correctional facilities for offenders whose standard range disposition does not include commitment of the offender to the department and reducing reliance on other traditional departmental services.

(2) The secretary of children, youth, and families will reimburse a county upon presentation and approval of a valid claim pursuant to the provisions of this chapter based on actual performance in meeting the terms and conditions of the approved plan and contract. Funds received by participating counties under this chapter shall not be used to replace local funds for existing programs.

(3) The secretary of children, youth, and families, in conjunction with the human rights commission, shall evaluate the effectiveness of programs funded under this chapter in reducing racial disproportionality. The secretary shall investigate whether implementation of such programs has reduced disproportionality in counties with initially high levels of disproportionality. The analysis shall indicate which programs are cost-effective in reducing disproportionality in such areas as alternatives to detention, intake and risk assessment standards pursuant to RCW 13.40.038, alternatives to incarceration, and in the prosecution and adjudication of juveniles. The secretary shall report his or her findings to the legislature by December 1st of each year. [2017 3rd sp.s. c 6 § 719; 1993 c 415 § 7; (2010 1st sp.s. c 37 § 910 expired June 30, 2011); 1983 c 191 § 5; 1979 c 151 § 9; 1977 ex.s. c 307 § 1; 1973 1st ex.s. c 198 § 1; 1971 ex.s. c 165 § 1; 1969 ex.s. c 165 § 5.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Expiration date—2010 1st sp.s. c 37 § 910: "Section 910 of this act expires June 30, 2011." [2010 1st sp.s. c 37 § 956.]

Effective date—2010 1st sp.s. c 37: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 4, 2010]." [2010 1st sp.s. c 37 § 958.]

Intent—1993 c 415: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

Chapter 13.16 RCW PLACES OF DETENTION

Sections

13.16.100 Motion pictures. (*Effective July 1, 2019.*)

13.16.100 Motion pictures. (Effective July 1, 2019.) Motion pictures unrated after November 1968 or rated R, X, or NC-17 by the motion picture association of America shall not be shown in juvenile detention facilities or facilities operated by the department of children, youth, and families. [2017 3rd sp.s. c 6 § 629; 1994 sp.s. c 7 § 807.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

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

Chapter 13.32A RCW FAMILY RECONCILIATION ACT

Sections

13.32A.030 Definitions—Regulating leave from semi-secure facility. (*Effective July 1, 2018.*)

13.32A.178 Out-of-home placement—Child support—Exceptions. (*Effective July 1, 2018.*)

13.32A.030 Definitions—Regulating leave from semi-secure facility. (Effective July 1, 2018.) As used in this chapter the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child by any person under circumstances that indicate the child's health, welfare, and safety is harmed, excluding conduct permitted under RCW 9A.16.100. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(2) "Administrator" means the individual who has the daily administrative responsibility of a crisis residential center, or his or her designee.

(3) "At-risk youth" means a juvenile:

(a) Who is absent from home for at least seventy-two consecutive hours without consent of his or her parent;

(b) Who is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or any other person; or

(c) Who has a substance abuse problem for which there are no pending criminal charges related to the substance abuse.

(4) "Child," "juvenile," "youth," and "minor" mean any unemancipated individual who is under the chronological age of eighteen years.

(5) "Child in need of services" means a juvenile:

(a) Who is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or any other person;

(b) Who has been reported to law enforcement as absent without consent for at least twenty-four consecutive hours on two or more separate occasions from the home of either parent, a crisis residential center, an out-of-home placement, or a court-ordered placement; and

(i) Has exhibited a serious substance abuse problem; or

(ii) Has exhibited behaviors that create a serious risk of harm to the health, safety, or welfare of the child or any other person;

(c)(i) Who is in need of: (A) Necessary services, including food, shelter, health care, clothing, or education; or (B) services designed to maintain or reunite the family;

(ii) Who lacks access to, or has declined to use, these services; and

(iii) Whose parents have evidenced continuing but unsuccessful efforts to maintain the family structure or are unable or unwilling to continue efforts to maintain the family structure; or

(d) Who is a "sexually exploited child."

(6) "Child in need of services petition" means a petition filed in juvenile court by a parent, child, or the department seeking adjudication of placement of the child.

(7) "Crisis residential center" means a secure or semi-secure facility established pursuant to chapter 74.13 RCW.

(8) "Custodian" means the person or entity that has the legal right to custody of the child.

(9) "Department" means the department of children, youth, and families.

(10) "Extended family member" means an adult who is a grandparent, brother, sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom the child has a relationship and is comfortable, and who is willing and available to care for the child.

(11) "Guardian" means the person or agency that (a) has been appointed as the guardian of a child in a legal proceeding other than a proceeding under chapter 13.34 RCW, and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under chapter 13.34 RCW.

(12) "Multidisciplinary team" means a group formed to provide assistance and support to a child who is an at-risk youth or a child in need of services and his or her parent. The team must include the parent, a department caseworker, a local government representative when authorized by the local government, and when appropriate, members from the mental health and substance abuse disciplines. The team may also include, but is not limited to, the following persons: Educators, law enforcement personnel, probation officers, employers, church persons, tribal members, therapists, medical personnel, social service providers, placement providers, and extended family members. The team members must be volunteers who do not receive compensation while acting in a capacity as a team member, unless the member's employer

chooses to provide compensation or the member is a state employee.

(13) "Out-of-home placement" means a placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(14) "Parent" means the parent or parents who have the legal right to custody of the child. "Parent" includes custodian or guardian.

(15) "Secure facility" means a crisis residential center, or portion thereof, that has locking doors, locking windows, or a secured perimeter, designed and operated to prevent a child from leaving without permission of the facility staff.

(16) "Semi-secure facility" means any facility, including but not limited to crisis residential centers or specialized foster family homes, operated in a manner to reasonably assure that youth placed there will not run away. Pursuant to rules established by the department, the facility administrator shall establish reasonable hours for residents to come and go from the facility such that no residents are free to come and go at all hours of the day and night. To prevent residents from taking unreasonable actions, the facility administrator, where appropriate, may condition a resident's leaving the facility upon the resident being accompanied by the administrator or the administrator's designee and the resident may be required to notify the administrator or the administrator's designee of any intent to leave, his or her intended destination, and the probable time of his or her return to the center.

(17) "Sexually exploited child" means any person under the age of eighteen who is a victim of the crime of commercial sex abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102.

(18) "Staff secure facility" means a structured group care facility licensed under rules adopted by the department with a ratio of at least one adult staff member to every two children.

(19) "Temporary out-of-home placement" means an out-of-home placement of not more than fourteen days ordered by the court at a fact-finding hearing on a child in need of services petition. [2017 3rd sp.s. c 6 § 417; 2013 c 4 § 1; 2010 c 289 § 1; 2000 c 123 § 2; 1997 c 146 § 1; 1996 c 133 § 9; 1995 c 312 § 3; 1990 c 276 § 3; 1985 c 257 § 6; 1979 c 155 § 17.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—2010 c 289: "Section 1 of this act takes effect July 1, 2011." [2010 c 289 § 2.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Intent—1990 c 276: See RCW 13.32A.015.

Additional notes found at www.leg.wa.gov

13.32A.178 Out-of-home placement—Child support—Exceptions. (Effective July 1, 2018.) The department shall promulgate rules that create good cause exceptions to the establishment and enforcement of child support from parents of children in out-of-home placement under chapter

13.34 or 13.32A RCW that do not violate federal funding requirements. [2017 3rd sp.s. c 6 § 418; 2001 c 332 § 8.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Chapter 13.34 RCW
JUVENILE COURT ACT—DEPENDENCY AND
TERMINATION OF PARENT-CHILD
RELATIONSHIP

Sections

13.34.030	Definitions. <i>(Effective until July 1, 2018.)</i>
13.34.030	Definitions. <i>(Effective July 1, 2018.)</i>
13.34.090	Rights under chapter proceedings. <i>(Effective July 1, 2018.)</i>
13.34.096	Right to be heard—Notice. <i>(Effective July 1, 2018.)</i>
13.34.100	Appointment of guardian ad litem—Background information—Rights—Notification and inquiry—Appointment of attorney for child—Review and removal.
13.34.110	Hearings—Fact-finding and disposition—Time and place, notice. <i>(Effective July 1, 2018.)</i>
13.34.136	Permanency plan of care. <i>(Effective July 1, 2018.)</i>
13.34.141	Entry, order of disposition—Parent, guardian, or custodian of child to engage in services and maintain contact with child—Notice. <i>(Effective July 1, 2018.)</i>
13.34.147	Case review panel—Creation—Duties.
13.34.180	Order terminating parent and child relationship—Petition—Filing—Allegations. <i>(Effective July 1, 2018.)</i>
13.34.820	Permanency for dependent children—Annual report. <i>(Effective July 1, 2018.)</i>

13.34.030 Definitions. (Effective until July 1, 2018.)

For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child," "juvenile," and "youth" means:

(a) Any individual under the age of eighteen years; or

(b) Any individual age eighteen to twenty-one years who is eligible to receive and who elects to receive the extended foster care services authorized under RCW 74.13.031. A youth who remains dependent and who receives extended foster care services under RCW 74.13.031 shall not be considered a "child" under any other statute or for any other purpose.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Department" means the department of social and health services.

(5) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to

this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(6) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child;

(c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development; or

(d) Is receiving extended foster care services, as authorized by RCW 74.13.031.

(7) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

(8) "Educational liaison" means a person who has been appointed by the court to fulfill responsibilities outlined in RCW 13.34.046.

(9) "Extended foster care services" means residential and other support services the department is authorized to provide under RCW 74.13.031. These services may include placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

(10) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding, including a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(11) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(12) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(13) "Housing assistance" means appropriate referrals by the department or other supervising agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing

assistance" is not a remedial service or time-limited family reunification service as described in RCW 13.34.025(2).

(14) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(15) "Nonminor dependent" means any individual age eighteen to twenty-one years who is participating in extended foster care services authorized under RCW 74.13.031.

(16) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(17) "Parent" means the biological or adoptive parents of a child, or an individual who has established a parent-child relationship under RCW 26.26.101, unless the legal rights of that person have been terminated by a judicial proceeding pursuant to this chapter, chapter 26.33 RCW, or the equivalent laws of another state or a federally recognized Indian tribe.

(18) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.

(19) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(20) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in RCW 13.38.040.

(21) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work

with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services, including housing assistance, that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

(22) "Supervised independent living" includes, but is not limited to, apartment living, room and board arrangements, college or university dormitories, and shared roommate settings. Supervised independent living settings must be approved by the children's administration or the court.

(23) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020.

(24) "Voluntary placement agreement" means, for the purposes of extended foster care services, a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purposes of participating in the extended foster care program. [2017 c 276 § 2. Prior: 2013 c 332 § 2; 2013 c 182 § 2; prior: 2011 1st sp.s. c 36 § 13; prior: 2011 c 330 § 3; 2011 c 309 § 22; prior: 2010 1st sp.s. c 8 § 13; 2010 c 272 § 10; 2010 c 94 § 6; prior: 2009 c 520 § 21; 2009 c 397 § 1; 2003 c 227 § 2; 2002 c 52 § 3; 2000 c 122 § 1; 1999 c 267 § 6; 1998 c 130 § 1; 1997 c 386 § 7; 1995 c 311 § 23; 1994 c 288 § 1; 1993 c 241 § 1; 1988 c 176 § 901; 1987 c 524 § 3; 1983 c 311 § 2; 1982 c 129 § 4; 1979 c 155 § 37; 1977 ex.s. c 291 § 31.]

Findings—Recommendations—Application—2013 c 332: See notes following RCW 13.34.267.

Findings—2013 c 182: "The legislature believes that youth residing in foster care are capable of achieving success in school with appropriate support. Youth residing in foster care in Washington state lag behind their non-foster youth peers in educational outcomes. Reasonable efforts by the department of social and health services to monitor educational outcomes and encourage academic achievement for youth in out-of-home care should be a responsibility of the child welfare system. When a youth is removed from his or her school district, it is the expectation of the legislature that the department of social and health services recognizes [recognize] the impact this move may have on a youth's academic success and provide the youth with necessary supports to be successful in school. The legislature believes that active oversight and advocacy by an educational liaison and collaborations will encourage youth to reach their fullest academic potential." [2013 c 182 § 1.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Intent—2011 c 330: See note following RCW 13.04.011.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Purpose—2010 c 94: See note following RCW 44.04.280.

Intent—2003 c 227: See note following RCW 13.34.130.

Intent—2002 c 52: See note following RCW 13.34.025.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Legislative finding—1983 c 311: "The legislature finds that in order for the state to receive federal funds for family foster care under Title IV-B and Title IV-E of the social security act, all children in family foster care must be subjected to periodic court review. Unfortunately, this includes children who are developmentally disabled and who are placed in family foster care solely because their parents have determined that the children's service needs require out-of-home placement. Except for providing such needed services, the parents of these children are completely competent to care for the children. The legislature intends by this act to minimize the embarrassment and inconvenience of developmentally disabled persons and their families caused by complying with these federal requirements." [1983 c 311 § 1.]

Additional notes found at www.leg.wa.gov

13.34.030 Definitions. (Effective July 1, 2018.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child," "juvenile," and "youth" mean:

(a) Any individual under the age of eighteen years; or

(b) Any individual age eighteen to twenty-one years who is eligible to receive and who elects to receive the extended foster care services authorized under RCW 74.13.031. A youth who remains dependent and who receives extended foster care services under RCW 74.13.031 shall not be considered a "child" under any other statute or for any other purpose.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Department" means the department of children, youth, and families.

(5) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(6) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child;

(c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circum-

stances which constitute a danger of substantial damage to the child's psychological or physical development; or

(d) Is receiving extended foster care services, as authorized by RCW 74.13.031.

(7) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary of the department of social and health services to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

(8) "Educational liaison" means a person who has been appointed by the court to fulfill responsibilities outlined in RCW 13.34.046.

(9) "Extended foster care services" means residential and other support services the department is authorized to provide under RCW 74.13.031. These services may include placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

(10) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding, including a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(11) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(12) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(13) "Housing assistance" means appropriate referrals by the department or other supervising agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing assistance" is not a remedial service or time-limited family reunification service as described in RCW 13.34.025(2).

(14) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, pov-

erty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(15) "Nonminor dependent" means any individual age eighteen to twenty-one years who is participating in extended foster care services authorized under RCW 74.13.031.

(16) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(17) "Parent" means the biological or adoptive parents of a child, or an individual who has established a parent-child relationship under RCW 26.26.101, unless the legal rights of that person have been terminated by a judicial proceeding pursuant to this chapter, chapter 26.33 RCW, or the equivalent laws of another state or a federally recognized Indian tribe.

(18) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.

(19) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(20) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in RCW 13.38.040.

(21) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services, including housing assistance, that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

(22) "Supervised independent living" includes, but is not limited to, apartment living, room and board arrangements, college or university dormitories, and shared roommate settings. Supervised independent living settings must be approved by the children's administration or the court.

(23) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020.

(24) "Voluntary placement agreement" means, for the purposes of extended foster care services, a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purposes of participating in the extended foster care program. [2017 3rd sp.s. c 6 § 302; 2017 c 276 § 2. Prior: 2013 c 332 § 2; 2013 c 182 § 2; prior: 2011 1st sp.s. c 36 § 13; prior: 2011 c 330 § 3; 2011 c 309 § 22; prior: 2010 1st sp.s. c 8 § 13; 2010 c 272 § 10; 2010 c 94 § 6; prior: 2009 c 520 § 21; 2009 c 397 § 1; 2003 c 227 § 2; 2002 c 52 § 3; 2000 c 122 § 1; 1999 c 267 § 6; 1998 c 130 § 1; 1997 c 386 § 7; 1995 c 311 § 23; 1994 c 288 § 1; 1993 c 241 § 1; 1988 c 176 § 901; 1987 c 524 § 3; 1983 c 311 § 2; 1982 c 129 § 4; 1979 c 155 § 37; 1977 ex.s. c 291 § 31.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Findings—Recommendations—Application—2013 c 332: See notes following RCW 13.34.267.

Findings—2013 c 182: "The legislature believes that youth residing in foster care are capable of achieving success in school with appropriate support. Youth residing in foster care in Washington state lag behind their non-foster youth peers in educational outcomes. Reasonable efforts by the department of social and health services to monitor educational outcomes and encourage academic achievement for youth in out-of-home care should be a responsibility of the child welfare system. When a youth is removed from his or her school district, it is the expectation of the legislature that the department of social and health services recognizes [recognize] the impact this move may have on a youth's academic success and provide the youth with necessary supports to be successful in school. The legislature believes that active oversight and advocacy by an educational liaison and collaborations will encourage youth to reach their fullest academic potential." [2013 c 182 § 1.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Intent—2011 c 330: See note following RCW 13.04.011.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Purpose—2010 c 94: See note following RCW 44.04.280.

Intent—2003 c 227: See note following RCW 13.34.130.

Intent—2002 c 52: See note following RCW 13.34.025.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Legislative finding—1983 c 311: "The legislature finds that in order for the state to receive federal funds for family foster care under Title IV-B and Title IV-E of the social security act, all children in family foster care must be subjected to periodic court review. Unfortunately, this includes children who are developmentally disabled and who are placed in family foster care solely because their parents have determined that the children's service needs require out-of-home placement. Except for providing such needed services, the parents of these children are completely competent to care for the children. The legislature intends by this act to minimize the embarrassment and inconvenience of developmentally disabled persons and their families caused by complying with these federal requirements." [1983 c 311 § 1.]

Additional notes found at www.leg.wa.gov

13.34.090 Rights under chapter proceedings. (Effective July 1, 2018.) (1) Any party has a right to be represented by an attorney in all proceedings under this chapter, to introduce evidence, to be heard in his or her own behalf, to examine witnesses, to receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact finder.

(2) At all stages of a proceeding in which a child is alleged to be dependent, the child's parent, guardian, or legal custodian has the right to be represented by counsel, and if indigent, to have counsel appointed for him or her by the court. Unless waived in court, counsel shall be provided to the child's parent, guardian, or legal custodian, if such person (a) has appeared in the proceeding or requested the court to appoint counsel and (b) is financially unable to obtain counsel because of indigency.

(3) If a party to an action under this chapter is represented by counsel, no order shall be provided to that party for his or her signature without prior notice and provision of the order to counsel.

(4) Copies of department or supervising agency records to which parents have legal access pursuant to chapter 13.50 RCW shall be given to the child's parent, guardian, legal custodian, or his or her legal counsel, prior to any shelter care hearing and within fifteen days after the department or supervising agency receives a written request for such records from the parent, guardian, legal custodian, or his or her legal counsel. These records shall be provided to the child's parents, guardian, legal custodian, or legal counsel a reasonable period of time prior to the shelter care hearing in order to allow an opportunity to review the records prior to the hearing. These records shall be legible and shall be provided at no expense to the parents, guardian, legal custodian, or his or her counsel. When the records are served on legal counsel, legal counsel shall have the opportunity to review the records with the parents and shall review the records with the parents prior to the shelter care hearing. [2017 3rd sp.s. c 6 § 303; 2000 c 122 § 10. Prior: 1998 c 328 § 3; 1998 c 141 § 1; 1990 c 246 § 4; 1979 c 155 § 42; 1977 ex.s. c 291 § 37.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Notice of rights: RCW 26.44.105.

Additional notes found at www.leg.wa.gov

13.34.096 Right to be heard—Notice. (Effective July 1, 2018.) (1) The department or supervising agency shall provide the child's foster parents, preadoptive parents, or other caregivers with timely and adequate notice of their right to be heard prior to each proceeding held with respect to the child in juvenile court under this chapter. For purposes of this section, "timely and adequate notice" means notice at the time the department would be required to give notice to parties to the case and by any means reasonably certain of notifying the foster parents, preadoptive parents, or other caregivers, including but not limited to written, telephone, or in person oral notification. For emergency hearings, the department shall give notice to foster parents, preadoptive parents, or other caregivers as soon as is practicable. For six-month review and annual permanency hearings, the department shall give notice to foster parents upon placement or as soon as practicable.

(2) The court shall establish and include in the court record after every hearing for which the department or supervising agency is required to provide notice to the child's foster parents, preadoptive parents, and caregivers whether the department provided adequate and timely notice, whether a caregiver's report was received by the court, and whether the court provided the child's foster parents, preadoptive parents, or caregivers with an opportunity to be heard in court. For purposes of this section, "caregiver's report" means a form provided by the department to a child's foster parents, preadoptive parents, or caregivers that provides an opportunity for those individuals to share information about the child with the court before a court hearing. A caregiver's report shall not include information related to a child's biological parent that is not directly related to the child's well-being.

(3) Absent exigent circumstances, the department shall provide the child's foster family home notice of expected placement changes as required by RCW 74.13.300.

(4) The rights to notice and to be heard apply only to persons with whom a child has been placed by the department or supervising agency and who are providing care to the child at the time of the proceeding. This section shall not be construed to grant party status to any person solely on the basis of such notice and right to be heard. [2017 3rd sp.s. c 6 § 304; 2016 c 180 § 1; 2009 c 520 § 25; 2007 c 409 § 1.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—2007 c 409: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 409 § 8.]

13.34.100 Appointment of guardian ad litem—Background information—Rights—Notification and inquiry—Appointment of attorney for child—Review and removal. (1) The court shall appoint a guardian ad litem for a child who is the subject of an action under this chapter, unless a court for good cause finds the appointment unnecessary. The requirement of a guardian ad litem may be deemed satisfied if the child is represented by an independent attorney in the proceedings. The court shall attempt to match a child with special needs with a guardian ad litem who has

specific training or education related to the child's individual needs.

(2) If the court does not have available to it a guardian ad litem program with a sufficient number of volunteers, the court may appoint a suitable person to act as guardian ad litem for the child under this chapter. Another party to the proceeding or the party's employee or representative shall not be so appointed.

(3) Each guardian ad litem program shall maintain a background information record for each guardian ad litem in the program. The background information record shall include, but is not limited to, the following information:

- (a) Level of formal education;
- (b) General training related to the guardian ad litem's duties;
- (c) Specific training related to issues potentially faced by children in the dependency system;
- (d) Specific training or education related to child disability or developmental issues;
- (e) Number of years' experience as a guardian ad litem;
- (f) Number of appointments as a guardian ad litem and the county or counties of appointment;
- (g) The names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause;
- (h) Founded allegations of abuse or neglect as defined in RCW 26.44.020;
- (i) The results of an examination of state and national criminal identification data. The examination shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050, the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the federal bureau of investigation. The background check shall be done through the Washington state patrol criminal identification section and must include a national check from the federal bureau of investigation based on the submission of fingerprints; and
- (j) Criminal history, as defined in RCW 9.94A.030, for the period covering ten years prior to the appointment.

The background information record shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made available to the court. If the appointed guardian ad litem is not a member of a guardian ad litem program a suitable person appointed by the court to act as guardian ad litem shall provide the background information record to the court.

Upon appointment, the guardian ad litem, or guardian ad litem program, shall provide the parties or their attorneys with a copy of the background information record. The portion of the background information record containing the results of the criminal background check and the criminal history shall not be disclosed to the parties or their attorneys. The background information record shall not include identifying information that may be used to harm a guardian ad litem, such as home addresses and home telephone numbers, and for volunteer guardians ad litem the court may allow the use of maiden names or pseudonyms as necessary for their safety.

(4) The appointment of the guardian ad litem shall remain in effect until the court discharges the appointment or no longer has jurisdiction, whichever comes first. The guardian ad litem may also be discharged upon entry of an order of guardianship.

(5) A guardian ad litem through an attorney, or as otherwise authorized by the court, shall have the right to present evidence, examine and cross-examine witnesses, and to be present at all hearings. A guardian ad litem shall receive copies of all pleadings and other documents filed or submitted to the court, and notice of all hearings according to court rules. The guardian ad litem shall receive all notice contemplated for a parent or other party in all proceedings under this chapter.

(6)(a) The court must appoint an attorney for a child in a dependency proceeding six months after granting a petition to terminate the parent and child relationship pursuant to RCW 13.34.180 and when there is no remaining parent with parental rights.

The court must appoint an attorney for a child when there is no remaining parent with parental rights for six months or longer prior to July 1, 2014, if the child is not already represented.

The court may appoint one attorney to a group of siblings, unless there is a conflict of interest, or such representation is otherwise inconsistent with the rules of professional conduct.

(b) Legal services provided by an attorney appointed pursuant to (a) of this subsection do not include representation of the child in any appellate proceedings relative to the termination of the parent and child relationship.

(c)(i) Subject to the availability of amounts appropriated for this specific purpose, the state shall pay the costs of legal services provided by an attorney appointed pursuant to (a) of this subsection, if the legal services are provided in accordance with the standards of practice, voluntary training, and caseload limits developed and recommended by the statewide children's representation work group pursuant to section 5, chapter 180, Laws of 2010. Caseload limits must be calculated pursuant to (c)(ii) of this subsection.

(ii) Counties are encouraged to set caseloads as low as possible and to account for the individual needs of the children in care. Notwithstanding the caseload limits developed and recommended by the statewide children's representation work group pursuant to section 5, chapter 180, Laws of 2010, when one attorney represents a sibling group, the first child is counted as one case, and each child thereafter is counted as one-half case to determine compliance with the caseload standards pursuant to (c)(i) of this subsection and RCW 2.53.045.

(iii) The office of civil legal aid is responsible for implementation of (c)(i) and (ii) of this subsection as provided in RCW 2.53.045.

(7)(a) The court may appoint an attorney to represent the child's position in any dependency action on its own initiative, or upon the request of a parent, the child, a guardian ad litem, a caregiver, or the department.

(b)(i) If the court has not already appointed an attorney for a child, or the child is not represented by a privately retained attorney:

(A) The child's caregiver, or any individual, may refer the child to an attorney for the purposes of filing a motion to request appointment of an attorney at public expense; or

(B) The child or any individual may retain an attorney for the child for the purposes of filing a motion to request appointment of an attorney at public expense.

(ii) Nothing in this subsection (7)(b) shall be construed to change or alter the confidentiality provisions of RCW 13.50.100.

(c) Pursuant to this subsection, the department or supervising agency and the child's guardian ad litem shall each notify a child of his or her right to request an attorney and shall ask the child whether he or she wishes to have an attorney. The department or supervising agency and the child's guardian ad litem shall notify the child and make this inquiry immediately after:

(i) The date of the child's twelfth birthday;

(ii) Assignment of a case involving a child age twelve or older; or

(iii) July 1, 2010, for a child who turned twelve years old before July 1, 2010.

(d) The department or supervising agency and the child's guardian ad litem shall repeat the notification and inquiry at least annually and upon the filing of any motion or petition affecting the child's placement, services, or familial relationships.

(e) The notification and inquiry is not required if the child has already been appointed an attorney.

(f) The department or supervising agency shall note in the child's individual service and safety plan, and the guardian ad litem shall note in his or her report to the court, that the child was notified of the right to request an attorney and indicate the child's position regarding appointment of an attorney.

(g) At the first regularly scheduled hearing after:

(i) The date of the child's twelfth birthday;

(ii) The date that a dependency petition is filed pursuant to this chapter on a child age twelve or older; or

(iii) July 1, 2010, for a child who turned twelve years old before July 1, 2010;

the court shall inquire whether the child has received notice of his or her right to request an attorney from the department or supervising agency and the child's guardian ad litem. The court shall make an additional inquiry at the first regularly scheduled hearing after the child's fifteenth birthday. No inquiry is necessary if the child has already been appointed an attorney.

(8) For the purposes of child abuse prevention and treatment act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247, or any related state or federal legislation, a person appointed pursuant to this section shall be deemed a guardian ad litem.

(9) When a court-appointed special advocate or volunteer guardian ad litem is requested on a case, the program shall give the court the name of the person it recommends. The program shall attempt to match a child with special needs with a guardian ad litem who has specific training or education related to the child's individual needs. The court shall immediately appoint the person recommended by the program.

(10) If a party in a case reasonably believes the court-appointed special advocate or volunteer guardian ad litem is inappropriate or unqualified, the party may request a review of the appointment by the program. The program must complete the review within five judicial days and remove any appointee for good cause. If the party seeking the review is not satisfied with the outcome of the review, the party may file a motion with the court for the removal of the court-appointed special advocate or volunteer guardian ad litem on the grounds the advocate or volunteer is inappropriate or unqualified.

(11) The court shall remove any person from serving as a court-appointed special advocate or volunteer guardian ad litem if the court is notified that the person has been removed from another county's registry pursuant to the disposition of a grievance or if the court is otherwise made aware that the individual was found by a court to have made a materially false statement that he or she knows to be false during an official proceeding under oath. [2017 c 99 § 2; 2014 c 108 § 2; 2010 c 180 § 2; 2009 c 480 § 2; 2000 c 124 § 2; 1996 c 249 § 13; 1994 c 110 § 2; 1993 c 241 § 2; 1988 c 232 § 1; 1979 c 155 § 43; 1977 ex.s. c 291 § 38.]

Finding—Intent—2017 c 99: "The legislature finds that the integrity of court-appointed special advocates and volunteer guardians ad litem is necessary to protect the best interest of children in child welfare proceedings.

Although courts must be notified regarding the removal of a guardian ad litem from a county's registry pursuant to a grievance, there is no requirement that a county must act on that information. For that reason, the legislature intends to require counties to remove child welfare volunteer guardians ad litem from their registries when counties are notified that the person has been removed from another county's registry pursuant to the disposition of a grievance or if the court is otherwise made aware that a guardian ad litem has been found by a court to have made a materially false statement that he or she knows to be false during an official proceeding under oath." [2017 c 99 § 1.]

Finding—Construction—2014 c 108: "(1) The legislature recognizes that some children may remain in foster care following the termination of the parent and child relationship. These children have legal rights and no longer have a parent to advocate on their behalf, and no other party represents their legal interests. The legislature finds that providing attorneys for children following the termination of the parent and child relationship is fundamental to protecting the child's legal rights and to accelerate permanency.

(2) Although the legislature recognizes that many jurisdictions provide attorneys to children prior to termination of the parent and child relationship, nothing in this act may be construed against the parent's fundamental liberty interest in parenting the child prior to termination of the parent and child relationship as stated in *In re Dependency of K.N.J.*, 171 Wn.2d 568, 574 (2011) and *In re Welfare of Lusier*, 84 Wn.2d 135, 136-37 (1974), unless such a position would jeopardize the child's right to conditions of basic nurture, health, or safety." [2014 c 108 § 1.]

Effective date—2014 c 108: "This act takes effect July 1, 2014." [2014 c 108 § 4.]

Findings—2010 c 180: "(1) The legislature recognizes that inconsistent practices in and among counties in Washington have resulted in few children being notified of their right to request legal counsel in their dependency and termination proceedings under RCW 13.34.100.

(2) The legislature recognizes that when children are provided attorneys in their dependency and termination proceedings, it is imperative to provide them with well-trained advocates so that their legal rights around health, safety, and well-being are protected. Attorneys, who have different skills and obligations than guardians ad litem and court-appointed special advocates, especially in forming a confidential and privileged relationship with a child, should be trained in meaningful and effective child advocacy, the child welfare system and services available to a child client, child and adolescent brain development, child and adolescent mental health, and the distinct legal rights of dependent youth, among other things. Well-trained attorneys can provide legal counsel to a child on issues such as placement options, visitation rights, educational rights, access to services while in care and services available to a child upon aging out of care. Well-trained attorneys for a child can:

(a) Ensure the child's voice is considered in judicial proceedings;

- (b) Engage the child in his or her legal proceedings;
- (c) Explain to the child his or her legal rights;
- (d) Assist the child, through the attorney's counseling role, to consider the consequences of different decisions; and
- (e) Encourage accountability, when appropriate, among the different systems that provide services to children." [2010 c 180 § 1.]

Intent—1996 c 249: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

13.34.110 Hearings—Fact-finding and disposition—Time and place, notice. (Effective July 1, 2018.) (1) The court shall hold a fact-finding hearing on the petition and, unless the court dismisses the petition, shall make written findings of fact, stating the reasons therefor. The rules of evidence shall apply at the fact-finding hearing and the parent, guardian, or legal custodian of the child shall have all of the rights provided in RCW 13.34.090(1). The petitioner shall have the burden of establishing by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030.

(2) The court in a fact-finding hearing may consider the history of past involvement of child protective services or law enforcement agencies with the family for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, or welfare of the child on the part of the child's parent, guardian, or legal custodian, or for the purpose of establishing that reasonable efforts have been made by the department to prevent or eliminate the need for removal of the child from the child's home. No report of child abuse or neglect that has been destroyed or expunged under RCW 26.44.031 may be used for such purposes.

(3)(a) The parent, guardian, or legal custodian of the child may waive his or her right to a fact-finding hearing by stipulating or agreeing to the entry of an order of dependency establishing that the child is dependent within the meaning of RCW 13.34.030. The parent, guardian, or legal custodian may also stipulate or agree to an order of disposition pursuant to RCW 13.34.130 at the same time. Any stipulated or agreed order of dependency or disposition must be signed by the parent, guardian, or legal custodian and his or her attorney, unless the parent, guardian, or legal custodian has waived his or her right to an attorney in open court, and by the petitioner and the attorney, guardian ad litem, or court-appointed special advocate for the child, if any. If the department is not the petitioner and is required by the order to supervise the placement of the child or provide services to any party, the department must also agree to and sign the order.

(b) Entry of any stipulated or agreed order of dependency or disposition is subject to approval by the court. The court shall receive and review a social study before entering a stipulated or agreed order and shall consider whether the order is consistent with the allegations of the dependency petition and the problems that necessitated the child's placement in out-of-home care. No social file or social study may be considered by the court in connection with the fact-finding hearing or prior to factual determination, except as otherwise admissible under the rules of evidence.

(c) Prior to the entry of any stipulated or agreed order of dependency, the parent, guardian, or legal custodian of the child and his or her attorney must appear before the court and the court within available resources must inquire and establish on the record that:

(i) The parent, guardian, or legal custodian understands the terms of the order or orders he or she has signed, including his or her responsibility to participate in remedial services as provided in any disposition order;

(ii) The parent, guardian, or legal custodian understands that entry of the order starts a process that could result in the filing of a petition to terminate his or her relationship with the child within the time frames required by state and federal law if he or she fails to comply with the terms of the dependency or disposition orders or fails to substantially remedy the problems that necessitated the child's placement in out-of-home care;

(iii) The parent, guardian, or legal custodian understands that the entry of the stipulated or agreed order of dependency is an admission that the child is dependent within the meaning of RCW 13.34.030 and shall have the same legal effect as a finding by the court that the child is dependent by at least a preponderance of the evidence, and that the parent, guardian, or legal custodian shall not have the right in any subsequent proceeding for termination of parental rights or dependency guardianship pursuant to this chapter or nonparental custody pursuant to chapter 26.10 RCW to challenge or dispute the fact that the child was found to be dependent; and

(iv) The parent, guardian, or legal custodian knowingly and willingly stipulated and agreed to and signed the order or orders, without duress, and without misrepresentation or fraud by any other party.

If a parent, guardian, or legal custodian fails to appear before the court after stipulating or agreeing to entry of an order of dependency, the court may enter the order upon a finding that the parent, guardian, or legal custodian had actual notice of the right to appear before the court and chose not to do so. The court may require other parties to the order, including the attorney for the parent, guardian, or legal custodian, to appear and advise the court of the parent's, guardian's, or legal custodian's notice of the right to appear and understanding of the factors specified in this subsection. A parent, guardian, or legal custodian may choose to waive his or her presence at the in-court hearing for entry of the stipulated or agreed order of dependency by submitting to the court through counsel a completed stipulated or agreed dependency fact-finding/disposition statement in a form determined by the Washington state supreme court pursuant to General Rule GR 9.

(4) Immediately after the entry of the findings of fact, the court shall hold a disposition hearing, unless there is good cause for continuing the matter for up to fourteen days. If good cause is shown, the case may be continued for longer than fourteen days. Notice of the time and place of the continued hearing may be given in open court. If notice in open court is not given to a party, that party shall be notified by certified mail of the time and place of any continued hearing. Unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or efforts to reunite the parent and child would be hindered, the court shall direct the department to notify those adult persons who: (a) Are related by blood or marriage to the child in the following degrees: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, or aunt; (b) are known to the department as having been in contact with the family or child within the past twelve months; and (c) would be an appropriate

placement for the child. Reasonable cause to dispense with notification to a parent under this section must be proved by clear, cogent, and convincing evidence.

The parties need not appear at the fact-finding or dispositional hearing if the parties, their attorneys, the guardian ad litem, and court-appointed special advocates, if any, are all in agreement. [2017 3rd sp.s. c 6 § 305; 2007 c 220 § 9; 2001 c 332 § 7; 2000 c 122 § 11. Prior: 1995 c 313 § 1; 1995 c 311 § 27; 1993 c 412 § 7; 1991 c 340 § 3; 1983 c 311 § 4; 1979 c 155 § 44; 1977 ex.s. c 291 § 39; 1961 c 302 § 5; prior: 1913 c 160 § 10, part; RCW 13.04.090, part. Formerly RCW 13.04.091.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Legislative finding—1983 c 311: See note following RCW 13.34.030.

Additional notes found at www.leg.wa.gov

13.34.136 Permanency plan of care. (Effective July 1, 2018.) (1) Whenever a child is ordered removed from the home, a permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(2) The agency supervising the dependency shall submit a written permanency plan to all parties and the court not less than fourteen days prior to the scheduled hearing. Responsive reports of parties not in agreement with the department's or supervising agency's proposed permanency plan must be provided to the department or supervising agency, all other parties, and the court at least seven days prior to the hearing.

The permanency plan shall include:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption, including a tribal customary adoption as defined in RCW 13.38.040; guardianship; permanent legal custody; long-term relative or foster care, if the child is between ages sixteen and eighteen, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age sixteen or older. Although a permanency plan of care may only identify long-term relative or foster care for children between ages sixteen and eighteen, children under sixteen may remain placed with relatives or in foster care. The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW;

(b) Unless the court has ordered, pursuant to RCW 13.34.130(8), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, what steps the supervising agency or the department will take to promote existing appro-

priate sibling relationships and/or facilitate placement together or contact in accordance with the best interests of each child, and what actions the department or supervising agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The department's or supervising agency's plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.

(A) If the parent is incarcerated, the plan must address how the parent will participate in the case conference and permanency planning meetings and, where possible, must include treatment that reflects the resources available at the facility where the parent is confined. The plan must provide for visitation opportunities, unless visitation is not in the best interests of the child.

(B) If a parent has a developmental disability according to the definition provided in RCW 71A.10.020, and that individual is eligible for services provided by the department of social and health services developmental disabilities administration, the department shall make reasonable efforts to consult with the department of social and health services developmental disabilities administration to create an appropriate plan for services. For individuals who meet the definition of developmental disability provided in RCW 71A.10.020 and who are eligible for services through the developmental disabilities administration, the plan for services must be tailored to correct the parental deficiency taking into consideration the parent's disability and the department shall also determine an appropriate method to offer those services based on the parent's disability.

(ii)(A) Visitation is the right of the family, including the child and the parent, in cases in which visitation is in the best interest of the child. Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify. The supervising agency or department shall encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child, including regular visitation and participation by the parents in the care of the child while the child is in placement.

(B) Visitation shall not be limited as a sanction for a parent's failure to comply with court orders or services where the health, safety, or welfare of the child is not at risk as a result of the visitation.

(C) Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare. When a parent or sibling has been identified as a suspect in an active criminal investigation for a violent crime that, if the allegations are true, would impact the safety of the child, the department shall make a concerted effort to consult with the assigned law enforcement officer in the criminal case before recommending any changes in parent/child or child/sibling contact. In the event that the law enforcement officer has information pertaining to the criminal case that may have serious implications for child safety or well-being, the law enforcement officer shall provide this information to the department during the consultation. The department may only use the informa-

tion provided by law enforcement during the consultation to inform family visitation plans and may not share or otherwise distribute the information to any person or entity. Any information provided to the department by law enforcement during the consultation is considered investigative information and is exempt from public inspection pursuant to RCW 42.56.240. The results of the consultation shall be communicated to the court.

(D) The court and the department or supervising agency should rely upon community resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that such resources are available, and appropriate, and the child's safety would not be compromised.

(iii)(A) The department, court, or caregiver in the out-of-home placement may not limit visitation or contact between a child and sibling as a sanction for a child's behavior or as an incentive to the child to change his or her behavior.

(B) Any exceptions, limitation, or denial of contacts or visitation must be approved by the supervisor of the department caseworker and documented. The child, parent, department, guardian ad litem, or court-appointed special advocate may challenge the denial of visits in court.

(iv) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(v) The plan shall state whether both in-state and, where appropriate, out-of-state placement options have been considered by the department or supervising agency.

(vi) Unless it is not in the best interests of the child, whenever practical, the plan should ensure the child remains enrolled in the school the child was attending at the time the child entered foster care.

(vii) The supervising agency or department shall provide all reasonable services that are available within the department or supervising agency, or within the community, or those services which the department has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to RCW 13.34.130(8), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The department or supervising agency shall not be required to develop a plan of services for the parents or provide services to the parents if the court orders a termination petition be filed. However, reasonable efforts to ensure visitation and contact between siblings shall be made unless there is reasonable cause to believe the best interests of the child or siblings would be jeopardized.

(3) Permanency planning goals should be achieved at the earliest possible date. If the child has been in out-of-home care for fifteen of the most recent twenty-two months, and the court has not made a good cause exception, the court shall require the department or supervising agency to file a petition seeking termination of parental rights in accordance with

RCW 13.34.145(4)(b)(vi). In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(4) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(6) The court shall consider the child's relationships with the child's siblings in accordance with RCW 13.34.130(6). Whenever the permanency plan for a child is adoption, the court shall encourage the prospective adoptive parents, birth parents, foster parents, kinship caregivers, and the department or other supervising agency to seriously consider the long-term benefits to the child adoptee and his or her siblings of providing for and facilitating continuing postadoption contact between the siblings. To the extent that it is feasible, and when it is in the best interests of the child adoptee and his or her siblings, contact between the siblings should be frequent and of a similar nature as that which existed prior to the adoption. If the child adoptee or his or her siblings are represented by an attorney or guardian ad litem in a proceeding under this chapter or in any other child custody proceeding, the court shall inquire of each attorney and guardian ad litem regarding the potential benefits of continuing contact between the siblings and the potential detriments of severing contact. This section does not require the department or other supervising agency to agree to any specific provisions in an open adoption agreement and does not create a new obligation for the department to provide supervision or transportation for visits between siblings separated by adoption from foster care.

(7) For purposes related to permanency planning:

(a) "Guardianship" means a dependency guardianship or a legal guardianship pursuant to chapter 11.88 RCW or equivalent laws of another state or a federally recognized Indian tribe.

(b) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(c) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or a federally recognized Indian tribe. [2017 3rd sp.s. c 6 § 306; 2015 c 270 § 1; 2014 c 163 § 2. Prior: 2013 c 316 § 2; 2013 c 254 § 2; 2013 c 173 § 2; 2011 c 309 § 29; prior: 2009 c 520 § 28; 2009 c 234 § 5; prior: 2008 c 267 § 3; 2008 c 152 § 2; 2007 c 413 § 7; 2004 c 146 § 1; 2003 c 227 § 4; 2002 c 52 § 6; 2000 c 122 § 18.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Intent—Finding—2014 c 163: "The legislature intends to assure that for parents with developmental disabilities, the department of social and health services takes into consideration the parent's disability when offering services to correct parental deficiencies. To do so, the legislature finds that

the department must contact the developmental disabilities administration." [2014 c 163 § 1.]

Intent—2013 c 316: "The Washington state legislature recognizes the importance of frequent and meaningful contact for siblings separated due to involvement in the foster care system. The legislature also recognizes that children and youth in foster care have not always been provided adequate opportunities for visitation with their siblings. It is the intent of the legislature to encourage appropriate facilitation of sibling visits." [2013 c 316 § 1.]

Findings—Intent—2008 c 152: "The legislature finds that meeting the needs of vulnerable children who enter the child welfare system includes protecting the child's right to a safe, stable, and permanent home where the child receives basic nurturing. The legislature also finds that according to measures of timely dependency case processing, many children's cases are not meeting the federal and state standards intended to promote child-centered decision making in dependency cases. The legislature intends to encourage a greater focus on children's developmental needs and to promote closer adherence to timeliness standards in the resolution of dependency cases." [2008 c 152 § 1.]

Severability—2007 c 413: See note following RCW 13.34.215.

Intent—2003 c 227: See note following RCW 13.34.130.

Intent—2002 c 52: See note following RCW 13.34.025.

13.34.141 Entry, order of disposition—Parent, guardian, or custodian of child to engage in services and maintain contact with child—Notice. (Effective July 1, 2018.) (1) After entry of a dispositional order pursuant to RCW 13.34.130 ordering placement of a child in out-of-home care, the department shall continue to encourage the parent, guardian, or custodian of the child to engage in services and maintain contact with the child, which shall be accomplished by attaching a standard notice to the services and safety plan to be provided in advance of hearings conducted pursuant to RCW 13.34.138.

(2) The notice shall be photocopied on contrasting paper to distinguish it from the services and safety plan to which it is attached, and shall be in substantially the following form:

"NOTICE

If you have not been maintaining consistent contact with your child in out-of-home care, your ability to reunify with your child may be jeopardized. If this is your situation, you need to be aware that you have important legal rights and must take steps to protect your interests.

1. The department of children, youth, and families (or other supervising agency) and the court have created a permanency plan for your child, including a primary placement plan and a secondary placement plan, and recommending services needed before your child can be placed in the primary or secondary placement. If you want the court to order that your child be reunified with you, you should notify your lawyer and the department, and you should carefully comply with court orders for services and participate regularly in visitation with your child. Failure to promptly engage in services or to maintain contact with your child may lead to the filing of a petition to terminate your rights as a parent.

2. Primary and secondary permanency plans are intended to run at the same time so that your child will have a permanent home as quickly as possible. Even if you want another parent or person to be the primary placement choice for your child, you should tell your lawyer, the department, and the court if you want to be the secondary placement option, and you should comply with any court orders for services and participate in visitation with your child. Early and consistent

involvement in your child's case plan is important for the well-being of your child.

3. Dependency review hearings, and all other dependency case hearings, are legal proceedings with potentially serious consequences. Failure to participate, respond, or comply with court orders may lead to the loss of your parental rights." [2017 3rd sp.s. c 6 § 307; 2009 c 484 § 1.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

13.34.147 Case review panel—Creation—Duties. (1) Within the department's appropriations, the department shall ensure that a case review panel reviews cases involving dependent children where permanency is not achieved for children within eighteen months after being placed in out-of-home care.

(2) The case review panel shall be comprised of, at a minimum, a lead social services specialist and either the office of the family and children's ombuds or another external organization with child welfare experience.

(3) Beginning September 1, 2018, the panel shall review all cases where, after October 19, 2017, a dependent child reaches eighteen months in out-of-home placement and has not achieved permanency. This review must occur by the child's nineteenth month in out-of-home placement. At each case review, the panel must develop a plan of action, including recommended next steps for the department to take, to achieve permanency.

(4) The department is encouraged to convene the case review panel regularly to review other cases involving dependent children as needed to ensure stability and permanency is achieved and length of stay for children in out-of-home placement is reduced. [2017 3rd sp.s. c 20 § 6.]

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

13.34.180 Order terminating parent and child relationship—Petition—Filing—Allegations. (Effective July 1, 2018.) (1) A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party, including the supervising agency, to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege all of the following unless subsection (3) or (4) of this section applies:

(a) That the child has been found to be a dependent child;

(b) That the court has entered a dispositional order pursuant to RCW 13.34.130;

(c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;

(d) That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;

(e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

(i) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts;

(ii) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; or

(iii) Failure of the parent to have contact with the child for an extended period of time after the filing of the dependency petition if the parent was provided an opportunity to have a relationship with the child by the department or the court and received documented notice of the potential consequences of this failure, except that the actual inability of a parent to have visitation with the child including, but not limited to, mitigating circumstances such as a parent's current or prior incarceration or service in the military does not in and of itself constitute failure to have contact with the child; and

(f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home. If the parent is incarcerated, the court shall consider whether a parent maintains a meaningful role in his or her child's life based on factors identified in RCW 13.34.145(5)(b); whether the department or supervising agency made reasonable efforts as defined in this chapter; and whether particular barriers existed as described in RCW 13.34.145(5)(b) including, but not limited to, delays or barriers experienced in keeping the agency apprised of his or her location and in accessing visitation or other meaningful contact with the child.

(2) As evidence of rebuttal to any presumption established pursuant to subsection (1)(e) of this section, the court may consider the particular constraints of a parent's current or prior incarceration. Such evidence may include, but is not limited to, delays or barriers a parent may experience in keeping the agency apprised of his or her location and in accessing visitation or other meaningful contact with the child.

(3) In lieu of the allegations in subsection (1) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or

maternity and requested custody of the child within two months after the child was found.

(4) In lieu of the allegations in subsection (1)(b) through (f) of this section, the petition may allege that the parent has been convicted of:

(a) Murder in the first degree, murder in the second degree, or homicide by abuse as defined in chapter 9A.32 RCW against another child of the parent;

(b) Manslaughter in the first degree or manslaughter in the second degree, as defined in chapter 9A.32 RCW against another child of the parent;

(c) Attempting, conspiring, or soliciting another to commit one or more of the crimes listed in (a) or (b) of this subsection; or

(d) Assault in the first or second degree, as defined in chapter 9A.36 RCW, against the surviving child or another child of the parent.

(5) When a parent has been sentenced to a long-term incarceration and has maintained a meaningful role in the child's life considering the factors provided in RCW 13.34.145(5)(b), and it is in the best interest of the child, the department should consider a permanent placement that allows the parent to maintain a relationship with his or her child, such as, but not limited to, a guardianship pursuant to chapter 13.36 RCW.

(6) Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

"NOTICE

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of children, youth, and families or the supervising agency and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number)."

[2017 3rd sp.s. c 6 § 308; 2013 c 173 § 4. Prior: 2009 c 520 § 34; 2009 c 477 § 5; 2001 c 332 § 4; 2000 c 122 § 25; 1998 c 314 § 4; 1997 c 280 § 2; prior: 1993 c 412 § 2; 1993 c 358 § 3; 1990 c 246 § 7; 1988 c 201 § 2; 1987 c 524 § 6; 1979 c 155 § 47; 1977 ex.s. c 291 § 46.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Findings—Intent—2009 c 477: See note following RCW 13.34.062.

Additional notes found at www.leg.wa.gov

13.34.820 Permanency for dependent children—Annual report. (Effective July 1, 2018.) (1) The administrative office of the courts, in consultation with the attorney general's office and the department, shall compile an annual report, providing information about cases that fail to meet statutory guidelines to achieve permanency for dependent children.

(2) The administrative office of the courts shall submit the annual report required by this section to appropriate committees of the legislature by December 1st of each year, beginning on December 1, 2007. The administrative office of the courts shall also submit the annual report to a representative of the foster parent association of Washington state.

(3) The annual report shall include information regarding whether foster parents received timely notification of dependency hearings as required by RCW 13.34.096 and 13.34.145 and whether caregivers submitted reports to the court. [2017 3rd sp.s. c 6 § 309; 2016 c 180 § 2; 2007 c 410 § 6.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Short title—2007 c 410: See note following RCW 13.34.138.

Chapter 13.36 RCW GUARDIANSHIP

Sections

13.36.020 Definitions. *(Effective July 1, 2018.)*

13.36.020 Definitions. (Effective July 1, 2018.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Child" means any individual under the age of eighteen years.

(2) "Department" means the department of children, youth, and families.

(3) "Dependent child" means a child who has been found by a court to be dependent in a proceeding under chapter 13.34 RCW.

(4) "Guardian" means a person who: (a) Has been appointed by the court as the guardian of a child in a legal proceeding under this chapter; and (b) has the legal right to custody of the child pursuant to court order. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under chapter 13.34 RCW for the purpose of assisting the court in supervising the dependency.

(5) "Relative" means a person related to the child in the following ways: (a) Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great; (b) stepfa-

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ther, stepmother, stepbrother, and stepsister; (c) a person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law; (d) spouses of any persons named in (a), (b), or (c) of this subsection, even after the marriage is terminated; (e) relatives, as named in (a), (b), (c), or (d) of this subsection, of any half sibling of the child; or (f) extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step-parent who provides care in the family abode on a twenty-four hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(6) "Suitable person" means a nonrelative with whom the child or the child's family has a preexisting relationship; who has completed all required criminal history background checks and otherwise appears to be suitable and competent to provide care for the child; and with whom the child has been placed pursuant to RCW 13.34.130.

(7) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020. [2017 3rd sp.s. c 6 § 419; 2017 3rd sp.s. c 6 § 310. Prior: 2010 c 272 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Chapter 13.38 RCW INDIAN CHILD WELFARE ACT

Sections

13.38.040 Definitions. *(Effective July 1, 2018.)*

13.38.070 Notice—Procedures—Determination of Indian status.

13.38.040 Definitions. (Effective July 1, 2018.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Active efforts" means the following:

(a) In any foster care placement or termination of parental rights proceeding of an Indian child under chapter 13.34 RCW and this chapter where the department or a supervising agency as defined in RCW 74.13.020 has a statutory or contractual duty to provide services to, or procure services for, the parent or parents or Indian custodian, or is providing services to a parent or parents or Indian custodian pursuant to a disposition order entered pursuant to RCW 13.34.130, the department or supervising agency shall make timely and diligent efforts to provide or procure such services, including engaging the parent or parents or Indian custodian in reasonably available and culturally appropriate preventive, remedial, or rehabilitative services. This shall include those ser-

vices offered by tribes and Indian organizations whenever possible. At a minimum "active efforts" shall include:

(i) In any dependency proceeding under chapter 13.34 RCW seeking out-of-home placement of an Indian child in which the department or supervising agency provided voluntary services to the parent, parents, or Indian custodian prior to filing the dependency petition, a showing to the court that the department or supervising agency social workers actively worked with the parent, parents, or Indian custodian to engage them in remedial services and rehabilitation programs to prevent the breakup of the family beyond simply providing referrals to such services.

(ii) In any dependency proceeding under chapter 13.34 RCW, in which the petitioner is seeking the continued out-of-home placement of an Indian child, the department or supervising agency must show to the court that it has actively worked with the parent, parents, or Indian custodian in accordance with existing court orders and the individual service plan to engage them in remedial services and rehabilitative programs to prevent the breakup of the family beyond simply providing referrals to such services.

(iii) In any termination of parental rights proceeding regarding an Indian child under chapter 13.34 RCW in which the department or supervising agency provided services to the parent, parents, or Indian custodian, a showing to the court that the department or supervising agency social workers actively worked with the parent, parents, or Indian custodian to engage them in remedial services and rehabilitation programs ordered by the court or identified in the department or supervising agency's individual service and safety plan beyond simply providing referrals to such services.

(b) In any foster care placement or termination of parental rights proceeding in which the petitioner does not otherwise have a statutory or contractual duty to directly provide services to, or procure services for, the parent or Indian custodian, "active efforts" means a documented, concerted, and good faith effort to facilitate the parent's or Indian custodian's receipt of and engagement in services capable of meeting the criteria set out in (a) of this subsection.

(2) "Best interests of the Indian child" means the use of practices in accordance with the federal Indian child welfare act, this chapter, and other applicable law, that are designed to accomplish the following: (a) Protect the safety, well-being, development, and stability of the Indian child; (b) prevent the unnecessary out-of-home placement of the Indian child; (c) acknowledge the right of Indian tribes to maintain their existence and integrity which will promote the stability and security of their children and families; (d) recognize the value to the Indian child of establishing, developing, or maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community; and (e) in a proceeding under this chapter where out-of-home placement is necessary, to prioritize placement of the Indian child in accordance with the placement preferences of this chapter.

(3) "Child custody proceeding" includes:

(a) "Foster care placement" which means any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home, institution, or with a relative, guardian, conservator, or suitable other person where the parent or Indian custodian cannot have the

child returned upon demand, but where parental rights have not been terminated;

(b) "Termination of parental rights" which means any action resulting in the termination of the parent-child relationship;

(c) "Preadoptive placement" which means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights but before or in lieu of adoptive placement; and

(d) "Adoptive placement" which means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

These terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a dissolution proceeding of custody to one of the parents.

(4) "Court of competent jurisdiction" means a federal court, or a state court that entered an order in a child custody proceeding involving an Indian child, as long as the state court had proper subject matter jurisdiction in accordance with this chapter and the laws of that state, or a tribal court that had or has exclusive or concurrent jurisdiction pursuant to 25 U.S.C. Sec. 1911.

(5) "Department" means the department of children, youth, and families and any of its divisions. "Department" also includes supervising agencies as defined in RCW 74.13.020 with which the department entered into a contract to provide services, care, placement, case management, contract monitoring, or supervision to children subject to a petition filed under chapter 13.34 or 26.33 RCW.

(6) "Indian" means a person who is a member of an Indian tribe, or who is an Alaska native and a member of a regional corporation as defined in 43 U.S.C. Sec. 1606.

(7) "Indian child" means an unmarried and unemancipated Indian person who is under eighteen years of age and is either: (a) A member of an Indian tribe; or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8) "Indian child's family" or "extended family member" means an individual, defined by the law or custom of the child's tribe, as a relative of the child. If the child's tribe does not identify such individuals by law or custom, the term means an adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or stepparent, even following termination of the marriage.

(9) "Indian child's tribe" means a tribe in which an Indian child is a member or eligible for membership.

(10) "Indian custodian" means an Indian person who under tribal law, tribal custom, or state law has legal or temporary physical custody of an Indian child, or to whom the parent has transferred temporary care, physical custody, and control of an Indian child.

(11) "Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior because of their status as Indians, including any Alaska native village as defined in 43 U.S.C. Sec. 1602(c).

(12) "Member" and "membership" means a determination by an Indian tribe that a person is a member or eligible for membership in that Indian tribe.

(13) "Parent" means a biological parent or parents of an Indian child or a person who has lawfully adopted an Indian child, including adoptions made under tribal law or custom. "Parent" does not include an unwed father whose paternity has not been acknowledged or established under chapter 26.26 RCW or the applicable laws of other states.

(14) "Secretary of the interior" means the secretary of the United States department of the interior.

(15) "Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child custody proceedings, including but not limited to a federal court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or an administrative body of an Indian tribe vested with authority over child custody proceedings.

(16) "Tribal customary adoption" means adoption or other process through the tribal custom, traditions, or laws of an Indian child's tribe by which the Indian child is permanently placed with a nonparent and through which the nonparent is vested with the rights, privileges, and obligations of a legal parent. Termination of the parent-child relationship between the Indian child and the biological parent is not required to effect or recognize a tribal customary adoption. [2017 3rd sp.s. c 6 § 311; 2011 c 309 § 4.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

13.38.070 Notice—Procedures—Determination of Indian status. (1) In any involuntary child custody proceeding seeking the foster care placement of, or the termination of parental rights to, a child in which the petitioning party or the court knows, or has reason to know, that the child is or may be an Indian child as defined in this chapter, the petitioning party shall notify the parent or Indian custodian and the Indian child's tribe or tribes, by certified mail, return receipt requested, and by use of a mandatory Indian child welfare act notice addressed to the tribal agent designated by the Indian child's tribe or tribes for receipt of Indian child welfare act notice, as published by the bureau of Indian affairs in the federal register. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the secretary of the interior by registered mail, return receipt requested, in accordance with the regulations of the bureau of Indian affairs. The secretary of the interior has fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe. The parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for the proceeding.

(2) The determination of the Indian status of a child shall be made as soon as practicable in order to serve the best interests of the Indian child and protect the interests of the child's tribe.

(3)(a) A written determination by an Indian tribe that a child is a member of or eligible for membership in that tribe, or testimony by the tribe attesting to such status shall be conclusive that the child is an Indian child;

(b) A written determination by an Indian tribe that a child is not a member of or eligible for membership in that tribe, or testimony by the tribe attesting to such status shall be conclusive that the child is not a member or eligible for membership in that tribe. Such determinations are presumptively those of the tribe where submitted in the form of a tribal resolution, or signed by or testified to by the person(s) authorized by the tribe's governing body to speak for the tribe, or by the tribe's agent designated to receive notice under the federal Indian child welfare act where such designation is published in the federal register;

(c) Where a tribe provides no response to notice under RCW 13.38.070, such nonresponse shall not constitute evidence that the child is not a member or eligible for membership. Provided, however, that under such circumstances the party asserting application of the federal Indian child welfare act, or this chapter, will have the burden of proving by a preponderance of the evidence that the child is an Indian child.

(4)(a) Where a child has been determined not to be an Indian child, any party to the proceeding, or an Indian tribe that subsequently determines the child is a member, may, during the pendency of any child custody proceeding to which this chapter or the federal Indian child welfare act applies, move the court for redetermination of the child's Indian status based upon new evidence, redetermination by the child's tribe, or newly conferred federal recognition of the tribe.

(b) This subsection (4) does not affect the rights afforded under 25 U.S.C. Sec. 1914. [2017 c 269 § 1; 2011 c 309 § 7.]

Chapter 13.40 RCW JUVENILE JUSTICE ACT OF 1977

Sections

13.40.020	Definitions. (<i>Effective July 1, 2019.</i>)
13.40.040	Taking juvenile into custody, grounds—Detention of, grounds—Detention pending disposition—Release on bond, conditions—Bail jumping. (<i>Effective July 1, 2019.</i>)
13.40.045	Escapees—Arrest warrants. (<i>Effective July 1, 2019.</i>)
13.40.070	Complaints—Screening—Filing information—Diversion—Modification of community supervision—Notice to parent or guardian—Probation counselor acting for prosecutor—Referral to mediation or reconciliation programs.
13.40.185	Disposition order—Confinement under departmental supervision or in juvenile facility, when. (<i>Effective July 1, 2019.</i>)
13.40.210	Setting of release date—Administrative release authorized, when—Parole program, revocation or modification of, scope—Intensive supervision program—Parole officer's right of arrest. (<i>Effective July 1, 2019.</i>)
13.40.220	Costs of support, treatment, and confinement—Order—Contempt of court. (<i>Effective July 1, 2019.</i>)
13.40.280	Transfer of juvenile to department of corrections facility—Grounds—Hearing—Term—Retransfer to a facility for juveniles. (<i>Effective July 1, 2019.</i>)
13.40.285	Juvenile offender sentenced to terms in juvenile and adult facilities—Transfer to department of corrections—Term of confinement. (<i>Effective July 1, 2019.</i>)
13.40.300	Commitment of juvenile beyond age twenty-one prohibited—Jurisdiction of juvenile court after juvenile's eighteenth birthday. (<i>Effective July 1, 2019.</i>)
13.40.310	Transitional treatment program for gang and drug-involved juvenile offenders. (<i>Effective July 1, 2019.</i>)
13.40.320	Juvenile offender basic training camp program. (<i>Effective July 1, 2019.</i>)

- 13.40.460 Juvenile rehabilitation programs—Administration. *(Effective July 1, 2019.)*
- 13.40.462 Reinvesting in youth program. *(Effective July 1, 2019.)*
- 13.40.464 Reinvesting in youth program—Guidelines. *(Effective July 1, 2019.)*
- 13.40.466 Reinvesting in youth account. *(Effective July 1, 2019.)*
- 13.40.468 Juvenile rehabilitation administration—State quality assurance program. *(Effective July 1, 2019.)*
- 13.40.510 Community juvenile accountability programs—Establishment—Proposals—Guidelines. *(Effective July 1, 2019.)*
- 13.40.520 Community juvenile accountability programs—Grants. *(Effective July 1, 2019.)*
- 13.40.540 Community juvenile accountability programs—Information collection—Report. *(Effective July 1, 2019.)*
- 13.40.560 Juvenile accountability incentive account. *(Effective July 1, 2019.)*
- 13.40.800 Decodified. *(Effective July 1, 2018.)*

13.40.020 Definitions. *(Effective July 1, 2019.)* For the purposes of this chapter:

(1) "Assessment" means an individualized examination of a child to determine the child's psychosocial needs and problems, including the type and extent of any mental health, substance abuse, or co-occurring mental health and substance abuse disorders, and recommendations for treatment. "Assessment" includes, but is not limited to, drug and alcohol evaluations, psychological and psychiatric evaluations, records review, clinical interview, and administration of a formal test or instrument;

(2) "Community-based rehabilitation" means one or more of the following: Employment; attendance of information classes; literacy classes; counseling, outpatient substance abuse treatment programs, outpatient mental health programs, anger management classes, education or outpatient treatment programs to prevent animal cruelty, or other services including, when appropriate, restorative justice programs; or attendance at school or other educational programs appropriate for the juvenile as determined by the school district. Placement in community-based rehabilitation programs is subject to available funds;

(3) "Community-based sanctions" may include one or more of the following:

(a) A fine, not to exceed five hundred dollars;

(b) Community restitution not to exceed one hundred fifty hours of community restitution;

(4) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender as punishment for committing an offense. Community restitution may be performed through public or private organizations or through work crews;

(5) "Community supervision" means an order of disposition by the court of an adjudicated youth not committed to the department or an order granting a deferred disposition. A community supervision order for a single offense may be for a period of up to two years for a sex offense as defined by RCW 9.94A.030 and up to one year for other offenses. As a mandatory condition of any term of community supervision, the court shall order the juvenile to refrain from committing new offenses. As a mandatory condition of community supervision, the court shall order the juvenile to comply with the mandatory school attendance provisions of chapter 28A.225 RCW and to inform the school of the existence of this requirement. Community supervision is an individualized program comprised of one or more of the following:

(a) Community-based sanctions;

(b) Community-based rehabilitation;

(c) Monitoring and reporting requirements;

(d) Posting of a probation bond;

(e) Residential treatment, where substance abuse, mental health, and/or co-occurring disorders have been identified in an assessment by a qualified mental health professional, psychologist, psychiatrist, or chemical dependency professional and a funded bed is available. If a child agrees to voluntary placement in a state-funded long-term evaluation and treatment facility, the case must follow the existing placement procedure including consideration of less restrictive treatment options and medical necessity.

(i) A court may order residential treatment after consideration and findings regarding whether:

(A) The referral is necessary to rehabilitate the child;

(B) The referral is necessary to protect the public or the child;

(C) The referral is in the child's best interest;

(D) The child has been given the opportunity to engage in less restrictive treatment and has been unable or unwilling to comply; and

(E) Inpatient treatment is the least restrictive action consistent with the child's needs and circumstances.

(ii) In any case where a court orders a child to inpatient treatment under this section, the court must hold a review hearing no later than sixty days after the youth begins inpatient treatment, and every thirty days thereafter, as long as the youth is in inpatient treatment;

(6) "Confinement" means physical custody by the department of children, youth, and families in a facility operated by or pursuant to a contract with the state, or physical custody in a detention facility operated by or pursuant to a contract with any county. The county may operate or contract with vendors to operate county detention facilities. The department may operate or contract to operate detention facilities for juveniles committed to the department. Pretrial confinement or confinement of less than thirty-one days imposed as part of a disposition or modification order may be served consecutively or intermittently, in the discretion of the court;

(7) "Court," when used without further qualification, means the juvenile court judge(s) or commissioner(s);

(8) "Criminal history" includes all criminal complaints against the respondent for which, prior to the commission of a current offense:

(a) The allegations were found correct by a court. If a respondent is convicted of two or more charges arising out of the same course of conduct, only the highest charge from among these shall count as an offense for the purposes of this chapter; or

(b) The criminal complaint was diverted by a prosecutor pursuant to the provisions of this chapter on agreement of the respondent and after an advisement to the respondent that the criminal complaint would be considered as part of the respondent's criminal history. A successfully completed deferred adjudication that was entered before July 1, 1998, or a deferred disposition shall not be considered part of the respondent's criminal history;

(9) "Department" means the department of children, youth, and families;

(10) "Detention facility" means a county facility, paid for by the county, for the physical confinement of a juvenile alleged to have committed an offense or an adjudicated offender subject to a disposition or modification order. "Detention facility" includes county group homes, inpatient substance abuse programs, juvenile basic training camps, and electronic monitoring;

(11) "Diversion unit" means any probation counselor who enters into a diversion agreement with an alleged youthful offender, or any other person, community accountability board, youth court under the supervision of the juvenile court, or other entity except a law enforcement official or entity, with whom the juvenile court administrator has contracted to arrange and supervise such agreements pursuant to RCW 13.40.080, or any person, community accountability board, or other entity specially funded by the legislature to arrange and supervise diversion agreements in accordance with the requirements of this chapter. For purposes of this subsection, "community accountability board" means a board comprised of members of the local community in which the juvenile offender resides. The superior court shall appoint the members. The boards shall consist of at least three and not more than seven members. If possible, the board should include a variety of representatives from the community, such as a law enforcement officer, teacher or school administrator, high school student, parent, and business owner, and should represent the cultural diversity of the local community;

(12) "Foster care" means temporary physical care in a foster family home or group care facility as defined in RCW 74.15.020 and licensed by the department, or other legally authorized care;

(13) "Institution" means a juvenile facility established pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

(14) "Intensive supervision program" means a parole program that requires intensive supervision and monitoring, offers an array of individualized treatment and transitional services, and emphasizes community involvement and support in order to reduce the likelihood a juvenile offender will commit further offenses;

(15) "Juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years and who has not been previously transferred to adult court pursuant to RCW 13.40.110, unless the individual was convicted of a lesser charge or acquitted of the charge for which he or she was previously transferred pursuant to RCW 13.40.110 or who is not otherwise under adult court jurisdiction;

(16) "Juvenile offender" means any juvenile who has been found by the juvenile court to have committed an offense, including a person eighteen years of age or older over whom jurisdiction has been extended under RCW 13.40.300;

(17) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix;

(18) "Local sanctions" means one or more of the following: (a) 0-30 days of confinement; (b) 0-12 months of community supervision; (c) 0-150 hours of community restitution; or (d) \$0-\$500 fine;

(19) "Manifest injustice" means a disposition that would either impose an excessive penalty on the juvenile or would impose a serious, and clear danger to society in light of the purposes of this chapter;

(20) "Monitoring and reporting requirements" means one or more of the following: Curfews; requirements to remain at home, school, work, or court-ordered treatment programs during specified hours; restrictions from leaving or entering specified geographical areas; requirements to report to the probation officer as directed and to remain under the probation officer's supervision; and other conditions or limitations as the court may require which may not include confinement;

(21) "Offense" means an act designated a violation or a crime if committed by an adult under the law of this state, under any ordinance of any city or county of this state, under any federal law, or under the law of another state if the act occurred in that state;

(22) "Physical restraint" means the use of any bodily force or physical intervention to control a juvenile offender or limit a juvenile offender's freedom of movement in a way that does not involve a mechanical restraint. Physical restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, without the aid of mechanical restraint, accomplished with limited force and designed to:

(a) Prevent a juvenile offender from completing an act that would result in potential bodily harm to self or others or damage property;

(b) Remove a disruptive juvenile offender who is unwilling to leave the area voluntarily; or

(c) Guide a juvenile offender from one location to another;

(23) "Postpartum recovery" means (a) the entire period a woman or youth is in the hospital, birthing center, or clinic after giving birth and (b) an additional time period, if any, a treating physician determines is necessary for healing after the youth leaves the hospital, birthing center, or clinic;

(24) "Probation bond" means a bond, posted with sufficient security by a surety justified and approved by the court, to secure the offender's appearance at required court proceedings and compliance with court-ordered community supervision or conditions of release ordered pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of cash or posting of other collateral in lieu of a bond if approved by the court;

(25) "Respondent" means a juvenile who is alleged or proven to have committed an offense;

(26) "Restitution" means financial reimbursement by the offender to the victim, and shall be limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical treatment for physical injury to persons, lost wages resulting from physical injury, and costs of the victim's counseling reasonably related to the offense. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses. Nothing in this chapter shall limit or replace civil remedies or defenses available to the victim or offender;

(27) "Restorative justice" means practices, policies, and programs informed by and sensitive to the needs of crime victims that are designed to encourage offenders to accept

responsibility for repairing the harm caused by their offense by providing safe and supportive opportunities for voluntary participation and communication between the victim, the offender, their families, and relevant community members;

(28) "Restraints" means anything used to control the movement of a person's body or limbs and includes:

(a) Physical restraint; or

(b) Mechanical device including but not limited to: Metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons;

(29) "Screening" means a process that is designed to identify a child who is at risk of having mental health, substance abuse, or co-occurring mental health and substance abuse disorders that warrant immediate attention, intervention, or more comprehensive assessment. A screening may be undertaken with or without the administration of a formal instrument;

(30) "Secretary" means the secretary of the department;

(31) "Services" means services which provide alternatives to incarceration for those juveniles who have pleaded or been adjudicated guilty of an offense or have signed a diversion agreement pursuant to this chapter;

(32) "Sex offense" means an offense defined as a sex offense in RCW 9.94A.030;

(33) "Sexual motivation" means that one of the purposes for which the respondent committed the offense was for the purpose of his or her sexual gratification;

(34) "Surety" means an entity licensed under state insurance laws or by the state department of licensing, to write corporate, property, or probation bonds within the state, and justified and approved by the superior court of the county having jurisdiction of the case;

(35) "Transportation" means the conveying, by any means, of an incarcerated pregnant youth from the institution or detention facility to another location from the moment she leaves the institution or detention facility to the time of arrival at the other location, and includes the escorting of the pregnant incarcerated youth from the institution or detention facility to a transport vehicle and from the vehicle to the other location;

(36) "Violation" means an act or omission, which if committed by an adult, must be proven beyond a reasonable doubt, and is punishable by sanctions which do not include incarceration;

(37) "Violent offense" means a violent offense as defined in RCW 9.94A.030;

(38) "Youth court" means a diversion unit under the supervision of the juvenile court. [2017 3rd sp.s. c 6 § 605. Prior: 2016 c 136 § 2; 2016 c 106 § 1; 2014 c 110 § 1; 2012 c 201 § 1; 2010 c 181 § 10; 2009 c 454 § 2; 2004 c 120 § 2; prior: 2002 c 237 § 7; 2002 c 175 § 19; 1997 c 338 § 10; (1997 c 338 § 9 expired July 1, 1998); prior: 1995 c 395 § 2; 1995 c 134 § 1; prior: 1994 sp.s. c 7 § 520; 1994 c 271 § 803; 1994 c 261 § 18; 1993 c 373 § 1; 1990 1st ex.s. c 12 § 1; 1990 c 3 § 301; 1989 c 407 § 1; 1988 c 145 § 17; 1983 c 191 § 7; 1981 c 299 § 2; 1979 c 155 § 54; 1977 ex.s. c 291 § 56.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

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

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

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Additional notes found at www.leg.wa.gov

13.40.040 Taking juvenile into custody, grounds—Detention of, grounds—Detention pending disposition—Release on bond, conditions—Bail jumping. (Effective July 1, 2019.) (1) A juvenile may be taken into custody:

(a) Pursuant to a court order if a complaint is filed with the court alleging, and the court finds probable cause to believe, that the juvenile has committed an offense or has violated terms of a disposition order or release order; or

(b) Without a court order, by a law enforcement officer if grounds exist for the arrest of an adult in identical circumstances. Admission to, and continued custody in, a court detention facility shall be governed by subsection (2) of this section; or

(c) Pursuant to a court order that the juvenile be held as a material witness; or

(d) Where the secretary or the secretary's designee has suspended the parole of a juvenile offender.

(2) A juvenile may not be held in detention unless there is probable cause to believe that:

(a) The juvenile has committed an offense or has violated the terms of a disposition order; and

(i) The juvenile will likely fail to appear for further proceedings; or

(ii) Detention is required to protect the juvenile from himself or herself; or

(iii) The juvenile is a threat to community safety; or

(iv) The juvenile will intimidate witnesses or otherwise unlawfully interfere with the administration of justice; or

(v) The juvenile has committed a crime while another case was pending; or

(b) The juvenile is a fugitive from justice; or

(c) The juvenile's parole has been suspended or modified; or

(d) The juvenile is a material witness.

(3) Notwithstanding subsection (2) of this section, and within available funds, a juvenile who has been found guilty of one of the following offenses shall be detained pending disposition: Rape in the first or second degree (RCW 9A.44.040 and 9A.44.050); or rape of a child in the first degree (RCW 9A.44.073).

(4) Upon a finding that members of the community have threatened the health of a juvenile taken into custody, at the juvenile's request the court may order continued detention pending further order of the court.

(5) Except as provided in RCW 9.41.280, a juvenile detained under this section may be released upon posting a probation bond set by the court. The juvenile's parent or guardian may sign for the probation bond. A court authorizing such a release shall issue an order containing a statement of conditions imposed upon the juvenile and shall set the date of his or her next court appearance. The court shall advise the juvenile of any conditions specified in the order and may at

any time amend such an order in order to impose additional or different conditions of release upon the juvenile or to return the juvenile to custody for failing to conform to the conditions imposed. In addition to requiring the juvenile to appear at the next court date, the court may condition the probation bond on the juvenile's compliance with conditions of release. The juvenile's parent or guardian may notify the court that the juvenile has failed to conform to the conditions of release or the provisions in the probation bond. If the parent notifies the court of the juvenile's failure to comply with the probation bond, the court shall notify the surety. As provided in the terms of the bond, the surety shall provide notice to the court of the offender's noncompliance. A juvenile may be released only to a responsible adult or the department of children, youth, and families. Failure to appear on the date scheduled by the court pursuant to this section shall constitute the crime of bail jumping. [2017 3rd sp.s. c 6 § 606; 2002 c 171 § 2; 1999 c 167 § 2; 1997 c 338 § 13; 1995 c 395 § 4; 1979 c 155 § 57; 1977 ex.s. c 291 § 58.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

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

Additional notes found at www.leg.wa.gov

13.40.045 Escapees—Arrest warrants. (Effective July 1, 2019.) The secretary or the secretary's designee shall issue arrest warrants for juveniles who escape from department residential custody. The secretary or the secretary's designee may issue arrest warrants for juveniles who abscond from parole supervision or fail to meet conditions of parole. These arrest warrants shall authorize any law enforcement, probation and parole, or peace officer of this state, or any other state where the juvenile is located, to arrest the juvenile and to place the juvenile in physical custody pending the juvenile's return to confinement in a state juvenile rehabilitation facility. [2017 3rd sp.s. c 6 § 607; 1997 c 338 § 14; 1994 sp.s. c 7 § 518.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

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

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

Additional notes found at www.leg.wa.gov

13.40.070 Complaints—Screening—Filing information—Diversion—Modification of community supervision—Notice to parent or guardian—Probation counselor acting for prosecutor—Referral to mediation or reconciliation programs. (1) Complaints referred to the juvenile court alleging the commission of an offense shall be referred directly to the prosecutor. The prosecutor, upon receipt of a complaint, shall screen the complaint to determine whether:

(a) The alleged facts bring the case within the jurisdiction of the court; and

(b) On a basis of available evidence there is probable cause to believe that the juvenile did commit the offense.

(2) If the identical alleged acts constitute an offense under both the law of this state and an ordinance of any city or county of this state, state law shall govern the prosecutor's screening and charging decision for both filed and diverted cases.

(3) If the requirements of subsections (1)(a) and (b) of this section are met, the prosecutor shall either file an information in juvenile court or divert the case, as set forth in subsections (5), (6), and (8) of this section. If the prosecutor finds that the requirements of subsection (1)(a) and (b) of this section are not met, the prosecutor shall maintain a record, for one year, of such decision and the reasons therefor. In lieu of filing an information or diverting an offense a prosecutor may file a motion to modify community supervision where such offense constitutes a violation of community supervision.

(4) An information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and conform to chapter 10.37 RCW.

(5) Except as provided in RCW 13.40.213 and subsection (7) of this section, where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

(a) An alleged offender is accused of a class A felony, a class B felony, an attempt to commit a class B felony, a class C felony listed in RCW 9.94A.411(2) as a crime against persons or listed in RCW 9A.46.060 as a crime of harassment, or a class C felony that is a violation of RCW 9.41.080 or 9.41.040(2)(a)(iv); or

(b) An alleged offender is accused of a felony and has a criminal history of any felony, or at least two gross misdemeanors, or at least two misdemeanors; or

(c) An alleged offender has previously been committed to the department; or

(d) An alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion; or

(e) An alleged offender has three or more diversion agreements on the alleged offender's criminal history; or

(f) A special allegation has been filed that the offender or an accomplice was armed with a firearm when the offense was committed.

(6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense is the offender's first offense or violation. If the alleged offender is charged with a related offense that must or may be filed under subsections (5) and (8) of this section, a case under this subsection may also be filed.

(7) Where a case is legally sufficient to charge an alleged offender with:

(a) Either prostitution or prostitution loitering and the alleged offense is the offender's first prostitution or prostitution loitering offense, the prosecutor shall divert the case; or

(b) Voyeurism in the second degree, the offender is under seventeen years of age, and the alleged offense is the offender's first voyeurism in the second degree offense, the prosecutor shall divert the case, unless the offender has received two diversions for any offense in the previous two years.

(8) Where a case is legally sufficient and falls into neither subsection (5) nor (6) of this section, it may be filed or diverted. In deciding whether to file or divert an offense under this section the prosecutor shall be guided only by the length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense.

(9) Whenever a juvenile is placed in custody or, where not placed in custody, referred to a diversion interview, the parent or legal guardian of the juvenile shall be notified as soon as possible concerning the allegation made against the juvenile and the current status of the juvenile. Where a case involves victims of crimes against persons or victims whose property has not been recovered at the time a juvenile is referred to a diversion unit, the victim shall be notified of the referral and informed how to contact the unit.

(10) The responsibilities of the prosecutor under subsections (1) through (9) of this section may be performed by a juvenile court probation counselor for any complaint referred to the court alleging the commission of an offense which would not be a felony if committed by an adult, if the prosecutor has given sufficient written notice to the juvenile court that the prosecutor will not review such complaints.

(11) The prosecutor, juvenile court probation counselor, or diversion unit may, in exercising their authority under this section or RCW 13.40.080, refer juveniles to mediation or victim offender reconciliation programs. Such mediation or victim offender reconciliation programs shall be voluntary for victims. [2017 c 292 § 2; 2013 c 179 § 3; 2010 c 289 § 7; 2009 c 252 § 3; 2003 c 53 § 98; 2001 c 175 § 2; 1997 c 338 § 17; 1994 sp.s. c 7 § 543; 1992 c 205 § 107; 1989 c 407 § 9; 1983 c 191 § 18; 1981 c 299 § 7; 1979 c 155 § 60; 1977 ex.s. c 291 § 61.]

Finding—2013 c 179: See note following RCW 13.40.042.

Findings—2009 c 252: See note following RCW 13.40.213.

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

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

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

Additional notes found at www.leg.wa.gov

13.40.185 Disposition order—Confinement under departmental supervision or in juvenile facility, when. (Effective July 1, 2019.) (1) Any term of confinement imposed for an offense which exceeds thirty days shall be served under the supervision of the department. If the period of confinement imposed for more than one offense exceeds thirty days but the term imposed for each offense is less than thirty days, the confinement may, in the discretion of the court, be served in a juvenile facility operated by or pursuant to a contract with the state or a county.

(2) Whenever a juvenile is confined in a detention facility or is committed to the department, the court may not directly order a juvenile into a particular county or state facility. The juvenile court administrator and the secretary or the secretary's designee, as appropriate, has the sole discretion to determine in which facility a juvenile should be confined or committed. The counties may operate a variety of detention facilities as determined by the county legislative authority

subject to available funds. [2017 3rd sp.s. c 6 § 608; 1994 sp.s. c 7 § 524; 1981 c 299 § 15.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

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

13.40.210 Setting of release date—Administrative release authorized, when—Parole program, revocation or modification of, scope—Intensive supervision program—Parole officer's right of arrest. (Effective July 1, 2019.) (1)

The secretary shall set a release date for each juvenile committed to its custody. The release date shall be within the prescribed range to which a juvenile has been committed under RCW 13.40.0357 or 13.40.030 except as provided in RCW 13.40.320 concerning offenders the department determines are eligible for the juvenile offender basic training camp program. Such dates shall be determined prior to the expiration of sixty percent of a juvenile's minimum term of confinement included within the prescribed range to which the juvenile has been committed. The secretary shall release any juvenile committed to the custody of the department within four calendar days prior to the juvenile's release date or on the release date set under this chapter. Days spent in the custody of the department shall be tolled by any period of time during which a juvenile has absented himself or herself from the department's supervision without the prior approval of the secretary or the secretary's designee.

(2) The secretary shall monitor the average daily population of the state's juvenile residential facilities. When the secretary concludes that in-residence population of residential facilities exceeds one hundred five percent of the rated bed capacity specified in statute, or in absence of such specification, as specified by the department in rule, the secretary may recommend reductions to the governor. On certification by the governor that the recommended reductions are necessary, the secretary has authority to administratively release a sufficient number of offenders to reduce in-residence population to one hundred percent of rated bed capacity. The secretary shall release those offenders who have served the greatest proportion of their sentence. However, the secretary may deny release in a particular case at the request of an offender, or if the secretary finds that there is no responsible custodian, as determined by the department, to whom to release the offender, or if the release of the offender would pose a clear danger to society. The department shall notify the committing court of the release at the time of release if any such early releases have occurred as a result of excessive in-residence population. In no event shall an offender adjudicated of a violent offense be granted release under the provisions of this subsection.

(3)(a) Following the release of any juvenile under subsection (1) of this section, the secretary may require the juvenile to comply with a program of parole to be administered by the department in his or her community which shall last no longer than eighteen months, except that in the case of a juvenile sentenced for rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, or indecent liberties with forcible compulsion,

the period of parole shall be twenty-four months and, in the discretion of the secretary, may be up to thirty-six months when the secretary finds that an additional period of parole is necessary and appropriate in the interests of public safety or to meet the ongoing needs of the juvenile. A parole program is mandatory for offenders released under subsection (2) of this section and for offenders who receive a juvenile residential commitment sentence for theft of a motor vehicle, possession of a stolen motor vehicle, or taking a motor vehicle without permission 1. A juvenile adjudicated for unlawful possession of a firearm, possession of a stolen firearm, theft of a firearm, or drive-by shooting may participate in aggression replacement training, functional family therapy, or functional family parole aftercare if the juvenile meets eligibility requirements for these services. The decision to place an offender in an evidence-based parole program shall be based on an assessment by the department of the offender's risk for reoffending upon release and an assessment of the ongoing treatment needs of the juvenile. The department shall prioritize available parole resources to provide supervision and services to offenders at moderate to high risk for reoffending.

(b) The secretary shall, for the period of parole, facilitate the juvenile's reintegration into his or her community and to further this goal shall require the juvenile to refrain from possessing a firearm or using a deadly weapon and refrain from committing new offenses and may require the juvenile to: (i) Undergo available medical, psychiatric, drug and alcohol, sex offender, mental health, and other offense-related treatment services; (ii) report as directed to a parole officer and/or designee; (iii) pursue a course of study, vocational training, or employment; (iv) notify the parole officer of the current address where he or she resides; (v) be present at a particular address during specified hours; (vi) remain within prescribed geographical boundaries; (vii) submit to electronic monitoring; (viii) refrain from using illegal drugs and alcohol, and submit to random urinalysis when requested by the assigned parole officer; (ix) refrain from contact with specific individuals or a specified class of individuals; (x) meet other conditions determined by the parole officer to further enhance the juvenile's reintegration into the community; (xi) pay any court-ordered fines or restitution; and (xii) perform community restitution. Community restitution for the purpose of this section means compulsory service, without compensation, performed for the benefit of the community by the offender. Community restitution may be performed through public or private organizations or through work crews.

(c) The secretary may further require up to twenty-five percent of the highest risk juvenile offenders who are placed on parole to participate in an intensive supervision program. Offenders participating in an intensive supervision program shall be required to comply with all terms and conditions listed in (b) of this subsection and shall also be required to comply with the following additional terms and conditions: (i) Obey all laws and refrain from any conduct that threatens public safety; (ii) report at least once a week to an assigned community case manager; and (iii) meet all other requirements imposed by the community case manager related to participating in the intensive supervision program. As a part of the intensive supervision program, the secretary may require day reporting.

(d) After termination of the parole period, the juvenile shall be discharged from the department's supervision.

(4)(a) The department may also modify parole for violation thereof. If, after affording a juvenile all of the due process rights to which he or she would be entitled if the juvenile were an adult, the secretary finds that a juvenile has violated a condition of his or her parole, the secretary shall order one of the following which is reasonably likely to effectuate the purpose of the parole and to protect the public: (i) Continued supervision under the same conditions previously imposed; (ii) intensified supervision with increased reporting requirements; (iii) additional conditions of supervision authorized by this chapter; (iv) except as provided in (a)(v) and (vi) of this subsection, imposition of a period of confinement not to exceed thirty days in a facility operated by or pursuant to a contract with the state of Washington or any city or county for a portion of each day or for a certain number of days each week with the balance of the days or weeks spent under supervision; (v) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the offense for which the offender was sentenced is rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, indecent liberties with forcible compulsion, or a sex offense that is also a serious violent offense as defined by RCW 9.94A.030; and (vi) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the youth has completed the basic training camp program as described in RCW 13.40.320.

(b) The secretary may modify parole and order any of the conditions or may return the offender to confinement for up to twenty-four weeks if the offender was sentenced for a sex offense as defined under RCW 9A.44.128 and is known to have violated the terms of parole. Confinement beyond thirty days is intended to only be used for a small and limited number of sex offenders. It shall only be used when other graduated sanctions or interventions have not been effective or the behavior is so egregious it warrants the use of the higher level intervention and the violation: (i) Is a known pattern of behavior consistent with a previous sex offense that puts the youth at high risk for reoffending sexually; (ii) consists of sexual behavior that is determined to be predatory as defined in RCW 71.09.020; or (iii) requires a review under chapter 71.09 RCW, due to a recent overt act. The total number of days of confinement for violations of parole conditions during the parole period shall not exceed the number of days provided by the maximum sentence imposed by the disposition for the underlying offense pursuant to RCW 13.40.0357. The department shall not aggregate multiple parole violations that occur prior to the parole revocation hearing and impose consecutive twenty-four week periods of confinement for each parole violation. The department is authorized to engage in rule making pursuant to chapter 34.05 RCW, to implement this subsection, including narrowly defining the behaviors that could lead to this higher level intervention.

(c) If the department finds that any juvenile in a program of parole has possessed a firearm or used a deadly weapon during the program of parole, the department shall modify the parole under (a) of this subsection and confine the juvenile for at least thirty days. Confinement shall be in a facility

operated by or pursuant to a contract with the state or any county.

(5) A parole officer of the department of children, youth, and families shall have the power to arrest a juvenile under his or her supervision on the same grounds as a law enforcement officer would be authorized to arrest the person.

(6) If so requested and approved under chapter 13.06 RCW, the secretary shall permit a county or group of counties to perform functions under subsections (3) through (5) of this section. [2017 3rd sp.s. c 6 § 609; 2014 c 117 § 3; 2009 c 187 § 1. Prior: 2007 c 203 § 1; 2007 c 199 § 13; 2002 c 175 § 27; prior: 2001 c 137 § 2; 2001 c 51 § 1; 1997 c 338 § 32; 1994 sp.s. c 7 § 527; 1990 c 3 § 304; 1987 c 505 § 4; 1985 c 287 § 1; 1985 c 257 § 4; 1983 c 191 § 11; 1979 c 155 § 71; 1977 ex.s. c 291 § 75.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Applicability—2007 c 203: "This act applies prospectively only and not retroactively. It applies only to juvenile offenders who have been adjudicated for an offense that occurred on or after October 1, 2007." [2007 c 203 § 2.]

Effective date—2007 c 203: "This act takes effect October 1, 2007." [2007 c 203 § 3.]

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Findings—Intent—1997 c 338 §§ 32 and 34: See note following RCW 13.40.212.

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

Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7: See notes following RCW 43.70.540.

Intent—1985 c 257 § 4: "To promote both public safety and the welfare of juvenile offenders, it is the intent of the legislature that services to juvenile offenders be delivered in the most effective and efficient means possible. Section 4 of this act facilitates those objectives by permitting counties to supervise parole of juvenile offenders. This is consistent with the philosophy of chapter 13.06 RCW to deliver community services to juvenile offenders comprehensively at the county level." [1985 c 257 § 3.]

Additional notes found at www.leg.wa.gov

13.40.220 Costs of support, treatment, and confinement—Order—Contempt of court. (Effective July 1, 2019.)

(1) Whenever legal custody of a child is vested in someone other than his or her parents, under this chapter, and not vested in the department, after due notice to the parents or other persons legally obligated to care for and support the child, and after a hearing, the court may order and decree that the parent or other legally obligated person shall pay in such a manner as the court may direct a reasonable sum representing in whole or in part the costs of support, treatment, and confinement of the child after the decree is entered.

(2) If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against such person for contempt.

(3) Whenever legal custody of a child is vested in the department under this chapter, the parents or other persons legally obligated to care for and support the child shall be liable for the costs of support, treatment, and confinement of the child, in accordance with the department's reimbursement of cost schedule. The department shall adopt a reimbursement of cost schedule based on the costs of providing such ser-

vices, and shall determine an obligation based on the responsible parents' or other legally obligated person's ability to pay. The department is authorized to adopt additional rules as appropriate to enforce this section.

(4) To enforce subsection (3) of this section, the department shall serve on the parents or other person legally obligated to care for and support the child a notice and finding of financial responsibility requiring the parents or other legally obligated person to appear and show cause in an adjudicative proceeding why the finding of responsibility and/or the amount thereof is incorrect and should not be ordered. This notice and finding shall relate to the costs of support, treatment, and confinement of the child in accordance with the department's reimbursement of cost schedule adopted under this section, including periodic payments to be made in the future. The hearing shall be held pursuant to chapter 34.05 RCW, the administrative procedure act, and the rules of the department.

(5) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action or may be served on the parent or legally obligated person by certified mail, return receipt requested. The receipt shall be prima facie evidence of service.

(6) If the parents or other legally obligated person objects to the notice and finding of financial responsibility, then an application for an adjudicative hearing may be filed within twenty days of the date of service of the notice. If an application for an adjudicative proceeding is filed, the presiding or reviewing officer shall determine the past liability and responsibility, if any, of the parents or other legally obligated person and shall also determine the amount of periodic payments to be made in the future. If the parents or other legally responsible person fails to file an application within twenty days, the notice and finding of financial responsibility shall become a final administrative order.

(7) Debts determined pursuant to this section are subject to collection action without further necessity of action by a presiding or reviewing officer. The department may collect the debt in accordance with RCW 43.20B.635, 43.20B.640, 74.20A.060, and 74.20A.070. The department shall exempt from payment parents receiving adoption support under RCW 74.13A.005 through 74.13A.080, parents eligible to receive adoption support under RCW 74.13A.085, and a parent or other legally obligated person when the parent or other legally obligated person, or such person's child, spouse, or spouse's child, was the victim of the offense for which the child was committed.

(8) An administrative order entered pursuant to this section shall supersede any court order entered prior to June 13, 1994.

(9) The department shall be subrogated to the right of the child and his or her parents or other legally responsible person to receive support payments for the benefit of the child from any parent or legally obligated person pursuant to a support order established by a superior court or pursuant to RCW 74.20A.055. The department's right of subrogation under this section is limited to the liability established in accordance with its cost schedule for support, treatment, and confinement, except as addressed in subsection (10) of this section.

(10) Nothing in this section precludes the department from recouping such additional support payments from the child's parents or other legally obligated person as required to qualify for receipt of federal funds. The department may adopt such rules dealing with liability for recoupment of support, treatment, or confinement costs as may become necessary to entitle the state to participate in federal funds unless such rules would be expressly prohibited by law. If any law dealing with liability for recoupment of support, treatment, or confinement costs is ruled to be in conflict with federal requirements which are a prescribed condition of the allocation of federal funds, such conflicting law is declared to be inoperative solely to the extent of the conflict. [2017 3rd sp.s. c 6 § 610; 1995 c 300 § 1; 1994 sp.s. c 7 § 529; 1993 c 466 § 1; 1977 ex.s. c 291 § 76.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

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

Additional notes found at www.leg.wa.gov

13.40.280 Transfer of juvenile to department of corrections facility—Grounds—Hearing—Term—Retransfer to a facility for juveniles. (Effective July 1, 2019.) (1) The secretary of the department of children, youth, and families, with the consent of the secretary of the department of corrections, has the authority to transfer a juvenile presently or hereafter committed to the department of children, youth, and families to the department of corrections for appropriate institutional placement in accordance with this section.

(2) The secretary of the department of children, youth, and families may, with the consent of the secretary of the department of corrections, transfer a juvenile offender to the department of corrections if it is established at a hearing before a review board that continued placement of the juvenile offender in an institution for juvenile offenders presents a continuing and serious threat to the safety of others in the institution. The department of children, youth, and families shall establish rules for the conduct of the hearing, including provision of counsel for the juvenile offender.

(3) Assaults made against any staff member at a juvenile corrections institution that are reported to a local law enforcement agency shall require a hearing held by the department of children, youth, and families review board within ten judicial working days. The board shall determine whether the accused juvenile offender represents a continuing and serious threat to the safety of others in the institution.

(4) Upon conviction in a court of law for custodial assault as defined in RCW 9A.36.100, the department of children, youth, and families review board shall conduct a second hearing, within five judicial working days, to recommend to the secretary of the department of children, youth, and families that the convicted juvenile be transferred to an adult correctional facility if the review board has determined the juvenile offender represents a continuing and serious threat to the safety of others in the institution.

The juvenile has the burden to show cause why the transfer to an adult correctional facility should not occur.

(5) A juvenile offender transferred to an institution operated by the department of corrections shall not remain in such an institution beyond the maximum term of confinement imposed by the juvenile court.

(6) A juvenile offender who has been transferred to the department of corrections under this section may, in the discretion of the secretary of the department of children, youth, and families and with the consent of the secretary of the department of corrections, be transferred from an institution operated by the department of corrections to a facility for juvenile offenders deemed appropriate by the secretary. [2017 3rd sp.s. c 6 § 611. Prior: 1989 c 410 § 2; 1989 c 407 § 8; 1983 c 191 § 22.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Purpose—1989 c 410: "The legislature recognizes the ever-increasing severity of offenses committed by juvenile offenders residing in this state's juvenile detention facilities and the increasing aggressive nature of detained juveniles due to drugs and gang-related violence. The purpose of this act is to provide necessary protection to state employees and juvenile residents of these institutions from assaults committed against them by juvenile detainees." [1989 c 410 § 1.]

13.40.285 Juvenile offender sentenced to terms in juvenile and adult facilities—Transfer to department of corrections—Term of confinement. (Effective July 1, 2019.) A juvenile offender ordered to serve a term of confinement with the department of children, youth, and families who is subsequently sentenced to the department of corrections may, with the consent of the department of corrections, be transferred by the secretary of children, youth, and families to the department of corrections to serve the balance of the term of confinement ordered by the juvenile court. The juvenile and adult sentences shall be served consecutively. In no case shall the secretary credit time served as a result of an adult conviction against the term of confinement ordered by the juvenile court. [2017 3rd sp.s. c 6 § 612; 1983 c 191 § 23.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

13.40.300 Commitment of juvenile beyond age twenty-one prohibited—Jurisdiction of juvenile court after juvenile's eighteenth birthday. (Effective July 1, 2019.) (1) In no case may a juvenile offender be committed by the juvenile court to the department of children, youth, and families for placement in a juvenile correctional institution beyond the juvenile offender's twenty-first birthday. A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of children, youth, and families beyond the juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday:

(a) Proceedings are pending seeking the adjudication of a juvenile offense and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday;

(b) The juvenile has been found guilty after a fact finding or after a plea of guilty and an automatic extension is necessary to allow for the imposition of disposition;

(c) Disposition has been held and an automatic extension is necessary to allow for the execution and enforcement of the court's order of disposition. If an order of disposition imposes commitment to the department, then jurisdiction is automatically extended to include a period of up to twelve months of parole, in no case extending beyond the offender's twenty-first birthday; or

(d) While proceedings are pending in a case in which jurisdiction has been transferred to the adult criminal court pursuant to RCW 13.04.030, the juvenile turns eighteen years of age and is subsequently found not guilty of the charge for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense, and an automatic extension is necessary to impose the disposition as required by RCW 13.04.030(1)(e)(v)(E).

(2) If the juvenile court previously has extended jurisdiction beyond the juvenile offender's eighteenth birthday and that period of extension has not expired, the court may further extend jurisdiction by written order setting forth its reasons.

(3) In no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday except for the purpose of enforcing an order of restitution or penalty assessment.

(4) Notwithstanding any extension of jurisdiction over a person pursuant to this section, the juvenile court has no jurisdiction over any offenses alleged to have been committed by a person eighteen years of age or older. [2017 3rd sp.s. c 6 § 613; 2005 c 238 § 2; 2000 c 71 § 2; 1994 sp.s. c 7 § 530; 1986 c 288 § 6; 1983 c 191 § 17; 1981 c 299 § 17; 1979 c 155 § 73; 1975 1st ex.s. c 170 § 1. Formerly RCW 13.04.260.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

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

Additional notes found at www.leg.wa.gov

13.40.310 Transitional treatment program for gang and drug-involved juvenile offenders. (Effective July 1, 2019.) (1) The department may contract with a community-based nonprofit organization to establish a three-step transitional treatment program for gang and drug-involved juvenile offenders committed to the custody of the department under this chapter. Any such program shall provide six to twenty-four months of treatment. The program shall emphasize the principles of self-determination, unity, collective work and responsibility, cooperative economics, and creativity. The program shall be culturally relevant and appropriate and shall include:

(a) A culturally relevant and appropriate institution-based program that provides comprehensive drug and alcohol services, individual and family counseling, and a wilderness experience of constructive group living, rigorous physical exercise, and academic studies;

(b) A culturally relevant and appropriate community-based structured group living program that focuses on indi-

vidual goals, positive community involvement, coordinated drug and alcohol treatment, coordinated individual and family counseling, academic and vocational training, and employment in apprenticeship, internship, and entrepreneurial programs; and

(c) A culturally relevant and appropriate transitional group living program that provides support services, academic services, and coordinated individual and family counseling.

(2) Participation in any such program shall be on a voluntary basis.

(3) The department shall adopt rules as necessary to implement any such program. [2017 3rd sp.s. c 6 § 614; 1991 c 326 § 4.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Finding—1991 c 326: "The legislature finds that a destructive lifestyle of drug and street gang activity is rapidly becoming prevalent among some of the state's youths. Gang and drug activity may be a culturally influenced phenomenon which the legislature intends public and private agencies to consider and address in prevention and treatment programs. Gang and drug-involved youths are more likely to become addicted to drugs or alcohol, live in poverty, experience high unemployment, be incarcerated, and die of violence than other youths." [1991 c 326 § 3.]

13.40.320 Juvenile offender basic training camp program. (Effective July 1, 2019.) (1) The department may establish a medium security juvenile offender basic training camp program. This program for juvenile offenders serving a term of confinement under the supervision of the department is exempt from the licensing requirements of chapter 74.15 RCW.

(2) The department may contract under this chapter with private companies, the national guard, or other federal, state, or local agencies to operate the juvenile offender basic training camp.

(3) The juvenile offender basic training camp shall be a structured and regimented model emphasizing the building up of an offender's self-esteem, confidence, and discipline. The juvenile offender basic training camp program shall provide participants with basic education, prevocational training, work-based learning, work experience, work ethic skills, conflict resolution counseling, substance abuse intervention, anger management counseling, and structured intensive physical training. The juvenile offender basic training camp program shall have a curriculum training and work schedule that incorporates a balanced assignment of these or other rehabilitation and training components for no less than sixteen hours per day, six days a week.

The department shall develop standards for the safe and effective operation of the juvenile offender basic training camp program, for an offender's successful program completion, and for the continued after-care supervision of offenders who have successfully completed the program.

(4) Offenders eligible for the juvenile offender basic training camp option shall be those with a disposition of not more than sixty-five weeks. Violent and sex offenders shall not be eligible for the juvenile offender basic training camp program.

(5) If the court determines that the offender is eligible for the juvenile offender basic training camp option, the court may recommend that the department place the offender in the program. The department shall evaluate the offender and may place the offender in the program. The evaluation shall include, at a minimum, a risk assessment developed by the department and designed to determine the offender's suitability for the program. No juvenile who is assessed as a high risk offender or suffers from any mental or physical problems that could endanger his or her health or drastically affect his or her performance in the program shall be admitted to or retained in the juvenile offender basic training camp program.

(6) All juvenile offenders eligible for the juvenile offender basic training camp sentencing option shall spend one hundred twenty days of their disposition in a juvenile offender basic training camp. This period may be extended for up to forty days by the secretary if a juvenile offender requires additional time to successfully complete the basic training camp program. If the juvenile offender's activities while in the juvenile offender basic training camp are so disruptive to the juvenile offender basic training camp program, as determined by the secretary according to standards developed by the department, as to result in the removal of the juvenile offender from the juvenile offender basic training camp program, or if the offender cannot complete the juvenile offender basic training camp program due to medical problems, the secretary shall require that the offender be committed to a juvenile institution to serve the entire remainder of his or her disposition, less the amount of time already served in the juvenile offender basic training camp program.

(7) All offenders who successfully graduate from the juvenile offender basic training camp program shall spend the remainder of their disposition on parole in a department juvenile rehabilitation intensive aftercare program in the local community. Violation of the conditions of parole is subject to sanctions specified in RCW 13.40.210(4). The program shall provide for the needs of the offender based on his or her progress in the aftercare program as indicated by ongoing assessment of those needs and progress. The intensive aftercare program shall monitor postprogram juvenile offenders and assist them to successfully reintegrate into the community. In addition, the program shall develop a process for closely monitoring and assessing public safety risks. The intensive aftercare program shall be designed and funded by the department.

(8) The department shall also develop and maintain a database to measure recidivism rates specific to this incarceration program. The database shall maintain data on all juvenile offenders who complete the juvenile offender basic training camp program for a period of two years after they have completed the program. The database shall also maintain data on the criminal activity, educational progress, and employment activities of all juvenile offenders who participated in the program. [2017 3rd sp.s. c 6 § 615; 2015 3rd sp.s. c 23 § 1; 2002 c 354 § 234; 2001 c 137 § 1; 1997 c 338 § 38; 1995 c 40 § 1; 1994 sp.s. c 7 § 532.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

[2017 RCW Supp—page 112]

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

Findings and intent—Juvenile basic training camps—1994 sp.s. c 7: "The legislature finds that the number of juvenile offenders and the severity of their crimes is increasing rapidly statewide. In addition, many juvenile offenders continue to reoffend after they are released from the juvenile justice system causing disproportionately high and expensive rates of recidivism.

The legislature further finds that juvenile criminal behavior is often the result of a lack of self-discipline, the lack of systematic work habits and ethics, the inability to deal with authority figures, and an unstable or unstructured living environment. The legislature further finds that the department of social and health services currently operates an insufficient number of confinement beds to meet the rapidly growing juvenile offender population. Together these factors are combining to produce a serious public safety hazard and the need to develop more effective and stringent juvenile punishment and rehabilitation options.

The legislature intends that juvenile offenders who enter the state rehabilitation system have the opportunity and are given the responsibility to become more effective participants in society by enhancing their personal development, work ethics, and life skills. The legislature recognizes that structured incarceration programs for juvenile offenders such as juvenile offender basic training camps, can instill the self-discipline, accountability, self-esteem, and work ethic skills that could discourage many offenders from returning to the criminal justice system. Juvenile offender basic training camp incarceration programs generally emphasize life skills training, pre-occupational work skills training, anger management, dealing with difficult at-home family problems and/or abuses, discipline, physical training, structured and intensive work activities, and educational classes. The legislature further recognizes that juvenile offenders can benefit from a highly structured basic training camp environment and the public can also benefit through increased public protection and reduced cost due to lowered rates of recidivism." [1994 sp.s. c 7 § 531.]

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

Additional notes found at www.leg.wa.gov

13.40.460 Juvenile rehabilitation programs—Administration. (Effective July 1, 2019.) The secretary or the secretary's designee shall manage and administer the department's juvenile rehabilitation responsibilities, including but not limited to the operation of all state institutions or facilities used for juvenile rehabilitation.

The secretary or the secretary's designee shall:

- (1) Prepare a biennial budget request sufficient to meet the confinement and rehabilitative needs of the juvenile rehabilitation program, as forecast by the office of financial management;
- (2) Create by rule a formal system for inmate classification. This classification system shall consider:
 - (a) Public safety;
 - (b) Internal security and staff safety;
 - (c) Rehabilitative resources both within and outside the department;
 - (d) An assessment of each offender's risk of sexually aggressive behavior as provided in RCW 13.40.470; and
 - (e) An assessment of each offender's vulnerability to sexually aggressive behavior as provided in RCW 13.40.470;
- (3) Develop agreements with local jurisdictions to develop regional facilities with a variety of custody levels;
- (4) Adopt rules establishing effective disciplinary policies to maintain order within institutions;
- (5) Develop a comprehensive diagnostic evaluation process to be used at intake, including but not limited to evaluation for substance addiction or abuse, literacy, learning disabilities, fetal alcohol syndrome or effect, attention deficit disorder, and mental health;

(6) Develop placement criteria:

(a) To avoid assigning youth who present a moderate or high risk of sexually aggressive behavior to the same sleeping quarters as youth assessed as vulnerable to sexual victimization under RCW 13.40.470(1)(c); and

(b) To avoid placing a juvenile offender on parole status who has been assessed as a moderate to high risk for sexually aggressive behavior in a department community residential program with another child who is: (i) Dependent under chapter 13.34 RCW, or an at-risk youth or child in need of services under chapter 13.32A RCW; and (ii) not also a juvenile offender on parole status;

(7) Develop a plan to implement, by July 1, 1995:

(a) Substance abuse treatment programs for all state juvenile rehabilitation facilities and institutions;

(b) Vocational education and instruction programs at all state juvenile rehabilitation facilities and institutions; and

(c) An educational program to establish self-worth and responsibility in juvenile offenders. This educational program shall emphasize instruction in character-building principles such as: Respect for self, others, and authority; victim awareness; accountability; work ethics; good citizenship; and life skills; and

(8)(a) The department shall develop uniform policies related to custodial assaults consistent with RCW 72.01.045 and 9A.36.100 that are to be followed in all juvenile rehabilitation facilities; and

(b) The department will report assaults in accordance with the policies developed in (a) of this subsection. [2017 3rd sp.s. c 6 § 616; 2003 c 229 § 1; 1999 c 372 § 2; 1997 c 386 § 54; 1994 sp.s. c 7 § 516.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Finding—Intent—1997 c 386 §§ 50-55: See note following RCW 13.40.470.

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

Additional notes found at www.leg.wa.gov

13.40.462 Reinvesting in youth program. (Effective July 1, 2019.) (1) The department shall establish a reinvesting in youth program that awards grants to counties for implementing research-based early intervention services that target juvenile justice-involved youth and reduce crime, subject to the availability of amounts appropriated for this specific purpose.

(2) Effective July 1, 2007, any county or group of counties may apply for participation in the reinvesting in youth program.

(3) Counties that participate in the reinvesting in youth program shall have a portion of their costs of serving youth through the research-based intervention service models paid for with moneys from the reinvesting in youth account established pursuant to RCW 13.40.466.

(4) The department shall review county applications for funding through the reinvesting in youth program and shall select the counties that will be awarded grants with funds appropriated to implement this program. The department, in consultation with the Washington state institute for public

policy, shall develop guidelines to determine which counties will be awarded funding in accordance with the reinvesting in youth program. At a minimum, counties must meet the following criteria in order to participate in the reinvesting in youth program:

(a) Counties must match state moneys awarded for research-based early intervention services with nonstate resources that are at least proportional to the expected local government share of state and local government cost avoidance that would result from the implementation of such services;

(b) Counties must demonstrate that state funds allocated pursuant to this section are used only for the intervention service models authorized pursuant to RCW 13.40.464;

(c) Counties must participate fully in the state quality assurance program established in RCW 13.40.468 to ensure fidelity of program implementation. If no state quality assurance program is in effect for a particular selected research-based service, the county must submit a quality assurance plan for state approval with its grant application. Failure to demonstrate continuing compliance with quality assurance plans shall be grounds for termination of state funding; and

(d) Counties that submit joint applications must submit for approval by the department multicounty plans for efficient program delivery. [2017 3rd sp.s. c 6 § 617; 2011 1st sp.s. c 32 § 4; 2006 c 304 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Transition plan—Report to the legislature—2011 1st sp.s. c 32: See note following RCW 70.305.005.

Finding—Intent—2006 c 304: "The legislature finds that there are youth and family-focused intervention services that have been proven through rigorous evaluation in the state of Washington and elsewhere to significantly reduce violence and crime while saving more public safety dollars than they cost. Under current state laws, no local government acting alone has the financial incentive to invest in these cost-effective services because the savings accrue to multiple levels of government with the largest savings going to the state. It is the intent of the legislature to create incentives for local government to invest in cost-effective intervention services that reduce crime by reimbursing local governments with a portion of the cost savings that accrue to the state as the result of local investments in such services." [2006 c 304 § 1.]

Additional notes found at www.leg.wa.gov

13.40.464 Reinvesting in youth program—Guidelines. (Effective July 1, 2019.) (1)(a) In order to receive funding through the reinvesting in youth program established pursuant to RCW 13.40.462, intervention service models must meet the following minimum criteria:

(i) There must be scientific evidence from at least one rigorous evaluation study of the specific service model that measures recidivism reduction;

(ii) There must be evidence that the specific service model's results can be replicated outside of an academic research environment;

(iii) The evaluation or evaluations of the service model must permit dollar cost estimates of both benefits and costs so that the benefit-cost ratio of the model can be calculated; and

(iv) The public taxpayer benefits to all levels of state and local government must exceed the service model costs.

(b) In calendar year 2006, for use beginning in fiscal year 2008, the Washington state institute for public policy shall publish a list of service models that are eligible for reimbursement through the investing in youth program. As authorized by the board of the institute and to the extent necessary to respond to new research and information, the institute shall periodically update the list of service models. The institute shall use the technical advisory committee established in *RCW 13.40.462(5) to review and provide comments on the list of service models that are eligible for reimbursement.

(2) In calendar year 2006, for use beginning in fiscal year 2008, the Washington state institute for public policy shall review and update the methodology for calculating cost savings resulting from implementation of this program. As authorized by the board of the institute and to the extent necessary to respond to new research and information, the institute shall periodically further review and update the methodology. As authorized by the board of the institute, when the institute reviews and updates the methodology for calculating cost savings, the institute shall provide an estimate of savings and avoided costs resulting from this program, along with a projection of future savings and avoided costs, to the appropriate committees of the legislature. The institute shall use the technical advisory committee established in *RCW 13.40.462(5) to review and provide comments on its methodology and cost calculations.

(3) In calendar year 2006, for use beginning in fiscal year 2008, the department shall establish a distribution formula to provide funding to local governments that implement research-based intervention services pursuant to this program. The department shall periodically update the distribution formula. The distribution formula shall require that the state allocation to local governments be proportional to the expected state government share of state and local government cost avoidance that would result from the implementation of such services based on the methodology maintained by the Washington state institute for public policy pursuant to subsection (2) of this section. The department shall use the technical advisory committee established in *RCW 13.40.462(5) to review and provide comments on its proposed distribution formula. [2017 3rd sp.s. c 6 § 618; 2006 c 304 § 3.]

***Reviser's note:** RCW 13.40.462 was amended by 2011 1st sp.s. c 32 § 4, deleting subsection (5).

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Finding—Intent—Entitlement not created—Effective date—2006 c 304: See notes following RCW 13.40.462.

13.40.466 Reinvesting in youth account. (Effective July 1, 2019.) (1) The reinvesting in youth account is created in the state treasury. Moneys in the account shall be spent only after appropriation. Expenditures from the account may be used to reimburse local governments for the implementation of the reinvesting in youth program established in RCW 13.40.462 and 13.40.464. During the 2013-2015 fiscal biennium, the legislature may appropriate moneys from the reinvesting in youth account for juvenile rehabilitation purposes.

[2017 RCW Supp—page 114]

(2) Revenues to the reinvesting in youth account consist of revenues appropriated to or deposited in the account.

(3) The department shall review and monitor the expenditures made by any county or group of counties that is funded, in whole or in part, with funds provided through the reinvesting in youth account. Counties shall repay any funds that are not spent in accordance with RCW 13.40.462 and 13.40.464. [2017 3rd sp.s. c 6 § 619; 2013 2nd sp.s. c 4 § 953; 2006 c 304 § 4.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Finding—Intent—Entitlement not created—Effective date—2006 c 304: See notes following RCW 13.40.462.

13.40.468 Juvenile rehabilitation administration—State quality assurance program. (Effective July 1, 2019.)

The department shall establish a state quality assurance program. The department shall monitor the implementation of intervention services funded pursuant to RCW 13.40.466 and shall evaluate adherence to service model design and service completion rate. [2017 3rd sp.s. c 6 § 620; 2006 c 304 § 6.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Finding—Intent—Entitlement not created—Effective date—2006 c 304: See notes following RCW 13.40.462.

13.40.510 Community juvenile accountability programs—Establishment—Proposals—Guidelines. (Effective July 1, 2019.)

(1) In order to receive funds under RCW 13.40.500 through 13.40.540, local governments may, through their respective agencies that administer funding for consolidated juvenile services, submit proposals that establish community juvenile accountability programs within their communities. These proposals must be submitted to the department for certification.

(2) The proposals must:

(a) Demonstrate that the proposals were developed with the input of the local law and justice councils established under RCW 72.09.300;

(b) Describe how local community groups or members are involved in the implementation of the programs funded under RCW 13.40.500 through 13.40.540;

(c) Include a description of how the grant funds will contribute to the expected outcomes of the program and the reduction of youth violence and juvenile crime in their community. Data approaches are not required to be replicated if the networks have information that addresses risks in the community for juvenile offenders.

(3) A local government receiving a grant under this section shall agree that any funds received must be used efficiently to encourage the use of community-based programs that reduce the reliance on secure confinement as the sole means of holding juvenile offenders accountable for their crimes. The local government shall also agree to account for the expenditure of all funds received under the grant and to

submit to audits for compliance with the grant criteria developed under RCW 13.40.520.

(4) The department, in consultation with the Washington association of juvenile court administrators and the state law and justice advisory council, shall establish guidelines for programs that may be funded under RCW 13.40.500 through 13.40.540. The guidelines must:

- (a) Target diverted and adjudicated juvenile offenders;
- (b) Include assessment methods to determine services, programs, and intervention strategies most likely to change behaviors and norms of juvenile offenders;
- (c) Provide maximum structured supervision in the community. Programs should use natural surveillance and community guardians such as employers, relatives, teachers, clergy, and community mentors to the greatest extent possible;
- (d) Promote good work ethic values and educational skills and competencies necessary for the juvenile offender to function effectively and positively in the community;
- (e) Maximize the efficient delivery of treatment services aimed at reducing risk factors associated with the commission of juvenile offenses;
- (f) Maximize the reintegration of the juvenile offender into the community upon release from confinement;
- (g) Maximize the juvenile offender's opportunities to make full restitution to the victims and amends to the community;
- (h) Support and encourage increased court discretion in imposing community-based intervention strategies;
- (i) Be compatible with research that shows which prevention and early intervention strategies work with juvenile offenders;
- (j) Be outcome-based in that it describes what outcomes will be achieved or what outcomes have already been achieved;
- (k) Include an evaluation component; and
- (l) Recognize the diversity of local needs.

(5) The state law and justice advisory council may provide support and technical assistance to local governments for training and education regarding community-based prevention and intervention strategies. [2017 3rd sp.s. c 6 § 621; 2010 1st sp.s. c 7 § 62; 1997 c 338 § 61.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.40.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

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

Additional notes found at www.leg.wa.gov

13.40.520 Community juvenile accountability programs—Grants. (Effective July 1, 2019.) (1) The state may make grants to local governments for the provision of community-based programs for juvenile offenders. The grants must be made under a grant formula developed by the department, in consultation with the Washington association of juvenile court administrators.

(2) Upon certification by the department that a proposal satisfies the application and selection criteria, grant funds

will be distributed to the local government agency that administers funding for consolidated juvenile services. [2017 3rd sp.s. c 6 § 622; 1997 c 338 § 62.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.40.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

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

Additional notes found at www.leg.wa.gov

13.40.540 Community juvenile accountability programs—Information collection—Report. (Effective July 1, 2019.) (1) Each community juvenile accountability program approved and funded under RCW 13.40.500 through 13.40.540 shall comply with the information collection requirements in subsection (2) of this section and the reporting requirements in subsection (3) of this section.

(2) The information collected by each community juvenile accountability program must include, at a minimum for each juvenile participant: (a) The name, date of birth, gender, social security number, and, when available, the juvenile information system (JUVIS) control number; (b) an initial intake assessment of each juvenile participating in the program; (c) a list of all juveniles who completed the program; and (d) an assessment upon completion or termination of each juvenile, including outcomes and, where applicable, reasons for termination.

(3) The department shall annually compile the data and report to the legislature on: (a) The programs funded under RCW 13.40.500 through 13.40.540; (b) the total cost for each funded program and cost per juvenile; and (c) the essential elements of the program. [2017 3rd sp.s. c 6 § 623; 1997 c 338 § 64.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.40.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

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

Additional notes found at www.leg.wa.gov

13.40.560 Juvenile accountability incentive account. (Effective July 1, 2019.) The juvenile accountability incentive account is created in the custody of the state treasurer. Federal awards for juvenile accountability incentives received by the secretary of the department shall be deposited into the account. Interest earned from the inception of the trust account shall be deposited in the account. Expenditures from the account may be used only for the purposes specified in the federal award or awards. Moneys in the account may be spent only after appropriation. [2017 3rd sp.s. c 6 § 624; 1999 c 182 § 1.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.40.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

13.40.800 Decodified. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 13.50 RCW

KEEPING AND RELEASE OF RECORDS BY
JUVENILE JUSTICE OR CARE AGENCIES

Sections

- 13.50.010 Definitions—Conditions when filing petition or information—Duties to maintain accurate records and access—Confidential child welfare records. (*Effective until July 1, 2018.*)
- 13.50.010 Definitions—Conditions when filing petition or information—Duties to maintain accurate records and access—Confidential child welfare records. (*Effective July 1, 2018.*)
- 13.50.100 Records not relating to commission of juvenile offenses—Maintenance and access—Release of information for child custody hearings—Disclosure of unfounded allegations prohibited. (*Effective July 1, 2018.*)
- 13.50.140 Disclosure of privileged information to office of the family and children's ombuds—Privilege not waived as to others. (*Effective July 1, 2018.*)

13.50.010 Definitions—Conditions when filing petition or information—Duties to maintain accurate records and access—Confidential child welfare records. (*Effective until July 1, 2018.*) (1) For purposes of this chapter:

(a) "Good faith effort to pay" means a juvenile offender has either (i) paid the principal amount in full; (ii) made at least eighty percent of the value of full monthly payments within the period from disposition or deferred disposition until the time the amount of restitution owed is under review; or (iii) can show good cause why he or she paid an amount less than eighty percent of the value of full monthly payments;

(b) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the legislative children's oversight committee, the office of the family and children's ombuds, the department of social and health services and its contracting agencies, schools; persons or public or private agencies having children committed to their custody; and any placement oversight committee created under RCW 72.05.415;

(c) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, notices of hearing or appearance, service documents, witness and exhibit lists, findings of the court and court orders, agreements, judgments, decrees, notices of appeal, as well as documents prepared by the clerk, including court minutes, letters, warrants, waivers, affidavits, declarations, invoices, and the index to clerk papers;

(d) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case;

(e) "Social file" means the juvenile court file containing the records and reports of the probation counselor.

(2) Each petition or information filed with the court may include only one juvenile and each petition or information shall be filed under a separate docket number. The social file shall be filed separately from the official juvenile court file.

(3) It is the duty of any juvenile justice or care agency to maintain accurate records. To this end:

(a) The agency may never knowingly record inaccurate information. Any information in records maintained by the department of social and health services relating to a petition filed pursuant to chapter 13.34 RCW that is found by the court to be false or inaccurate shall be corrected or expunged from such records by the agency;

(b) An agency shall take reasonable steps to assure the security of its records and prevent tampering with them; and

(c) An agency shall make reasonable efforts to insure the completeness of its records, including action taken by other agencies with respect to matters in its files.

(4) Each juvenile justice or care agency shall implement procedures consistent with the provisions of this chapter to facilitate inquiries concerning records.

(5) Any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency and who has been denied access to those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency record concerning that person. The court shall grant the motion to examine records unless it finds that in the interests of justice or in the best interests of the juvenile the records or parts of them should remain confidential.

(6) A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency may make a motion to the court challenging the accuracy of any information concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court grants the motion, it shall order the record or information to be corrected or destroyed.

(7) The person making a motion under subsection (5) or (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment. The court may also permit inspection by or release to individuals or agencies, including juvenile justice advisory committees of county law and justice councils, engaged in legitimate research for educational, scientific, or public purposes. Each person granted permission to inspect juvenile justice or care agency records for research purposes shall present a notarized statement to the court stating that the names of juveniles and parents will remain confidential.

(9) The court shall release to the caseload forecast council the records needed for its research and data-gathering functions. Access to caseload forecast data may be permitted by the council for research purposes only if the anonymity of all persons mentioned in the records or information will be preserved.

(10) Juvenile detention facilities shall release records to the caseload forecast council upon request. The commission shall not disclose the names of any juveniles or parents mentioned in the records without the named individual's written permission.

(11) Requirements in this chapter relating to the court's authority to compel disclosure shall not apply to the legislative children's oversight committee or the office of the family and children's ombuds.

(12) For the purpose of research only, the administrative office of the courts shall maintain an electronic research copy of all records in the judicial information system related to juveniles. Access to the research copy is restricted to the administrative office of the courts for research purposes as

authorized by the supreme court or by state statute. The administrative office of the courts shall maintain the confidentiality of all confidential records and shall preserve the anonymity of all persons identified in the research copy. Data contained in the research copy may be shared with other governmental agencies as authorized by state statute, pursuant to data-sharing and research agreements, and consistent with applicable security and confidentiality requirements. The research copy may not be subject to any records retention schedule and must include records destroyed or removed from the judicial information system pursuant to RCW 13.50.270 and 13.50.100(3).

(13) The court shall release to the Washington state office of public defense records needed to implement the agency's oversight, technical assistance, and other functions as required by RCW 2.70.020. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of public defense. The Washington state office of public defense shall maintain the confidentiality of all confidential information included in the records.

(14) The court shall release to the Washington state office of civil legal aid records needed to implement the agency's oversight, technical assistance, and other functions as required by RCW 2.53.045. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of civil legal aid. The Washington state office of civil legal aid shall maintain the confidentiality of all confidential information included in the records, and shall, as soon as possible, destroy any retained notes or records obtained under this section that are not necessary for its functions related to RCW 2.53.045.

(15) For purposes of providing for the educational success of youth in foster care, the department of social and health services may disclose only those confidential child welfare records that pertain to or may assist with meeting the educational needs of foster youth to another state agency or state agency's contracted provider responsible under state law or contract for assisting foster youth to attain educational success. The records retain their confidentiality pursuant to this chapter and federal law and cannot be further disclosed except as allowed under this chapter and federal law.

(16) For the purpose of ensuring the safety and welfare of the youth who are in foster care, the department of social and health services may disclose to the department of commerce and its contracted providers responsible under state law or contract for providing services to youth, only those confidential child welfare records that pertain to ensuring the safety and welfare of the youth who are in foster care who are admitted to crisis residential centers or HOPE centers under contract with the office of homeless youth prevention and protection. Records disclosed under this subsection retain their confidentiality pursuant to this chapter and federal law and may not be further disclosed except as permitted by this chapter and federal law. [2017 c 277 § 1. Prior: 2016 c 93 § 2; 2016 c 72 § 109; 2016 c 71 § 2; prior: 2015 c 265 § 2; 2015 c 262 § 1; prior: 2014 c 175 § 2; 2014 c 117 § 5; 2013 c 23 § 6; 2011 1st sp.s. c 40 § 30; 2010 c 150 § 3; 2009 c 440 § 1; 1998 c 269 § 4; prior: 1997 c 386 § 21; 1997 c 338 § 39; 1996 c 232 § 6; 1994 sp.s. c 7 § 541; 1993 c 374 § 1; 1990 c 246 § 8; 1986 c 288 § 11; 1979 c 155 § 8.]

Finding—Intent—2016 c 72: See note following RCW 28A.600.015.

Intent—2016 c 71: See note following RCW 28A.300.590.

Finding—Intent—2015 c 265: "The legislature finds that requiring juvenile offenders to pay all legal financial obligations before being eligible to have a juvenile record administratively sealed disproportionately affects youth based on their socioeconomic status. Juveniles who cannot afford to pay their legal financial obligations cannot seal their juvenile records once they turn eighteen and oftentimes struggle to find employment. By eliminating most nonrestitution legal financial obligations for juveniles convicted of less serious crimes, juvenile offenders will be better able to find employment and focus on making restitution payments first to the actual victim. This legislation is intended to help juveniles understand the consequences of their actions and the harm that those actions have caused others without placing insurmountable burdens on juveniles attempting to become productive members of society. Depending on the juvenile's ability to pay, and upon the consent of the victim, courts should also strongly consider ordering community restitution in lieu of paying restitution where appropriate." [2015 c 265 § 1.]

Findings—Intent—2014 c 175: "The legislature finds that:

(1) The primary goal of the Washington state juvenile justice system is the rehabilitation and reintegration of former juvenile offenders. The public has a compelling interest in the rehabilitation of former juvenile offenders and their successful reintegration into society as active, law-abiding, and contributing members of their communities. When juvenile court records are publicly available, former juvenile offenders face substantial barriers to reintegration, as they are denied housing, employment, and education opportunities on the basis of these records.

(2) The legislature declares it is the policy of the state of Washington that the interest in juvenile rehabilitation and reintegration constitutes compelling circumstances that outweigh the public interest in continued availability of juvenile court records. The legislature intends that juvenile court proceedings be openly administered but, except in limited circumstances, the records of these proceedings be closed when the juvenile has reached the age of eighteen and completed the terms of disposition." [2014 c 175 § 1.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

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

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

Additional notes found at www.leg.wa.gov

13.50.010 Definitions—Conditions when filing petition or information—Duties to maintain accurate records and access—Confidential child welfare records. (Effective July 1, 2018.) (1) For purposes of this chapter:

(a) "Good faith effort to pay" means a juvenile offender has either (i) paid the principal amount in full; (ii) made at least eighty percent of the value of full monthly payments within the period from disposition or deferred disposition until the time the amount of restitution owed is under review; or (iii) can show good cause why he or she paid an amount less than eighty percent of the value of full monthly payments;

(b) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the oversight board for children, youth, and families, the office of the family and children's ombuds, the department of social and health services and its contracting agencies, the department of children, youth, and families and its contracting agencies, schools; persons or public or private agencies having children committed to their custody; and any placement oversight committee created under RCW 72.05.415;

(c) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information,

motions, memorandums, briefs, notices of hearing or appearance, service documents, witness and exhibit lists, findings of the court and court orders, agreements, judgments, decrees, notices of appeal, as well as documents prepared by the clerk, including court minutes, letters, warrants, waivers, affidavits, declarations, invoices, and the index to clerk papers;

(d) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case;

(e) "Social file" means the juvenile court file containing the records and reports of the probation counselor.

(2) Each petition or information filed with the court may include only one juvenile and each petition or information shall be filed under a separate docket number. The social file shall be filed separately from the official juvenile court file.

(3) It is the duty of any juvenile justice or care agency to maintain accurate records. To this end:

(a) The agency may never knowingly record inaccurate information. Any information in records maintained by the department of social and health services relating to a petition filed pursuant to chapter 13.34 RCW that is found by the court to be false or inaccurate shall be corrected or expunged from such records by the agency;

(b) An agency shall take reasonable steps to assure the security of its records and prevent tampering with them; and

(c) An agency shall make reasonable efforts to insure the completeness of its records, including action taken by other agencies with respect to matters in its files.

(4) Each juvenile justice or care agency shall implement procedures consistent with the provisions of this chapter to facilitate inquiries concerning records.

(5) Any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency and who has been denied access to those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency record concerning that person. The court shall grant the motion to examine records unless it finds that in the interests of justice or in the best interests of the juvenile the records or parts of them should remain confidential.

(6) A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency may make a motion to the court challenging the accuracy of any information concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court grants the motion, it shall order the record or information to be corrected or destroyed.

(7) The person making a motion under subsection (5) or (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment. The court may also permit inspection by or release to individuals or agencies, including juvenile justice advisory committees of county law and justice councils, engaged in legitimate research for educational, scientific, or public purposes. Each person granted permission to inspect juvenile justice or care

agency records for research purposes shall present a notarized statement to the court stating that the names of juveniles and parents will remain confidential.

(9) The court shall release to the caseload forecast council the records needed for its research and data-gathering functions. Access to caseload forecast data may be permitted by the council for research purposes only if the anonymity of all persons mentioned in the records or information will be preserved.

(10) Juvenile detention facilities shall release records to the caseload forecast council upon request. The commission shall not disclose the names of any juveniles or parents mentioned in the records without the named individual's written permission.

(11) Requirements in this chapter relating to the court's authority to compel disclosure shall not apply to the oversight board for children, youth, and families or the office of the family and children's ombuds.

(12) For the purpose of research only, the administrative office of the courts shall maintain an electronic research copy of all records in the judicial information system related to juveniles. Access to the research copy is restricted to the administrative office of the courts for research purposes as authorized by the supreme court or by state statute. The administrative office of the courts shall maintain the confidentiality of all confidential records and shall preserve the anonymity of all persons identified in the research copy. Data contained in the research copy may be shared with other governmental agencies as authorized by state statute, pursuant to data-sharing and research agreements, and consistent with applicable security and confidentiality requirements. The research copy may not be subject to any records retention schedule and must include records destroyed or removed from the judicial information system pursuant to RCW 13.50.270 and 13.50.100(3).

(13) The court shall release to the Washington state office of public defense records needed to implement the agency's oversight, technical assistance, and other functions as required by RCW 2.70.020. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of public defense. The Washington state office of public defense shall maintain the confidentiality of all confidential information included in the records.

(14) The court shall release to the Washington state office of civil legal aid records needed to implement the agency's oversight, technical assistance, and other functions as required by RCW 2.53.045. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of civil legal aid. The Washington state office of civil legal aid shall maintain the confidentiality of all confidential information included in the records, and shall, as soon as possible, destroy any retained notes or records obtained under this section that are not necessary for its functions related to RCW 2.53.045.

(15) For purposes of providing for the educational success of youth in foster care, the department of children, youth, and families may disclose only those confidential child welfare records that pertain to or may assist with meeting the educational needs of foster youth to another state agency or state agency's contracted provider responsible

under state law or contract for assisting foster youth to attain educational success. The records retain their confidentiality pursuant to this chapter and federal law and cannot be further disclosed except as allowed under this chapter and federal law.

(16) For the purpose of ensuring the safety and welfare of the youth who are in foster care, the department of children, youth, and families may disclose to the department of commerce and its contracted providers responsible under state law or contract for providing services to youth, only those confidential child welfare records that pertain to ensuring the safety and welfare of the youth who are in foster care who are admitted to crisis residential centers or HOPE centers under contract with the office of homeless youth prevention and protection. Records disclosed under this subsection retain their confidentiality pursuant to this chapter and federal law and may not be further disclosed except as permitted by this chapter and federal law.

(17) For purposes of investigating and preventing child abuse and neglect, and providing for the health care coordination and the well-being of children in foster care, the department of children, youth, and families may disclose only those confidential child welfare records that pertain to or may assist with investigation and prevention of child abuse and neglect, or may assist with providing for the health and well-being of children in foster care to the department of social and health services, the health care authority, or their contracting agencies. For purposes of investigating and preventing child abuse and neglect, and to provide for the coordination of health care and the well-being of children in foster care, the department of social and health services and the health care authority may disclose only those confidential child welfare records that pertain to or may assist with investigation and prevention of child abuse and neglect, or may assist with providing for the health care coordination and the well-being of children in foster care to the department of children, youth, and families, or its contracting agencies. The records retain their confidentiality pursuant to this chapter and federal law and cannot be further disclosed except as allowed under this chapter and federal law. [2017 3rd sp.s. c 6 § 312; 2017 c 277 § 1. Prior: 2016 c 93 § 2; 2016 c 72 § 109; 2016 c 71 § 2; prior: 2015 c 265 § 2; 2015 c 262 § 1; prior: 2014 c 175 § 2; 2014 c 117 § 5; 2013 c 23 § 6; 2011 1st sp.s. c 40 § 30; 2010 c 150 § 3; 2009 c 440 § 1; 1998 c 269 § 4; prior: 1997 c 386 § 21; 1997 c 338 § 39; 1996 c 232 § 6; 1994 sp.s. c 7 § 541; 1993 c 374 § 1; 1990 c 246 § 8; 1986 c 288 § 11; 1979 c 155 § 8.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Finding—Intent—2016 c 72: See note following RCW 28A.600.015.

Intent—2016 c 71: See note following RCW 28A.300.590.

Finding—Intent—2015 c 265: "The legislature finds that requiring juvenile offenders to pay all legal financial obligations before being eligible to have a juvenile record administratively sealed disproportionately affects youth based on their socioeconomic status. Juveniles who cannot afford to pay their legal financial obligations cannot seal their juvenile records once they turn eighteen and oftentimes struggle to find employment. By eliminating most nonrestitution legal financial obligations for juveniles convicted of less serious crimes, juvenile offenders will be better able to find employment and focus on making restitution payments first to the actual victim. This legislation is intended to help juveniles understand the consequences of their

actions and the harm that those actions have caused others without placing insurmountable burdens on juveniles attempting to become productive members of society. Depending on the juvenile's ability to pay, and upon the consent of the victim, courts should also strongly consider ordering community restitution in lieu of paying restitution where appropriate." [2015 c 265 § 1.]

Findings—Intent—2014 c 175: "The legislature finds that:

(1) The primary goal of the Washington state juvenile justice system is the rehabilitation and reintegration of former juvenile offenders. The public has a compelling interest in the rehabilitation of former juvenile offenders and their successful reintegration into society as active, law-abiding, and contributing members of their communities. When juvenile court records are publicly available, former juvenile offenders face substantial barriers to reintegration, as they are denied housing, employment, and education opportunities on the basis of these records.

(2) The legislature declares it is the policy of the state of Washington that the interest in juvenile rehabilitation and reintegration constitutes compelling circumstances that outweigh the public interest in continued availability of juvenile court records. The legislature intends that juvenile court proceedings be openly administered but, except in limited circumstances, the records of these proceedings be closed when the juvenile has reached the age of eighteen and completed the terms of disposition." [2014 c 175 § 1.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

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

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

Additional notes found at www.leg.wa.gov

13.50.100 Records not relating to commission of juvenile offenses—Maintenance and access—Release of information for child custody hearings—Disclosure of unfounded allegations prohibited. (Effective July 1, 2018.)

(1) This section governs records not covered by RCW 13.50.050, 13.50.260, and 13.50.270.

(2) Records covered by this section shall be confidential and shall be released only pursuant to this section and RCW 13.50.010.

(3) Records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility of supervising the juvenile. Records covered under this section and maintained by the juvenile courts which relate to the official actions of the agency may be entered in the statewide judicial information system. However, truancy records associated with a juvenile who has no other case history, and records of a juvenile's parents who have no other case history, shall be removed from the judicial information system when the juvenile is no longer subject to the compulsory attendance laws in chapter 28A.225 RCW. A county clerk is not liable for unauthorized release of this data by persons or agencies not in his or her employ or otherwise subject to his or her control, nor is the county clerk liable for inaccurate or incomplete information collected from litigants or other persons required to provide identifying data pursuant to this section.

(4) Subject to (a) of this subsection, the department of children, youth, and families may release information retained in the course of conducting child protective services investigations to a family or juvenile court hearing a petition for custody under chapter 26.10 RCW.

(a) Information that may be released shall be limited to information regarding investigations in which: (i) The juvenile was an alleged victim of abandonment or abuse or neglect; or (ii) the petitioner for custody of the juvenile, or any individual aged sixteen or older residing in the petitioner's household, is the subject of a founded or currently pending child protective services investigation made by the department of social and health services or the department of children, youth, and families subsequent to October 1, 1998.

(b) Additional information may only be released with the written consent of the subject of the investigation and the juvenile alleged to be the victim of abandonment or abuse and neglect, or the parent, custodian, guardian, or personal representative of the juvenile, or by court order obtained with notice to all interested parties.

(5) Any disclosure of records or information by the department of social and health services or the department of children, youth, and families, pursuant to this section shall not be deemed a waiver of any confidentiality or privilege attached to the records or information by operation of any state or federal statute or regulation, and any recipient of such records or information shall maintain it in such a manner as to comply with such state and federal statutes and regulations and to protect against unauthorized disclosure.

(6) A contracting agency or service provider of the department of social and health services or the department of children, youth, and families, that provides counseling, psychological, psychiatric, or medical services may release to the office of the family and children's ombuds information or records relating to services provided to a juvenile who is dependent under chapter 13.34 RCW without the consent of the parent or guardian of the juvenile, or of the juvenile if the juvenile is under the age of thirteen years, unless such release is otherwise specifically prohibited by law.

(7) A juvenile, his or her parents, the juvenile's attorney, and the juvenile's parent's attorney, shall, upon request, be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile except:

(a) If it is determined by the agency that release of this information is likely to cause severe psychological or physical harm to the juvenile or his or her parents the agency may withhold the information subject to other order of the court: PROVIDED, That if the court determines that limited release of the information is appropriate, the court may specify terms and conditions for the release of the information; or

(b) If the information or record has been obtained by a juvenile justice or care agency in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile, when the services have been sought voluntarily by the juvenile, and the juvenile has a legal right to receive those services without the consent of any person or agency, then the information or record may not be disclosed to the juvenile's parents without the informed consent of the juvenile unless otherwise authorized by law; or

(c) That the department of children, youth, and families may delete the name and identifying information regarding persons or organizations who have reported alleged child abuse or neglect.

(8) A juvenile or his or her parent denied access to any records following an agency determination under subsection

(7) of this section may file a motion in juvenile court requesting access to the records. The court shall grant the motion unless it finds access may not be permitted according to the standards found in subsection (7)(a) and (b) of this section.

(9) The person making a motion under subsection (8) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(10) Subject to the rules of discovery in civil cases, any party to a proceeding seeking a declaration of dependency or a termination of the parent-child relationship and any party's counsel and the guardian ad litem of any party, shall have access to the records of any natural or adoptive child of the parent, subject to the limitations in subsection (7) of this section. A party denied access to records may request judicial review of the denial. If the party prevails, he or she shall be awarded attorneys' fees, costs, and an amount not less than five dollars and not more than one hundred dollars for each day the records were wrongfully denied.

(11) No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020(1) may be disclosed to a child-placing agency, private adoption agency, or any other licensed provider. [2017 3rd sp.s. c 6 § 313; 2014 c 175 § 8; 2013 c 23 § 7; 2003 c 105 § 2; 2001 c 162 § 2; 2000 c 162 § 18; 1999 c 390 § 3; 1997 c 386 § 22; 1995 c 311 § 16; 1990 c 246 § 9; 1983 c 191 § 20; 1979 c 155 § 10.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Findings—Intent—2014 c 175: See note following RCW 13.50.010.

Additional notes found at www.leg.wa.gov

13.50.140 Disclosure of privileged information to office of the family and children's ombuds—Privilege not waived as to others. (Effective July 1, 2018.) Any communication or advice privileged under RCW 5.60.060 that is disclosed by the office of the attorney general, the department of children, youth, and families, or the department of social and health services to the office of the family and children's ombuds may not be deemed to be a waiver of the privilege as to others. [2017 3rd sp.s. c 6 § 314; 2013 c 23 § 8; 1999 c 390 § 8.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Chapter 13.60 RCW

MISSING CHILDREN CLEARINGHOUSE

Sections

- 13.60.010 Missing children and endangered person clearinghouse—Hotline—Distribution of information—Amber alert plan, endangered missing person advisory plan, silver alert designation. (Effective July 1, 2018.)
- 13.60.040 Children receiving services from department of children, youth, and families—Reporting by the department—Notification of child's whereabouts. (Effective July 1, 2018.)

13.60.010 Missing children and endangered person clearinghouse—Hotline—Distribution of information—Amber alert plan, endangered missing person advisory plan, silver alert designation. (Effective July 1, 2018.) (1) The Washington state patrol shall establish a missing children and endangered person clearinghouse which shall include the maintenance and operation of a toll-free telephone hotline. The clearinghouse shall distribute information to local law enforcement agencies, school districts, the department of children, youth, and families, and the general public regarding missing children and endangered persons. The information shall include pictures, bulletins, training sessions, reports, and biographical materials that will assist in local law enforcement efforts to locate missing children and endangered persons. The state patrol shall also maintain a regularly updated computerized link with national and other statewide missing person systems or clearinghouses, and within existing resources, shall develop and implement a plan, commonly known as an "amber alert plan" or an "endangered missing person advisory plan" which includes a "silver alert" designation for voluntary cooperation between local, state, tribal, and other law enforcement agencies, state government agencies, radio and television stations, cable and satellite systems, and social media pages and sites to enhance the public's ability to assist in recovering abducted children and missing endangered persons consistent with the state endangered missing person advisory plan.

(2) For the purposes of this chapter:

(a) "Child" or "children" means an individual under eighteen years of age.

(b) "Missing endangered person" means a person who is believed to be in danger because of age, health, mental or physical disability, in combination with environmental or weather conditions, or is believed to be unable to return to safety without assistance and who is:

(i) A person with a developmental disability as defined in RCW 71A.10.020(5);

(ii) A vulnerable adult as defined in RCW 74.34.020; or

(iii) A person who has been diagnosed as having Alzheimer's disease or other age-related dementia.

(c) "Silver alert" means the designated title of a missing endangered person advisory that will be used on a variable message sign and text of the highway advisory radio message when used as part of an activated advisory to assist in the recovery of a missing endangered person age sixty or older. [2017 3rd sp.s. c 6 § 315; 2015 1st sp.s. c 2 § 2; 2013 c 285 § 1; 2009 c 20 § 1; 1985 c 443 § 22.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Findings—2015 1st sp.s. c 2: "The legislature finds that Washington state's elderly population is growing and the number of individuals with dementia is increasing. The legislature further finds that approximately sixty percent of individuals with dementia will wander at least once and, that if not found within twenty-four hours, up to half of wandering seniors with dementia will suffer serious injury or death. The legislature further finds that the state of Washington has a compelling interest in protecting the safety of vulnerable citizens with cognitive impairments. The legislature further finds that creating a public notification system to broadcast information about missing persons with Alzheimer's disease, dementia, or other mental disabilities to aid in their safe return will help prevent unnecessary suffering and death." [2015 1st sp.s. c 2 § 1.]

Additional notes found at www.leg.wa.gov

13.60.040 Children receiving services from department of children, youth, and families—Reporting by the department—Notification of child's whereabouts. (Effective July 1, 2018.) The department of children, youth, and families shall develop a procedure for reporting missing children information to the missing children clearinghouse on children who are receiving departmental services in each of its administrative regions. The purpose of this procedure is to link parents to missing children. When the department has obtained information that a minor child has been located at a facility funded by the department, the department shall notify the clearinghouse and the child's legal custodian, advising the custodian of the child's whereabouts or that the child is subject to a dependency action. The department shall inform the clearinghouse when reunification occurs. [2017 3rd sp.s. c 6 § 316; 1999 c 267 § 18.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

Chapter 13.64 RCW EMANCIPATION OF MINORS

Sections

13.64.030	Service of petition—Notice—Date of hearing. (<i>Effective July 1, 2018.</i>)
13.64.050	Emancipation decree—Certified copy—Notation of emancipated status. (<i>Effective July 1, 2018.</i>)

13.64.030 Service of petition—Notice—Date of hearing. (Effective July 1, 2018.) The petitioner shall serve a copy of the filed petition and notice of hearing on the petitioner's parent or parents, guardian, or custodian at least fifteen days before the emancipation hearing. No summons shall be required. Service shall be waived if proof is made to the court that the address of the parent or parents, guardian, or custodian is unavailable or unascertainable. The petitioner shall also serve notice of the hearing on the department of children, youth, and families if the petitioner is subject to dependency disposition order under RCW 13.34.130. The hearing shall be held no later than sixty days after the date on which the petition is filed. [2017 3rd sp.s. c 6 § 317; 1993 c 294 § 3.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

13.64.050 Emancipation decree—Certified copy—Notation of emancipated status. (Effective July 1, 2018.) (1) The court shall grant the petition for emancipation, except as provided in subsection (2) of this section, if the petitioner proves the following facts by clear and convincing evidence: (a) That the petitioner is sixteen years of age or older; (b) that

the petitioner is a resident of the state; (c) that the petitioner has the ability to manage his or her financial affairs; and (d) that the petitioner has the ability to manage his or her personal, social, educational, and nonfinancial affairs.

(2) A parent, guardian, custodian, or in the case of a dependent minor, the department of children, youth, and families, may oppose the petition for emancipation. The court shall deny the petition unless it finds, by clear and convincing evidence, that denial of the grant of emancipation would be detrimental to the interests of the minor.

(3) Upon entry of a decree of emancipation by the court the petitioner shall be given a certified copy of the decree. The decree shall instruct the petitioner to obtain a Washington driver's license or a Washington identification card and direct the department of licensing make a notation of the emancipated status on the license or identification card. [2017 3rd sp.s. c 6 § 318; 1993 c 294 § 5.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Chapter 13.90 RCW

VULNERABLE YOUTH GUARDIANSHIP PROGRAM

Sections

13.90.010	Definitions.
13.90.020	Petition for guardianship—Requirements.
13.90.030	Petition for guardianship—Hearing.
13.90.040	Order establishing guardianship.
13.90.050	Motion for modification—Motion for appointment of a new guardian.
13.90.060	Termination of guardianship.
13.90.070	Right to counsel.
13.90.900	Purpose.
13.90.901	Findings—Intent—2017 c 279.

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

(1) "Department" means the department of social and health services.

(2) "Guardian" means a person who has been appointed by the court as the guardian of a vulnerable youth in a legal proceeding under this chapter. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under chapter 13.34 RCW for the purpose of assisting the court in supervising the dependency. The term "guardian" does not include a "guardian" appointed pursuant to a proceeding under chapter 13.36 RCW or a "dependency guardian" appointed pursuant to a proceeding under chapter 13.34 RCW.

(3) "Juvenile court" or "court" means the juvenile division of the superior court.

(4) "Relative" means a person related to the child in the following ways:

(a) Any parent, or blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(b) A stepfather, stepmother, stepbrother, and stepsister;

(c) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(d) Spouses of any persons named in (a) through (c) of this subsection (4), even after the marriage is terminated;

(e) Relatives, as described in (a) through (d) of this subsection (4), of any half-sibling of the child.

(5)(a) "Suitable person" means a nonrelative who has completed all required criminal history background checks as specified in (b) of this subsection and otherwise appears to be suitable and competent to provide care for the youth.

(b) The criminal background checks required in (a) of this subsection are those set out in RCW 26.10.135 (1) and (2)(b), but apply only to the guardian and not to other adult members of the household.

(6) "Vulnerable youth" is an individual who has turned eighteen years old, but who is not yet twenty-one years old and who is eligible for classification under 8 U.S.C. Sec. 1101(a)(27)(J). A youth who remains in a vulnerable youth guardianship under this chapter shall not be considered a "child" under any other state statute or for any other purpose. A vulnerable youth is one who is not also a nonminor dependent who is participating in extended foster care services authorized under RCW 74.13.031. [2017 c 279 § 3.]

13.90.020 Petition for guardianship—Requirements.

(1) A vulnerable youth may petition the court that a vulnerable youth guardianship be established for him or her by filing a petition in juvenile court under this chapter. The proposed guardian must agree to join in the petition, and must receive notice of the petition.

(2) To be designated as a proposed guardian in a petition under this chapter, a person must be age twenty-one or over, suitable, and capable of performing the duties of guardian under RCW 13.90.040, including but not limited to parents, licensed foster parents, relatives, and suitable persons.

(3) The petition must allege and show that:

(a) Both the petitioner and the proposed guardian agree to the establishment of a guardianship;

(b) The youth is between the ages of eighteen and twenty-one years;

(c) The youth is prima facie eligible to apply for classification under 8 U.S.C. Sec. 1101(a)(27)(J);

(d) The youth requests the support of a responsible adult; and

(e) The proposed guardian agrees to serve as guardian, and is a suitable adult over twenty-one years old who is capable of performing the duties of a guardian as stated in RCW 13.90.040.

(4) There must be no fee associated with the filing of a vulnerable youth guardianship petition by or for a vulnerable youth under this section. [2017 c 279 § 4.]

13.90.030 Petition for guardianship—Hearing. (1)

At the hearing on a vulnerable youth guardianship petition, both parties, the vulnerable youth and the proposed guardian, have the right to present evidence and cross-examine witnesses. The rules of evidence apply to the conduct of the hearing.

(2) A vulnerable youth guardianship must be established if the court finds by a preponderance of the evidence that:

- (a) The allegations in the petition are true;
- (b) It is in the vulnerable youth's best interest to establish a vulnerable youth guardianship; and
- (c) The vulnerable youth consents in writing to the appointment of a guardian.

(3) A guardianship established under subsection (2) of this section remains in effect as provided in RCW 13.90.060. [2017 c 279 § 5.]

13.90.040 Order establishing guardianship. (1) If the court has made the findings required under RCW 13.90.030, the court shall issue an order establishing a vulnerable youth guardianship for the vulnerable youth. The order shall:

- (a) Appoint a person to be the guardian for the vulnerable youth;
- (b) Provide that the guardian shall ensure that the legal rights of the vulnerable youth are not violated, and may specify the guardian's other rights and responsibilities concerning the care, custody, and nurturing of the vulnerable youth;
- (c) Specify that the guardian shall not have possession of any identity documents belonging to the vulnerable youth; and
- (d) Specify the need for and scope of continued oversight by the court, if any.

(2) Unless specifically ordered by the court, the standards and requirements for relocation in chapter 26.09 RCW do not apply to vulnerable youth guardianships established under this chapter.

(3) The court shall provide a certified copy of the vulnerable youth guardianship order to the vulnerable youth and the guardian.

(4) For an unrepresented vulnerable youth whose vulnerable youth guardian is a suitable person, as defined in RCW 13.90.010, the court shall provide a list of service providers and available resources for survivors of human trafficking, such as any relevant lists or materials created by the Washington state task force against the trafficking of persons under RCW 7.68.350. [2017 c 279 § 6.]

13.90.050 Motion for modification—Motion for appointment of a new guardian. (1) The youth may move the court to modify the provisions of a vulnerable youth guardianship order at any time by: (a) Filing with the court a motion for modification and an affidavit setting forth facts supporting the requested modification; and (b) providing notice and a copy of the motion and affidavit to the other party. The nonmoving party may file and serve opposing affidavits.

(2) The youth may move the court to appoint a new guardian at any time by: (a) Filing with the court a motion for appointment of a new guardian and an affidavit setting forth facts supporting the requested appointment; and (b) providing notice and a copy of the motion and affidavit to the other party.

(3) The youth may move the court to substitute a new guardian, provided that the proposed new guardian is a suitable adult over twenty-one years old who is capable of performing the duties of a guardian as stated in RCW 13.90.040. The substitution of a new guardian must be permitted without

termination of the vulnerable youth guardianship and the youth is not required to file a new vulnerable youth guardianship petition to substitute a guardian.

(4) If a party other than the youth moves the court to modify the provisions of a vulnerable youth guardianship order, the modification is subject to the youth's agreement. [2017 c 279 § 7.]

13.90.060 Termination of guardianship. (1) The vulnerable youth guardianship terminates on the vulnerable youth's twenty-first birthday.

(2) The vulnerable youth may request the termination of the vulnerable youth guardianship at any time. The court shall terminate the vulnerable youth guardianship upon the request of the vulnerable youth. The vulnerable youth may also withdraw consent to the vulnerable youth guardianship at any time.

(3) The guardian may request termination of the vulnerable youth guardianship by filing a petition and supporting affidavit alleging a substantial change has occurred in the circumstances of the vulnerable youth or the guardian and that the termination is necessary to serve the best interests of the vulnerable youth. The petition and affidavit must be served on both parties to the vulnerable youth guardianship.

(4) Except as provided in subsection (2) of this section, the court shall not terminate a vulnerable youth guardianship unless it finds, upon the basis of facts that have arisen since the vulnerable youth guardianship was established or that were unknown to the court at the time the vulnerable youth guardianship was established, that a substantial change has occurred in the circumstances of the vulnerable youth or the guardian and that termination of the vulnerable youth guardianship is necessary to serve the best interests of the vulnerable youth. The effect of a guardian's duties while serving in the military potentially impacting vulnerable youth guardianship functions is not, by itself, a substantial change of circumstances justifying termination of a vulnerable youth guardianship. [2017 c 279 § 8.]

13.90.070 Right to counsel. In all proceedings under this chapter to establish, modify, or terminate a vulnerable youth guardianship order, the vulnerable youth and the guardian or prospective guardian have the right to be represented by counsel of their choosing and at their own expense. [2017 c 279 § 9.]

13.90.900 Purpose. Existing federal law, 8 U.S.C. Sec. 1101(a)(27)(J), establishes a procedure for classification of abandoned, abused, or neglected youth as special immigrants who have been declared dependent on a juvenile court or legally committed to or placed in the custody of a state agency or department, or placed under the custody of an individual or entity appointed by a state or juvenile court, and authorizes those youth to apply for an adjustment of status to that of a lawful permanent resident within the United States. A youth is age-eligible if the youth is under twenty-one years old. Existing state law already provides that superior courts have jurisdiction to make judicial determinations regarding the custody and care of juveniles.

This chapter authorizes a court to appoint a guardian for a vulnerable youth from eighteen to twenty-one years old,

who is not participating in extended foster care services authorized under RCW 74.13.031, and who is eligible for classification under 8 U.S.C. Sec. 1101(a)(27)(J) with the consent of the proposed ward. This chapter also provides that a vulnerable youth guardianship of the person terminates on the youth's twenty-first birthday unless the youth requests termination prior to that date. Opening court doors for the provision of a vulnerable youth guardianship serves the state's interest in eliminating human trafficking, preventing further victimization of youth, decreasing reliance on public resources, reducing youth homelessness, and offering protection for youth who may otherwise be targets for traffickers. [2017 c 279 § 1.]

13.90.901 Findings—Intent—2017 c 279. (1) The legislature finds and declares the following:

(a) Washington law grants the superior courts jurisdiction to make judicial determinations regarding the custody and care of youth within the meaning of the federal immigration and nationality act. Pursuant to 8 U.S.C. Sec. 1101(b), the term "child" means an unmarried person under twenty-one years of age. Superior courts are empowered to make the findings necessary for a youth to petition the United States citizenship and immigration services for classification under 8 U.S.C. Sec. 1101(a)(27)(J).

(b) 8 U.S.C. Sec. 1101(a)(27)(J) offers interim relief from deportation to undocumented, unmarried immigrant youth under twenty-one years old, if a state court with jurisdiction over juveniles has made specific findings.

(c) The findings necessary for a youth to petition for classification under 8 U.S.C. Sec. 1101(a)(27)(J) include, among others, a finding that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law, and a finding that it is not in the youth's best interest to be returned to the youth's country of origin.

(d) Misalignment between state and federal law continues to exist. Federal law allows a person under twenty-one years old, who otherwise meets the requirements for eligibility under 8 U.S.C. Sec. 1101(a)(27)(J), to file for relief. In Washington, however, vulnerable youth who are between eighteen and twenty-one years old have largely been unable to obtain the findings from the superior court necessary to seek classification under 8 U.S.C. Sec. 1101(a)(27)(J) and the relief that it was intended to afford them, solely because superior courts cannot take jurisdiction of these vulnerable youth under current law. This is true despite the fact that many vulnerable youth between eighteen and twenty-one years old face circumstances identical to those faced by their younger counterparts.

(e) Given the recent influx of vulnerable youth arriving to the United States, many of whom have been released to family members and other adults in Washington, and who have experienced parental abuse, neglect, or abandonment, it is necessary to provide an avenue for these vulnerable youth to petition the superior courts to appoint a guardian of the person, even if the youth is over eighteen years old. This is particularly necessary in light of the vulnerability of this class of youth, and their need for a custodial relationship with a responsible adult as they adjust to a new cultural context, language, and education system, and recover from the trauma of

abuse, neglect, or abandonment. These custodial arrangements promote the long-term well-being and stability of vulnerable youth present in the United States who have experienced abuse, neglect, or abandonment by one or both parents.

(f) The legislature has an interest in combating human trafficking throughout Washington state. In 2003, Washington became the first state to enact a law making human trafficking a crime and has since continued its efforts to provide support services for victims of human trafficking while also raising awareness of human trafficking. Vulnerable youth who have been subject to parental abuse, neglect, or abandonment are particularly susceptible to becoming victims of human trafficking. By creating an avenue for a vulnerable youth guardianship for certain eligible individuals between eighteen and twenty-one years old, the legislature will provide such youth with the possibility for additional support and protection that a guardian can offer, which will make these youth less likely to become targets for human traffickers. Guardians can support vulnerable youth by providing them stable housing and caring for their basic necessities, which may help alleviate many of the risk factors that make such youth prime targets for trafficking and exploitation.

(g) Vulnerable youth guardianships of the person may be necessary and appropriate for these individuals, even between eighteen and twenty-one years old, although a vulnerable youth for whom a guardian has been appointed retains the rights of an adult under Washington law.

(2) It is the intent of the legislature to give the juvenile division of superior courts jurisdiction to appoint a guardian for a consenting vulnerable youth between eighteen, up to the age of twenty-one who has been abandoned, neglected, or abused by one or both parents, or for whom the court determines that a guardian is otherwise necessary as one or both parents cannot adequately provide for the youth such that the youth risks physical or psychological harm if returned to the youth's home. The juvenile court will have jurisdiction to make the findings necessary for a vulnerable youth to petition for classification under 8 U.S.C. Sec. 1101(a)(27)(J). It is further the intent of the legislature to provide an avenue for a person between eighteen and twenty-one years old to have a guardian of the person appointed beyond eighteen years old if the youth so requests or consents to the appointment of a guardian as provided in RCW 13.90.030. [2017 c 279 § 2.]

Title 14 AERONAUTICS

Chapters

14.20 Aircraft dealers.

Chapter 14.20 RCW AIRCRAFT DEALERS

Sections

14.20.060 Payment of fees—Fund—Possession and display of licenses and certificates.

14.20.060 Payment of fees—Fund—Possession and display of licenses and certificates. The fees set forth in RCW 14.20.050 shall be paid to the secretary. The fee for any calendar year may be paid on and after the first day of

December of the preceding year. The secretary shall give appropriate receipts therefor. The fees collected under this chapter shall be credited to the aeronautics account. The secretary may prescribe requirements for the possession and exhibition of aircraft dealer's licenses and aircraft dealer's certificates. [2017 3rd sp.s. c 25 § 48; 1998 c 187 § 2; 1984 c 7 § 14; 1955 c 150 § 6.]

Title 15

AGRICULTURE AND MARKETING

Chapters

- 15.15** Certified seed potatoes.
- 15.49** Seeds.
- 15.51** Brassica seed production.
- 15.54** Fertilizers, minerals, and limes.
- 15.58** Washington pesticide control act.
- 15.80** Weighmasters.
- 15.120** Industrial hemp research program.
- 15.125** Marijuana and marijuana products.

Chapter 15.15 RCW

CERTIFIED SEED POTATOES

Sections

15.15.900 Decodified.

15.15.900 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 15.49 RCW

SEEDS

Sections

15.49.071 Damages—Mediation prerequisite to legal action.
 15.49.081 Repealed.
 15.49.091 Mediation—Procedure.
 15.49.101 Repealed.
 15.49.111 Repealed.
 15.49.920 Decodified.
 15.49.950 Decodified.

15.49.071 Damages—Mediation prerequisite to legal action. (1) When a buyer is damaged by the failure of any seed covered by this chapter to produce or perform as represented by the required label, by warranty, or as a result of negligence, the buyer, as a prerequisite to maintaining a legal action against the dealer of such seed, shall have first provided for the mediation of the claim. Any statutory period of limitations with respect to such claim shall be tolled from the date mediation proceedings are instituted until ten days after the date on which the mediation proceedings are concluded. Mediation proceedings are instituted from the date the buyer mails the dealer the buyer's complaint with its request to engage in mediation as provided under RCW 15.49.091.

(2) Conspicuous language calling attention to the requirement for mediation under this section shall be referenced or included on the analysis label required under this chapter.

(3) This section applies only to claims, or counterclaims, where the relief sought is, or includes, a monetary amount in excess of five thousand dollars. All claims for five thousand

dollars or less may be commenced in either district court or small claims court.

(4) The mediation provisions under this section apply only to a dealer subject to this state's jurisdiction in relation to the buyer's claims. [2017 c 33 § 1; 2005 c 433 § 36; 1989 c 354 § 77.]

Additional notes found at www.leg.wa.gov

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

15.49.091 Mediation—Procedure. (1) To submit a claim for mediation, the buyer shall make and file a sworn complaint against the dealer alleging the damages sustained. The sworn complaint may take the form of a declaration or affidavit. The buyer shall send a copy of the complaint to the dealer by United States registered mail.

(2) Within twenty days after receipt of a copy of the complaint, the dealer shall file with the buyer, by United States registered mail, the answer to the complaint. The answer shall agree to participate in mediation under chapter 7.07 RCW or shall state the dealer's grounds for refusing to engage in such mediation. Failure of a dealer to file a timely answer to the complaint and the request to engage in mediation shall be documented for the record supporting the buyer's option to maintain a legal action for its claim against the dealer.

(3) The parties shall be equally responsible for the mediator's fees unless otherwise agreed between the parties before retaining the mediator.

(4) The mediator must be selected by mutual agreement of the parties from mediators qualified to conduct mediations under chapter 7.07 RCW. The mediation must take place within the part of the state where the buyer conducts the buyer's operations unless otherwise agreed between the parties. [2017 c 33 § 2; 1989 c 354 § 79.]

Additional notes found at www.leg.wa.gov

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

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

15.49.920 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

15.49.950 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 15.51 RCW

BRASSICA SEED PRODUCTION

Sections

15.51.900 Decodified.

15.51.900 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 15.54 RCW
FERTILIZERS, MINERALS, AND LIMES

Sections

15.54.930 Decodified.

15.54.930 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 15.58 RCW
WASHINGTON PESTICIDE CONTROL ACT

Sections

15.58.900 Decodified.
15.58.901 Decodified.
15.58.943 Decodified.

15.58.900 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

15.58.901 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

15.58.943 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 15.80 RCW
WEIGHMASTERS

Sections

15.80.300 Definitions.
15.80.310 through 15.80.400 Repealed.
15.80.410 Director's duty to enforce—Adoption of rules.
15.80.440 Reweighing—Weighing—Variance from invoiced weight.
15.80.450 Weighmaster's license—Applications—Fee.
15.80.470 Weighmaster's license—Renewal date—Penalty fee.
15.80.480 Repealed.
15.80.490 Weigher's license—Employees or agents to issue weight tickets—Application—Fee.
15.80.510 Duties of weighmaster.
15.80.520 Certification of weights—Impression seal—Fee.
15.80.530 Certified weight ticket—Form—Contents—Evidence.
15.80.540 Certified weight tickets—Retention of copies—Records.
15.80.560 Weighing devices to be suitable—Testing of weighing and measuring devices.
15.80.590 Denial, suspension, or revocation of licenses—Hearing.
15.80.600 Repealed.
15.80.640 Writing, etc., false ticket or certificate—Influence—Penalty.
15.80.650 Violations—Penalty—Criminal—Civil—Opportunity to request hearing.
15.80.660 Collected moneys, civil penalties—Deposit.

15.80.300 Definitions. The definitions in this section apply throughout this chapter unless the context clearly require[s] otherwise.

(1) "Certified weight" means any signed certified statement or memorandum of weight, measure, or count, issued by a weighmaster or weigher in accordance with the provisions of this chapter or any rule adopted under it.

(2) "Commodity" means anything that may be weighed, measured, or counted in a commercial transaction.

(3) "Department" means the department of agriculture of the state of Washington.

(4) "Director" means the director of the department or the director's duly appointed representative.

(5) "Licensed public weighmaster," also referred to as "weighmaster," means any person, licensed under the provi-

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sions of this chapter, who weighs, measures, or counts any commodity or thing and issues therefor a signed certified statement, ticket, or memorandum of weight, measure, or count accepted as the accurate weight, or count upon which the purchase or sale of any commodity or upon which the basic charge or payment for services rendered is based.

(6) "Person" means a natural person, individual, or firm, partnership, corporation, company, society, or association. This term shall import either the singular or plural, as the case may be.

(7) "Retail merchant" means and includes any person operating from a bona fide fixed or permanent location at which place all of the retail business of the merchant is transacted, and whose business is exclusively retail except for the occasional wholesaling of small quantities of surplus commodities that have been taken in exchange for merchandise from the producers thereof at the bona fide fixed or permanent location.

(8) "Thing" means anything used to move, handle, transport, or contain any commodity for which a certified weight, measure, or count is issued when such thing is used to handle, transport, or contain a commodity.

(9) "Vehicle" means any device, other than a railroad car, in, upon, or by which any commodity is or may be transported or drawn.

(10) "Weigher" means any person who is licensed under the provisions of this chapter and who is an agent or employee of a weighmaster and authorized by the weighmaster to issue certified statements of weight, measure, or count. [2017 c 158 § 1; 1969 ex.s. c 100 § 1.]

15.80.310 through 15.80.400 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

15.80.410 Director's duty to enforce—Adoption of rules. The director shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purposes. The adoption of rules shall be subject to the provisions of chapter 34.05 RCW (administrative procedure act), as enacted or hereafter amended, concerning the adoption of rules. [2017 c 158 § 2; 1969 ex.s. c 100 § 12.]

15.80.440 Reweighing—Weighing—Variance from invoiced weight. The director or any peace officer may order the driver of any vehicle previously weighed by a licensed public weighmaster to reweigh the vehicle and load at the nearest scale.

The director or any peace officer may order the driver of any vehicle operated by or for a retail merchant which vehicle contains hay, straw, or grain to weigh the vehicle and load at the nearest scale. If the weight is found to be less than the amount appearing on the invoice, a copy of which is required to be carried on the vehicle, the director or peace officer shall report the finding to the consignee and may prosecute such retail merchant in accordance with the provisions of this chapter. [2017 c 158 § 3; 1969 ex.s. c 100 § 15.]

15.80.450 Weighmaster's license—Applications—Fee. (1) Any person may apply to the director for a weigh-

master's license. Such application shall be on a form prescribed by the director and shall include:

(a) The full name of the person applying for such license and, if the applicant is a partnership, association, or corporation, the full name of each member of the partnership or the names of the officers of the association or corporation;

(b) The principal business address of the applicant in this state and elsewhere;

(c) The names and addresses of the persons authorized to receive and accept service of summons and legal notice of all kinds for the applicant;

(d) The location of each scale subject to the applicant's control and from which certified weights will be issued;

(e) The state unified business identifier number for the operator of the scale; and

(f) Such other information as the director identifies as necessary to carry out the purposes of this chapter and adopts by rule.

(2) Such annual application shall be accompanied by a license fee of eighty dollars for each scale from which certified weights will be issued. [2017 c 158 § 4; 2006 c 358 § 3; 1969 ex.s. c 100 § 16.]

Additional notes found at www.leg.wa.gov

15.80.470 Weighmaster's license—Renewal date—

Penalty fee. If an application for the annual renewal of any license provided for in this chapter is not filed prior to the current license expiration date, there shall be assessed and added to the renewal fee as a penalty therefor fifty percent of said renewal fee which shall be paid by the applicant before any renewal license shall be issued. The penalty shall not apply if the applicant furnishes a declaration that he or she has not acted as a weighmaster or weigher subsequent to the expiration of his or her prior license. [2017 c 158 § 5; 2010 c 8 § 6103; 1991 c 109 § 8; 1969 ex.s. c 100 § 18.]

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

15.80.490 Weigher's license—Employees or agents to issue weight tickets—Application—Fee. (1) Any weighmaster must file an application with the director for a license for any employee or agent to operate and issue certified weight tickets from each scale which such weighmaster is licensed to operate under the provisions of this chapter. Such application shall be submitted on a form prescribed by the director and shall contain the following:

(a) The name of the weighmaster;

(b) The full name of the employee or agent; and

(c) The scale from which such employee or agent will issue certified weights.

(2) Such annual application shall be accompanied by a license fee of twenty dollars. [2017 c 158 § 6; 2010 c 8 § 6105; 2006 c 358 § 4; 1969 ex.s. c 100 § 20.]

Additional notes found at www.leg.wa.gov

15.80.510 Duties of weighmaster. A licensed public weighmaster shall: (1) Keep the scale or scales upon which he or she weighs any commodity or thing, in conformity with the standards of weights and measures; (2) carefully and correctly weigh and certify the gross, tare, and net weights of

any load of any commodity or thing required to be weighed; and (3) without charge, weigh any commodity or thing brought to his or her scale by the director or peace officer, and issue a certificate of the weights thereof. [2017 c 158 § 7; 2010 c 8 § 6107; 1969 ex.s. c 100 § 22.]

15.80.520 Certification of weights—Impression seal—Fee. (1) Certification of weights must be in accordance with subsection (2)(a) or (b) of this section.

(2)(a) The certification must appear in an appropriate and conspicuous place on each certificate and copies thereof. In addition the weight ticket must bear the name of the weighmaster, the full name of the weigher issuing the ticket, and a seal number assigned to the scale by the department. The seal number must be used only at the scale to which it is assigned.

WEIGHMASTER CERTIFICATE

THIS IS TO CERTIFY that the following described commodity was weighed, measured, or counted by a weighmaster, whose signature is on this certificate, who is a recognized authority of accuracy, as prescribed by chapter 15.80 RCW administered by the Washington state department of agriculture.

(b) Certification must be made by means of an impression seal, the impress of which shall be placed by the weighmaster or weigher making the weight determination upon the weights shown on the weight tickets. The impression seal may be procured from the director upon the payment of a fee of sixty dollars or the current cost of the seal to the department, whichever is less, and such fee shall accompany the applicant's application for a weighmaster's license. Any replacement seal needed may be procured from the director upon payment to the department of the current cost to the department for such replacement. An impression seal must be used only at the scale to which it is assigned, and remains the property of the state and shall be returned to the director upon the termination, suspension, or revocation of the weighmaster's license. [2017 c 158 § 8; 1983 c 95 § 6; 1969 ex.s. c 100 § 23.]

15.80.530 Certified weight ticket—Form—Contents—Evidence. The certified weight ticket shall be of a form approved by the director and shall contain the following information:

(1) The date of issuance;

(2) The kind of commodity weighed, measured, or counted;

(3) The name of the owner, agent, or consignee of the commodity weighed;

(4) The name of the seller, agent, or consignor;

(5) The accurate weight, measure, or count of the commodity weighed, measured, or counted; including the entry of the gross, tare, and/or net weight, where applicable;

(6) The identifying numerals or symbols, if any, of each container separately weighed and the license plate number of each vehicle separately weighed;

(7) The means by which the commodity was being transported at the time it was weighed, measured, or counted;

(8) The name of the city or town where such commodity was weighed;

(9) The complete signature of the weighmaster or weigher who weighed, measured, or counted the commodity; and

(10) Such other available information as may be necessary to distinguish or identify the commodity.

Such weight certificates when so made and properly certified or sealed shall be prima facie evidence of the accuracy of the weights, measures, or count shown, as a certified weight, measure, or count. [2017 c 158 § 9; 1969 ex.s. c 100 § 24.]

15.80.540 Certified weight tickets—Retention of copies—Records. (1) Certified weight tickets shall be delivered to the person receiving the weighed commodity at the time of delivery. The weight ticket must accompany the vehicle that transports such commodity.

(2) A copy must be provided to the seller by the carrier of the weighed commodity.

(3) The weighmaster that provided the certified weight ticket must retain a copy for a period of one year.

(4) The weighmaster must retain such other records as the director shall determine necessary to carry out the purposes of this chapter.

(5) These records shall be made available at all reasonable business hours for inspection by the director. [2017 c 158 § 10; 1969 ex.s. c 100 § 25.]

15.80.560 Weighing devices to be suitable—Testing of weighing and measuring devices. A licensed public weighmaster shall, in making a weight determination as provided for in this chapter, use a weighing device that conforms to current state legal requirements for commercial devices and is suitable for the weighing of the type and amount of commodity being weighed. The director shall cause to be tested for proper state standards of weight all weighing or measuring devices utilized by any licensed public weighmaster. Certified weights shall not be issued over a device that has been rejected or condemned for use by the director until such device has been repaired and tested as conforming to the intended use requirements. [2017 c 158 § 11; 1969 ex.s. c 100 § 27.]

15.80.590 Denial, suspension, or revocation of licenses—Hearing. The director is hereby authorized to deny, suspend, or revoke a license in any case in which he or she finds that there has been a failure to comply with the requirements of this chapter or rules adopted hereunder. For hearings for revocations, suspension, or denial of a license, the director shall give the licensee or applicant such notice as is required under the provisions of chapter 34.05 RCW. Such hearings shall be subject to chapter 34.05 RCW (administrative procedure act) concerning adjudicative proceedings. [2017 c 158 § 12; 2010 c 8 § 6109; 1989 c 175 § 52; 1969 ex.s. c 100 § 30.]

Additional notes found at www.leg.wa.gov

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

15.80.640 Writing, etc., false ticket or certificate—Influence—Penalty. Any person who shall mark, stamp, or write any false weight ticket, scale ticket, or weight certificate, knowing it to be false, and any person who influences, or attempts to wrongfully influence, any licensed public weighmaster or weigher in the performance of his or her official duties shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment of not less than thirty days nor more than three hundred sixty-four days in the county jail, or by both such fine and imprisonment. [2017 c 158 § 13; 2011 c 96 § 16; 2010 c 8 § 6113; 1969 ex.s. c 100 § 35.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

15.80.650 Violations—Penalty—Criminal—Civil—Opportunity to request hearing. (1) Except as provided in RCW 15.80.640 or subsection (2) of this section, any person violating any provision of this chapter or rules adopted hereunder is guilty of a misdemeanor.

(2) A second or subsequent same or similar violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

(3) The director may assess a civil penalty ranging from one hundred dollars to one thousand dollars per occurrence against any person who knowingly violates any provision under this chapter or rules adopted thereunder. In determining the amount of any civil penalty, the director shall give due consideration to the appropriateness of the penalty with respect to the gravity of the violation, and the history of any previous violations. The respondent issued a notice of intent to assess a civil penalty must be provided the opportunity to request a hearing as provided under chapter 34.05 RCW to contest the alleged violation and the penalty amount. [2017 c 158 § 14; 2003 c 53 § 109; 1969 ex.s. c 100 § 36.]

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

15.80.660 Collected moneys, civil penalties—Deposit. (1) All moneys collected under this chapter shall be placed in the weights and measures account created in RCW 19.94.185.

(2) Civil penalties collected under RCW 15.80.650 must be deposited into the state general fund. [2017 c 158 § 15; 1995 c 355 § 25.]

Additional notes found at www.leg.wa.gov

Chapter 15.120 RCW INDUSTRIAL HEMP RESEARCH PROGRAM

Sections

- 15.120.035 Rule-making authority—Monetary penalties, license suspension or forfeiture, other sanctions—Rules to be consistent with section 7606 of federal agricultural act of 2014.
- 15.120.060 Sales and transfers of industrial hemp produced for processing—Department and state liquor and cannabis board to study feasibility and practicality of implementing legislatively authorized regulatory framework.

15.120.035 Rule-making authority—Monetary penalties, license suspension or forfeiture, other sanctions—Rules to be consistent with section 7606 of federal agricul-

tural act of 2014. The department is granted the rule-making authority necessary to implement and enforce the provisions of this chapter. This includes the authority to impose monetary penalties, license suspension or forfeiture, or other sanctions for violations of statutory and regulatory requirements. The rules adopted by the department must be consistent with section 7606 of the federal agricultural act of 2014 (128 Stat. 649, 912; 7 U.S.C. Sec. 5940). [2017 c 317 § 10.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

15.120.060 Sales and transfers of industrial hemp produced for processing—Department and state liquor and cannabis board to study feasibility and practicality of implementing legislatively authorized regulatory framework. The department and the state liquor and cannabis board must collaboratively study the feasibility and practicality of implementing a legislatively authorized regulatory framework allowing industrial hemp produced in accordance with the requirements of this chapter to be sold or transferred to marijuana processors, licensed under chapter 69.50 RCW, for processing into industrial hemp or marijuana products to be sold at retail for human consumption. [2017 c 317 § 9.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

Chapter 15.125 RCW

MARIJUANA AND MARIJUANA PRODUCTS

Sections

- 15.125.010 Definitions.
- 15.125.020 Rule-making authority.
- 15.125.030 Marijuana and marijuana products—Production and processing.
- 15.125.040 Licensee facilities—Department may inspect—Certification—Fines—Enforcement actions.
- 15.125.050 Marijuana producer, processor, and retailer information—Exemption from public inspection and copying.
- 15.125.060 Deposit of fees into account within agricultural local fund—Revenue from fees—Appropriation not required for disbursement.

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

(1) "Board" means the state liquor and cannabis board.

(2) "Licensee facilities" means any premises regulated by the board for producing, processing, or retailing marijuana or marijuana products.

(3) "Marijuana" has the meaning provided in RCW 69.50.101.

(4) "Marijuana processor" has the meaning provided in RCW 69.50.101.

(5) "Marijuana producer" has the meaning provided in RCW 69.50.101.

(6) "Marijuana products" has the meaning provided in RCW 69.50.101.

(7) "Marijuana retailer" has the meaning provided in RCW 69.50.101.

(8) "Person" means any natural person, firm, partnership, association, private or public corporation, governmental entity, or other business entity. [2017 c 317 § 18.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

15.125.020 Rule-making authority. (1) The department may adopt rules establishing:

(a) Standards for marijuana and marijuana products produced and processed in a manner consistent with, to the extent practicable, 7 C.F.R. Part 205;

(b) A self-sustaining program for certifying marijuana producers and marijuana processors as meeting the standards established under (a) of this subsection; and

(c) Other rules as necessary for administration of this chapter.

(2) To the extent practicable, the program must be consistent with the program established by the director under chapter 15.86 RCW.

(3) The rules must include a fee schedule that will provide for the recovery of the full cost of the program including, but not limited to, application processing, inspections, sampling and testing, notifications, public awareness programs, and enforcement. [2017 c 317 § 19.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

15.125.030 Marijuana and marijuana products—Production and processing. (1) No marijuana or marijuana product may be labeled, sold, or represented as produced or processed under the standards established under this chapter unless produced or processed by a person certified by the department under the program established under this chapter.

(2) No person may represent, sell, or offer for sale any marijuana or marijuana products as produced or processed under standards adopted under this chapter if the person knows, or has reason to know, that the marijuana or marijuana product has not been produced or processed in conformance with the standards established under this chapter.

(3) No person may represent, sell, or offer for sale any marijuana or marijuana products as "organic products" as that term has meaning under chapter 15.86 RCW. [2017 c 317 § 20.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

15.125.040 Licensee facilities—Department may inspect—Certification—Fines—Enforcement actions. (1) The department may inspect licensee facilities to verify compliance with this chapter and rules adopted under it.

(2) The department may deny, suspend, or revoke a certification provided for in this chapter if the department determines that an applicant or certified person has violated this chapter or rules adopted under it.

(3) The department may impose on and collect from any person who has violated this chapter or rules adopted under it a civil fine not exceeding the total of:

(a) The state's estimated costs of investigating and taking appropriate administrative and enforcement actions for the violation; and

(b) One thousand dollars.

(4) The board may take enforcement actions against a marijuana producer, marijuana processor, or marijuana retailer license issued by the board, including suspension or revocation of the license, when a licensee continues to violate this chapter after revocation of its certification or, if uncerti-

fied, receiving written notice from the department of certification requirements.

(5) The provisions of this chapter are cumulative and nonexclusive and do not affect any other remedy at law. [2017 c 317 § 21.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

15.125.050 Marijuana producer, processor, and retailer information—Exemption from public inspection and copying. Information about marijuana producers, marijuana processors, and marijuana retailers otherwise exempt from public inspection and copying under chapter 42.56 RCW is also exempt from public inspection and copying if submitted to or used by the department. [2017 c 317 § 22.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

15.125.060 Deposit of fees into account within agricultural local fund—Revenue from fees—Appropriation not required for disbursement. All fees collected under this chapter must be deposited in an account within the agricultural local fund. The revenue from the fees must be used solely for carrying out the provisions of this chapter, and no appropriation is required for disbursement from the fund. [2017 c 317 § 23.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

Title 16

ANIMALS AND LIVESTOCK

Chapters

- 16.52** Prevention of cruelty to animals.
16.67 Washington state beef commission.
16.76 Wolf-livestock management.

Chapter 16.52 RCW

PREVENTION OF CRUELTY TO ANIMALS

Sections

- 16.52.011 Definitions—Principles of liability.
 16.52.350 Dog tethering—Penalties.

16.52.011 Definitions—Principles of liability. (1) Principles of liability as defined in chapter 9A.08 RCW apply to this chapter.

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

(a) "Abandons" means the knowing or reckless desertion of an animal by its owner or the causing of the animal to be deserted by its owner, in any place, without making provisions for the animal's adequate care.

(b) "Animal" means any nonhuman mammal, bird, reptile, or amphibian.

(c) "Animal care and control agency" means any city or county animal control agency or authority authorized to enforce city or county municipal ordinances regulating the care, control, licensing, or treatment of animals within the city or county, and any corporation organized under RCW 16.52.020 that contracts with a city or county to enforce the city or county ordinances governing animal care and control.

[2017 RCW Supp—page 130]

(d) "Animal control officer" means any individual employed, contracted, or appointed pursuant to RCW 16.52.025 by an animal care and control agency or humane society to aid in the enforcement of ordinances or laws regulating the care and control of animals. For purposes of this chapter, the term "animal control officer" shall be interpreted to include "humane officer" as defined in (h) of this subsection and RCW 16.52.025.

(e) "Dog" means an animal of the species *Canis lupus familiaris*.

(f) "Euthanasia" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death, or by a method that causes painless loss of consciousness, and death during the loss of consciousness.

(g) "Food" means food or feed appropriate to the species for which it is intended.

(h) "Humane officer" means any individual employed, contracted, or appointed by an animal care and control agency or humane society as authorized under RCW 16.52.025.

(i) "Law enforcement agency" means a general authority Washington law enforcement agency as defined in RCW 10.93.020.

(j) "Livestock" includes, but is not limited to, horses, mules, cattle, sheep, swine, goats, and bison.

(k) "Malice" has the same meaning as provided in RCW 9A.04.110, but applied to acts against animals.

(l) "Necessary food" means the provision at suitable intervals of wholesome foodstuff suitable for the animal's age, species, and condition, and that is sufficient to provide a reasonable level of nutrition for the animal and is easily accessible to the animal or as directed by a veterinarian for medical reasons.

(m) "Necessary shelter" means a structure sufficient to protect a dog from wind, rain, snow, cold, heat, or sun that has bedding to permit a dog to remain dry and reasonably clean and maintain a normal body temperature.

(n) "Necessary water" means water that is in sufficient quantity and of appropriate quality for the species for which it is intended and that is accessible to the animal or as directed by a veterinarian for medical reasons.

(o) "Owner" means a person who has a right, claim, title, legal share, or right of possession to an animal or a person having lawful control, custody, or possession of an animal.

(p) "Person" means individuals, corporations, partnerships, associations, or other legal entities, and agents of those entities.

(q) "Similar animal" means: (i) For a mammal, another animal that is in the same taxonomic order; or (ii) for an animal that is not a mammal, another animal that is in the same taxonomic class.

(r) "Substantial bodily harm" means substantial bodily harm as defined in RCW 9A.04.110.

(s) "Tether" means: (i) To restrain an animal by tying or securing the animal to any object or structure; and (ii) a device including, but not limited to, a chain, rope, cable, cord, tie-out, pulley, or trolley system for restraining an animal. [2017 c 65 § 2. Prior: 2015 c 235 § 2; prior: 2011 c 172 § 1; 2011 c 67 § 3; 2009 c 287 § 1; 2007 c 376 § 2; 1994 c 261 § 2.]

Finding—Intent—1994 c 261: "The legislature finds there is a need to modernize the law on animal cruelty to more appropriately address the nature of the offense. It is not the intent of this act to remove or decrease any of the exemptions from the statutes on animal cruelty that now apply to customary animal husbandry practices, state game or fish laws, rodeos, fairs under chapter 15.76 RCW, or medical research otherwise authorized under federal or state law. It is the intent of this act to require the enforcement of chapter 16.52 RCW by persons who are accountable to elected officials at the local and state level." [1994 c 261 § 1.]

16.52.350 Dog tethering—Penalties. (1) Any dog that is restrained outside by a tether must only be restrained for a period of time that is not reckless and in compliance with this section.

(a) The dog shall not be tethered in a manner that results, or could reasonably result, in the dog becoming frequently entangled on the restraint or another object.

(b) If there are multiple dogs tethered, each dog must be on a separate tether and not secured to the same fixed point.

(c) The tether must allow the dog to sit, lie down, and stand comfortably without the restraint becoming taut and allow the dog a range of movement.

(d) A dog shall not be tethered if it is ill, suffering from a debilitating disease, injured, in distress, in the advanced stages of pregnancy, or under six months of age.

(e) A tethered dog must have access to clean water and necessary shelter that is safe and protective while tethered. The shelter and water vessel must be constructed or attached in such a way that the dog cannot knock over the shelter or water vessel.

(f) A dog shall not be tethered in a manner that results in the dog being left in unsafe or unsanitary conditions or that forces the dog to stand, sit, or lie down in its own excrement or urine.

(g) A dog shall not be tethered by means of a choke, pinch, slip, halter, or prong-type collar, or by any means other than with a properly fitted buckle-type collar or harness that provides enough room between the collar or harness and the dog's throat to allow normal breathing and swallowing.

(h) The weight of the tether shall not unreasonably inhibit the free movement of the dog within the area allowed by the length of the tether.

(i) The dog shall not be tethered in a manner that causes the dog injury or pain.

(2) The provisions of subsection (1)(a) through (d) of this section do not apply to a dog that is:

(a) Tethered while it is receiving medical care or treatment under the supervision of a licensed veterinarian or is being groomed;

(b) Participating temporarily in an exhibition, show, contest, or other event in which the skill, breeding, or stamina of the dog is judged or examined;

(c) Being kept temporarily at a camping or recreation area;

(d) Being cared for temporarily after having been picked up as a stray or as part of a rescue operation;

(e) Being transported in a motor vehicle or temporarily restrained or tied after being unloaded from a motor vehicle;

(f) Being trained or used by a federal, state, or local law enforcement agency or military or national guard unit; or

(g) In the physical presence of the person who owns, keeps, or controls the dog.

(3) Each incident involving a violation of this section is a separate offense. A person who violates this section is subject to the following penalties:

(a) A first offense shall result in a correction warning being issued requiring the offense to be corrected by the person who owns, keeps, or controls the dog within seven days after the date of the warning being issued in lieu of an infraction unless the offense poses an imminent risk to the health or safety of the dog or the dog has been injured as a result of the offense.

(b) A second offense is a class 2 civil infraction under RCW 7.80.120(1)(b).

(c) A third or subsequent offense is a class 1 civil infraction under RCW 7.80.120(1)(a). [2017 c 65 § 1.]

Chapter 16.67 RCW

WASHINGTON STATE BEEF COMMISSION

Sections

16.67.035	Legislative declaration—Focus of the beef commission—Regulating beef and beef products—Existing comprehensive scheme—Laws applicable.
16.67.090	Powers and duties—Rule making.
16.67.091	Commission's plans, programs, and projects—Director's approval required.
16.67.110	Promotional programs, research, rate studies, labeling.
16.67.200	Budget—Report to the legislature.

16.67.035 Legislative declaration—Focus of the beef commission—Regulating beef and beef products—Existing comprehensive scheme—Laws applicable. The legislature declares:

(1) That the history, economy, culture, and the future of Washington state's agriculture involves the beef industry. It is vital to the economy and to citizens' health that the beef industry continue to progress and thrive. The Washington state beef commission is part of an existing comprehensive system to regulate and promote beef and beef products;

(2) That the focus of the beef commission shall include the following responsibilities:

(a) The beef industry is to be promoted in a manner that showcases the varied aspects and segments of the industry;

(b) Research, education, and programs related to health and safety of beef are to be advanced in cooperation with the Washington state department of agriculture, Washington State University, other institutions of higher learning as appropriate, and other governmental or nongovernmental organizations doing research on trade or health issues;

(c) Support is to be provided to the beef industry in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of beef and beef products; and

(d) Maintain efforts to increase consumption of beef and beef products within the state, the nation, and internationally;

(3) That beef producers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the beef producer's ability to compete in local, domestic, and foreign markets;

(4) That it is in the overriding public interest that support for the beef industry be clearly expressed, that adequate pro-

tection be given to agricultural commodities, uses, activities, and operations, and that beef and beef products be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agriculture industry;

(b) Increase the sale and use of beef products in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to sustainable stewardship of cattle and the environment, quality, care, and methods used in the production of beef and beef products, and in reference to the various cuts and grades of beef and the uses to which each should be put;

(d) Increase the knowledge of the health-giving qualities and dietetic value of beef products; and

(e) Support and engage in programs or activities that benefit the care and well-being of the cattle, and the production, handling, processing, marketing, and uses of beef and beef products;

(5) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state; and

(6) That the beef industry is a highly regulated industry and that this chapter and the rules adopted under it are only one aspect of the regulated industry. Other regulations and restraints applicable to the beef industry include the:

(a) Beef promotion and research act of 1985, U.S.C. Title 7, chapter 62;

(b) Beef promotion and research, 7 C.F.R., Part 1260;

(c) Agricultural marketing act, 7 U.S.C., section 1621;

(d) USDA meat grading, certification, and standards, 7 C.F.R., Part 54;

(e) Mandatory price reporting, 7 C.F.R., Part 57;

(f) Grazing permits, 43 C.F.R., Part 2920;

(g) Capper-Volstead act, U.S.C. Title 7, chapters 291 and 292;

(h) Livestock identification under chapter 16.57 RCW and rules;

(i) Organic products act under chapter 15.86 RCW and rules;

(j) Intrastate commerce in food, drugs, and cosmetics act under chapter 69.04 RCW and rules, including provisions of 21 C.F.R. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

(k) Washington food processing act under chapter 69.07 RCW and rules;

(l) Washington food storage warehouses act under chapter 69.10 RCW and rules;

(m) Animal health under chapter 16.36 RCW and rules; and

(n) Weights and measures under chapter 19.94 RCW and rules. [2017 c 256 § 1; 2011 c 103 § 34; 2002 c 313 § 79.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

16.67.090 Powers and duties—Rule making. The powers and duties of the commission shall include the following:

(1) To administer and enforce the provisions of this chapter, and do all things reasonably necessary to effectuate the purposes of this chapter;

(2) To elect a chair and such other officers as it deems advisable;

(3) To employ and discharge at its discretion a manager, secretary, and such other personnel, including attorneys engaged in the private practice of law subject to the review of the attorney general, as the commission determines are necessary and proper to carry out the purposes of this chapter, and to prescribe their duties and powers and fix their compensation;

(4) To adopt, rescind, and amend rules, regulations, and orders for the exercise of its powers hereunder subject to the provisions of chapter 34.05 RCW, except that rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310, the provisions of chapter 19.85 RCW, the regulatory fairness act, and the provisions of RCW 43.135.055 when adoption of the rule is determined by a referendum vote of the affected parties;

(5) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the commission. All records, books, and minutes of the commission shall be kept at such headquarters;

(6) To require a bond of all commission members and employees of the commission in a position of trust in the amount the commission shall deem necessary. The premium for such bond or bonds shall be paid by the commission from assessments collected. Such bond shall not be necessary if any such commission member or employee is covered by any blanket bond covering officials or employees of the state of Washington;

(7) To establish a beef commission revolving fund, such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the commission, except an amount of petty cash for each day's needs not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable; none of the provisions of RCW 43.01.050 as now or hereafter amended shall apply to money collected under this chapter;

(8) To prepare a detailed and explanatory budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this chapter during each fiscal year;

(9) To incur expense and enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this chapter;

(10) To borrow money, not in excess of its estimate of its revenue from the current year's contributions;

(11) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, expenditures, moneys, and other financial transactions made and done pursuant to this chapter. Such records, books, and accounts shall be audited at least every five years subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year. A copy of such audit shall be delivered within thirty days after completion thereof to the director, the state auditor, and the commission. On such years and in such event the state auditor is unable to

audit the records, books, and accounts within six months following the close of the audit period it shall be mandatory that the commission employ a private auditor to make such audit;

(12) To sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter;

(13) To cooperate with any other local, state, or national commission, organization, or agency, whether voluntary or established by state or federal law, including recognized livestock groups, engaged in work or activities similar to the work and activities of the commission created by this chapter and make contracts and agreements with such organizations or agencies for carrying on joint programs beneficial to the beef industry and sustainable stewardship of cattle;

(14) To accept grants, donations, contributions, or gifts from any governmental agency or private source for expenditures for any purpose consistent with the provisions of this chapter; and

(15) To operate jointly with beef commissions or similar agencies established by state laws in adjoining states. [2017 c 256 § 2; 2011 c 336 § 436; 2002 c 313 § 82; 2000 c 146 § 2; 1982 c 81 § 3; 1969 c 133 § 8.]

Additional notes found at www.leg.wa.gov

16.67.091 Commission's plans, programs, and projects—Director's approval required. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of its affected commodities;

(b) The establishment, effectuation, and administration of research, education, and programs related to health and safety of cattle, beef, and beef products; and

(c) The establishment and effectuation of market research projects, market development projects, or industry specific educational projects to the end that the marketing and utilization of its affected commodities may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning its affected commodities.

(3) The commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget on a fiscal period basis.

(4) The director shall review and make a determination of all submissions described in this section in a timely manner. [2017 c 256 § 3; 2003 c 396 § 34.]

Additional notes found at www.leg.wa.gov

16.67.110 Promotional programs, research, rate studies, labeling. The commission shall provide for programs designed to support sustainable stewardship of cattle and the environment; increase the consumption of beef; develop more efficient methods for the production, processing, handling and marketing of beef; eliminate transportation rate inequalities on feed grains and supplements and other production supplies adversely affecting Washington producers; properly identify beef and beef products for consumers as

to quality and origin. For these purposes the commission may:

(1) Provide for programs for advertising, sales promotion and education, locally, nationally or internationally, for maintaining present markets and/or creating new or larger markets for beef. Such programs shall be directed toward increasing the sale of beef and shall neither make use of false or unwarranted claims in behalf of beef nor disparage the quality, value, sale or use of any other agricultural commodity;

(2) Provide for research: (a) To develop and discover the health, food, therapeutic, and dietetic value of beef and beef products; and (b) to develop materials, education, and programs related to health and safety of beef and beef products and the sustainable stewardship of cattle and the environment;

(3) Make grants to research agencies for financing studies related to beef health, beef production, processing, handling, and marketing, which may include funds for the acquisition of equipment and facilities;

(4) Disseminate reliable information founded upon the research undertaken under this chapter or otherwise available;

(5) Provide for rate studies and participate in rate hearings connected with problems of beef production, processing, handling or marketing; and

(6) Provide for proper labeling of beef and beef products so that the purchaser and the consuming public of the state will be readily apprised of the quality of the product and how and where it was processed. [2017 c 256 § 4; 2000 c 146 § 4; 1969 c 133 § 10.]

16.67.200 Budget—Report to the legislature. (1) The budget required in RCW 16.67.090(8) must set forth the complete and detailed financial program of the commission, showing the revenues and expenditures of the commission. The budget must be explanatory, describing how the funding is used to administer and implement the commission's programs and priorities, and include the reasons for salient changes from the previous fiscal period in expenditure or revenue items. The budget must explain any major changes to financial policy and contain an outline of the proposed financial policies of the commission for the ensuing fiscal period and describe performance indicators that demonstrate measurable progress toward the commission's priorities.

(2) The budget must be sufficiently detailed to provide transparency for the commission's actions on behalf of the industry.

(3) The commission must submit to the legislature a concise yet detailed report of the commission's activities and expenditures after the completion of each fiscal year. [2017 c 256 § 5.]

**Chapter 16.76 RCW
WOLF-LIVESTOCK MANAGEMENT**

Sections

- 16.76.005 Finding.
- 16.76.010 Definitions.
- 16.76.020 Northeast Washington wolf-livestock management grant—Advisory board—Distribution of funds.
- 16.76.030 Northeast Washington wolf-livestock management account.

16.76.005 Finding. The legislature finds that there is a need to provide resources to help livestock producers adapt their operations in light of the recovery of wolves on the landscape and a desire by many to increase use of nonlethal deterrence measures to reduce the probability of livestock depredations by wolves. The application of resources in support of these goals must respect livestock producers' values of independence, privacy, and local decision making. The legislature further recognizes that the recent recolonization of wolves places a relatively large time and monetary burden on livestock producers, and that livestock producers have unique and valuable knowledge, occupy an important place in their local communities and the state's social fabric, and are critical partners in creating sound natural resource policies. [2017 c 257 § 1.]

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

- (1) "Department" means the department of agriculture.
- (2) "Director" means the director of the department of agriculture.
- (3) "Northeast Washington" means Okanogan, Ferry, Stevens, and Pend Oreille counties. [2017 c 257 § 2.]

16.76.020 Northeast Washington wolf-livestock management grant—Advisory board—Distribution of funds.

(1) The northeast Washington wolf-livestock management grant is created within the department. Funds from the grant program must be used only for the deployment of nonlethal deterrence resources in any Washington county east of the crest of the Cascade mountain range that shares a border with Canada, including human presence, and locally owned and deliberately located equipment and tools.

(2)(a) A four-member advisory board is established to advise the department on the expenditure of the northeast Washington wolf-livestock management grant funds. Advisory board members must be knowledgeable about wolf depredation issues, and have a special interest in the use of nonlethal wolf management techniques. Board members are unpaid, are not state employees, and are not eligible for reimbursement for subsistence, lodging, or travel expenses incurred in the performance of their duties as board members. The director must appoint each member to the board for a term of two years. Board members may be reappointed for subsequent two-year terms. The following board members must be appointed by the director in consultation with each applicable conservation district and the legislators in the legislative district encompassing each county:

- (i) One Ferry county conservation district board member;
 - (ii) One Stevens county conservation district board member;
 - (iii) One Pend Oreille conservation district board member; and
 - (iv) One Okanogan conservation district board member.
- (b) If no board member qualifies under this section, the director must appoint a resident of the applicable county to serve on the board.
- (c) Board members may not:

(i) Directly benefit, in whole or in part, from any contract entered into or grant awarded under this section; or

(ii) Directly accept any compensation, gratuity, or reward in connection with such a contract from any other person with a beneficial interest in the contract.

(3) The board must help direct funding for the deployment of nonlethal deterrence resources, including human presence, and locally owned and deliberately located equipment and tools. Funds may only be distributed to nonprofit community-based collaborative organizations that have advisory boards that include personnel from relevant agencies including, but not limited to, the United States forest service and the Washington department of fish and wildlife, or to individuals that are willing to receive technical assistance from the same agencies. [2017 c 257 § 3.]

16.76.030 Northeast Washington wolf-livestock management account.

(1) The northeast Washington wolf-livestock management account is created as a nonappropriated account in the custody of the state treasurer. All receipts, any legislative appropriations, private donations, or any other private or public source directed to the northeast Washington wolf-livestock management grant must be deposited into the account. Expenditures from the account may be used only for the deployment of nonlethal wolf deterrence resources as described in RCW 16.76.020. Only the director may authorize expenditures from the account in consultation with the advisory board created in RCW 16.76.020. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Interest earned by deposits in the account must be retained in the account.

(2) The advisory board created in RCW 16.76.020 may solicit and receive gifts and grants from public and private sources for the purposes of RCW 16.76.020. [2017 c 257 § 4.]

Title 18

BUSINESSES AND PROFESSIONS

Chapters

- 18.20 Assisted living facilities.
- 18.22 Podiatric medicine and surgery.
- 18.27 Registration of contractors.
- 18.29 Dental hygienists.
- 18.32 Dentistry.
- 18.57 Osteopathy—Osteopathic medicine and surgery.
- 18.57A Osteopathic physician assistants.
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- 18.71A Physician assistants.
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- 18.85 Real estate brokers and managing brokers.
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- 18.235 Uniform regulation of business and professions act.**
18.260 Dental professionals.
18.350 Dental anesthesia assistants.
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Chapter 18.20 RCW
ASSISTED LIVING FACILITIES

(Formerly: Boarding homes)

Sections

- 18.20.310 Assistance with activities of daily living.

18.20.310 Assistance with activities of daily living.

(1) Assisted living facilities are not required to provide assistance with one or more activities of daily living.

(2) If an assisted living facility licensee chooses to provide assistance with activities of daily living, the licensee shall provide at least the minimal level of assistance for all activities of daily living consistent with subsection (3) of this section and consistent with the reasonable accommodation requirements in state or federal laws. "Activities of daily living" means the following self-care activities related to personal care:

- (a) Bathing;
- (b) Dressing;
- (c) Eating;
- (d) Personal hygiene;
- (e) Transferring;
- (f) Toileting;
- (g) Ambulation and mobility; and
- (h) Medication assistance, as defined in RCW 69.41.010.

(3) The department shall, in rule, define the minimum level of assistance that will be provided for all activities of daily living, however, such rules shall not require more than occasional stand-by assistance or more than occasional physical assistance.

(4) The licensee shall clarify, through the disclosure form, the assistance with activities of daily living that may be provided, and any limitations or conditions that may apply. The licensee shall also clarify through the disclosure form any additional services that may be provided.

(5) In providing assistance with activities of daily living, the assisted living facility shall observe the resident for changes in overall functioning and respond appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning. [2017 c 201 § 1; 2012 c 10 § 20; 2004 c 142 § 3.]

Application—2012 c 10: See note following RCW 18.20.010.

Additional notes found at www.leg.wa.gov

Chapter 18.22 RCW
PODIATRIC MEDICINE AND SURGERY

Sections

- 18.22.250 Impaired practitioner program—License surcharge.
 18.22.800 Opioid drug prescribing rules—Adoption.

18.22.250 Impaired practitioner program—License surcharge. (1) To implement an impaired podiatric practitioner program as authorized by RCW 18.130.175, the board

shall enter into a contract with a voluntary substance abuse monitoring program. The impaired podiatric practitioner program may include any or all of the following:

- (a) Contracting with providers of treatment programs;
- (b) Receiving and evaluating reports of suspected impairment from any source;
- (c) Intervening in cases of verified impairment;
- (d) Referring impaired podiatric practitioners to treatment programs;
- (e) Monitoring the treatment and rehabilitation of impaired podiatric practitioners including those ordered by the board;
- (f) Providing education, prevention of impairment, post-treatment monitoring, and support of rehabilitated impaired podiatric practitioners; and
- (g) Performing other related activities as determined by the board.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of fifty dollars on each license issuance or renewal to be collected by the department from every podiatric practitioner licensed under this chapter. These moneys must be placed in the health professions account to be used solely for implementation of the impaired podiatric practitioner program. [2017 c 22 § 1.]

18.22.800 Opioid drug prescribing rules—Adoption.

(1) By January 1, 2019, the board must adopt rules establishing requirements for prescribing opioid drugs. The rules may contain exemptions based on education, training, amount of opioids prescribed, patient panel, and practice environment.

(2) In developing the rules, the board must consider the agency medical directors' group and centers for disease control guidelines, and may consult with the department of health, the University of Washington, and the largest professional association of podiatric physicians and surgeons in the state. [2017 c 297 § 2.]

Findings—Intent—2017 c 297: "The legislature finds that in 2015 an average of two Washington residents died per day in this state from opioid overdose and that opioid overdose deaths have more than doubled between 2010 and 2015.

The legislature finds that in 2015 an average of two Washington residents died per day in this state from opioid overdose and that opioid overdose deaths have more than doubled between 2010 and 2015.

The legislature further finds that medically prescribed opioids intended to treat pain have contributed to the opioid epidemic and although Washington has done much to address the prescribing and tracking of opioid prescriptions, more needs to be done to ensure proper prescribing and use of opioids and access to treatment. This includes allowing local health officers to access the prescription monitoring program in order to provide patient follow-up and care coordination, including directing care to opioid treatment programs in the area as appropriate to the patient following an overdose event.

The legislature intends to streamline its already comprehensive system of tracking and treating opioid abuse by: Reducing barriers to the siting of opioid treatment programs; ensuring ease of access for prescribers, including those prescribers who provide services in opioid treatment programs, to the prescription monitoring program; allowing facilities and practitioners to use the information received under the prescription monitoring program for the purpose of providing individual prescriber quality improvement feedback; and requiring the boards and commissions of the health care professions with prescriptive authority to adopt rules establishing requirements for prescribing opioid drugs with the goal of reducing the number of people who inadvertently become addicted to opioids and, consequently, reducing the burden on opioid treatment programs." [2017 c 297 § 1.]

Chapter 18.27 RCW REGISTRATION OF CONTRACTORS

Sections

18.27.400 Deposit of moneys from chapter.

18.27.400 Deposit of moneys from chapter. All moneys, except fines and penalties, received or collected under the terms of this chapter must be deposited into the construction registration inspection account. All fines and penalties received or collected under the terms of this chapter shall be deposited in the general fund. [2017 3rd sp.s. c 11 § 1.]

Effective date—2017 3rd sp.s. c 11: See note following RCW 51.44.190.

Chapter 18.29 RCW DENTAL HYGIENISTS

Sections

18.29.180 Exemptions from chapter.

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

(1) The practice of dental hygiene in the discharge of official duties by dental hygienists in the United States armed services, coast guard, public health services, veterans' bureau, or bureau of Indian affairs;

(2) Dental hygiene programs approved by the secretary and the practice of dental hygiene by students in dental hygiene programs approved by the secretary, when acting under the direction and supervision of persons licensed under chapter 18.29 or 18.32 RCW acting as instructors;

(3) The practice of dental hygiene by students in accredited dental hygiene educational programs when acting under the direction and supervision of instructors licensed under chapter 18.29 or 18.32 RCW; and

(4) The performance of dental health aide therapist services to the extent authorized under chapter 70.350 RCW. [2017 c 5 § 4; 2004 c 262 § 4; 1991 c 3 § 57; 1989 c 202 § 10.]

Findings—2004 c 262: See note following RCW 18.06.050.

Chapter 18.32 RCW DENTISTRY

Sections

18.32.030 Exemptions from chapter.
18.32.040 Requirements for licensure.
18.32.091 License required.
18.32.675 Practice or solicitation by corporations prohibited—Penalty.
18.32.677 Interference with licensee's independent clinical judgment.
18.32.683 Patient abandonment.
18.32.800 Opioid drug prescribing rules—Adoption.

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

(1) The rendering of dental relief in emergency cases in the practice of his or her profession by a physician or surgeon, licensed as such and registered under the laws of this state, unless the physician or surgeon undertakes to or does reproduce lost parts of the human teeth in the mouth or to restore or to replace in the human mouth lost or missing teeth;

(2) The practice of dentistry in the discharge of official duties by dentists in the United States federal services on federal reservations, including but not limited to the armed services, coast guard, public health service, veterans' bureau, or bureau of Indian affairs;

(3) Dental schools or colleges approved under RCW 18.32.040, and the practice of dentistry by students in accredited dental schools or colleges approved by the commission, when acting under the direction and supervision of Washington state-licensed dental school faculty;

(4) The practice of dentistry by licensed dentists of other states or countries while appearing as clinicians at meetings of the Washington state dental association, or component parts thereof, or at meetings sanctioned by them, or other groups approved by the commission;

(5) The use of roentgen and other rays for making radiographs or similar records of dental or oral tissues, under the supervision of a licensed dentist or physician;

(6) The making, repairing, altering, or supplying of artificial restorations, substitutions, appliances, or materials for the correction of disease, loss, deformity, malposition, dislocation, fracture, injury to the jaws, teeth, lips, gums, cheeks, palate, or associated tissues or parts; providing the same are made, repaired, altered, or supplied pursuant to the written instructions and order of a licensed dentist which may be accompanied by casts, models, or impressions furnished by the dentist, and the prescriptions shall be retained and filed for a period of not less than three years and shall be available to and subject to the examination of the secretary or the secretary's authorized representatives;

(7) The removal of deposits and stains from the surfaces of the teeth, the application of topical preventative or prophylactic agents, and the polishing and smoothing of restorations, when performed or prescribed by a dental hygienist licensed under the laws of this state;

(8) A qualified and licensed physician and surgeon or osteopathic physician and surgeon extracting teeth or performing oral surgery pursuant to the scope of practice under chapter 18.71 or 18.57 RCW;

(9) The performing of dental operations or services by registered dental assistants and licensed expanded function dental auxiliaries holding a credential issued under chapter 18.260 RCW when performed under the supervision of a licensed dentist, or by other persons not licensed under this chapter if the person is licensed pursuant to chapter 18.29, 18.57, 18.71, or 18.79 RCW as it applies to registered nurses and advanced registered nurse practitioners, each while acting within the scope of the person's permitted practice under the person's license: PROVIDED HOWEVER, That such persons shall in no event perform the following dental operations or services unless permitted to be performed by the person under this chapter or chapters 18.29, 18.57, 18.71, 18.79 as it applies to registered nurses and advanced registered nurse practitioners, and 18.260 RCW:

(a) Any removal of or addition to the hard or soft tissue of the oral cavity;

(b) Any diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure;

(c) Any administration of general or injected local anesthetic of any nature in connection with a dental operation, including intravenous sedation;

(d) Any oral prophylaxis;

(e) The taking of any impressions of the teeth or jaw or the relationships of the teeth or jaws, for the purpose of fabricating any intra-oral restoration, appliance, or prosthesis;

(10) The performing of dental services described in RCW 18.350.040 by dental anesthesia assistants certified under chapter 18.350 RCW when working under the supervision and direction of an oral and maxillofacial surgeon or dental anesthesiologist; and

(11) The performance of dental health aide therapist services to the extent authorized under chapter 70.350 RCW. [2017 c 5 § 5; 2012 c 23 § 7; 2007 c 269 § 15; 2003 c 282 § 1; 1994 sp.s. c 9 § 203; 1991 c 3 § 59; 1989 c 202 § 13; 1979 c 158 § 35; 1971 ex.s. c 236 § 1; 1969 c 47 § 7; 1957 c 52 § 21; 1953 c 93 § 1; 1951 c 130 § 1. Prior: (i) 1941 c 92 § 3; 1935 c 112 § 25; Rem. Supp. 1941 § 10031-25; prior: 1923 c 16 § 23. (ii) 1935 c 112 § 6; RRS § 10031-6; prior: 1923 c 16 § 1; 1901 c 152 § 5; 1893 c 55 § 11.]

Application—Implementation—2007 c 269: See RCW 18.260.900 and 18.260.901.

18.32.040 Requirements for licensure. The commission shall require that every applicant for a license to practice dentistry shall:

(1) Present satisfactory evidence of graduation from a dental college, school, or dental department of an institution approved by the commission;

(2) Submit, for the files of the commission, a recent picture duly identified and attested; and

(3)(a) Pass an examination prepared or approved by and administered under the direction of the commission. The dentistry licensing examination shall consist of practical and written tests upon such subjects and of such scope as the commission determines. The commission shall set the standards for passing the examination. The secretary shall keep on file the examination papers and records of examination for at least one year. This file shall be open for inspection by the applicant or the applicant's agent unless the disclosure will compromise the examination process as determined by the commission or is exempted from disclosure under chapter 42.56 RCW.

(b) The commission may accept, in lieu of all or part of the written examination required in (a) of this subsection, a certificate granted by a national or regional testing organization approved by the commission.

(c) The commission shall accept, in lieu of the practical examination required in (a) of this subsection, proof that an applicant has satisfactorily completed a general practice residency, pediatric residency, or advanced education in general dentistry residency program in Washington state accredited by the commission on dental accreditation of the American dental association, of at least one year's duration, in a residency program that serves predominantly low-income patients. [2017 c 100 § 1. Prior: 2005 c 454 § 2; 2005 c 274 § 222; 1994 sp.s. c 9 § 211; 1991 c 3 § 61; 1989 c 202 § 16; 1979 c 38 § 2; 1935 c 112 § 5; RRS § 10031-5; prior: 1923 c 16 §§ 4, 5. Formerly RCW 18.32.040 and 18.32.130 through 18.32.150.]

Additional notes found at www.leg.wa.gov

18.32.091 License required. No person, unless previously licensed to practice dentistry in this state, shall begin the practice of dentistry in this state without first applying to, and obtaining a license. [2017 c 320 § 5; 1987 c 150 § 18.]

Finding—Intent—2017 c 320: See note following RCW 18.32.677.

Additional notes found at www.leg.wa.gov

18.32.675 Practice or solicitation by corporations prohibited—Penalty. (1) No corporation shall practice dentistry or shall solicit through itself, or its agent, officers, employees, directors or trustees, dental patronage for any dentists or dental surgeon employed by any corporation: PROVIDED, That nothing contained in this chapter shall prohibit a corporation from employing a dentist or dentists to render dental services to its employees: PROVIDED, FURTHER, That such dental services shall be rendered at no cost or charge to the employees; nor shall it apply to corporations or associations in which the dental services were originated and are being conducted upon a purely charitable basis for the worthy poor.

(2) Nothing in this chapter precludes a person or entity not licensed by the commission from:

(a) Ownership or leasehold of any assets used by a dental practice, including real property, furnishings, equipment, instruments, materials, supplies, and inventory, excluding dental records of patients;

(b) Employing or contracting for the services of personnel other than licensed dentists, licensed dental hygienists, licensed expanded function dental auxiliaries, certified dental anesthesia assistants, and registered dental assistants;

(c) Providing business support and management services to a dental practice, including as a sole provider of such services; and

(d) Receiving fees for the services in (a) through (c) of this subsection provided to a dental practice calculated as agreed to by the dental practice owner or owners.

(3) Any corporation violating this section is guilty of a gross misdemeanor, and each day that this chapter is violated shall be considered a separate offense. [2017 c 320 § 2; 2003 c 53 § 124; 1935 c 112 § 19; RRS § 10031-19. Formerly RCW 18.32.310.]

Finding—Intent—2017 c 320: See note following RCW 18.32.677.

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

18.32.677 Interference with licensee's independent clinical judgment. (1) A person that is not licensed under this chapter or an entity that is not a professional entity practices dentistry in violation of this chapter, and subject to enforcement under RCW 18.130.190, if the person or entity interferes with a licensed dentist's independent clinical judgment by:

(a) Limiting or imposing requirements on the length of time a dentist spends with a patient or performing dental services, or otherwise placing conditions on the number of patients a dentist must treat in a certain period of time or the number of certain types of procedures a dentist must complete in a certain time period;

(b) Limiting or imposing requirements on the decision of a dentist regarding a course or alternative course of treatment for a patient or the manner in which a course of treatment is carried out by the dentist;

(c) Limiting or imposing requirements on the manner in which a dentist uses dental equipment or materials for the provision of dental treatment;

(d) Limiting or imposing requirements on the use of a laboratory or the materials, supplies, instruments, or equipment deemed reasonably necessary by a dentist to provide diagnoses and treatment consistent with the standard of care;

(e) Limiting or imposing requirements for the professional training deemed reasonably necessary by a dentist to properly serve the dentist's patients;

(f) Limiting or imposing requirements on the referrals by a dentist to another licensed dentist specialist or any other practitioner the dentist determines is necessary;

(g) Interfering with a dentist's right to access patient records at any time;

(h) Interfering with a dentist's decision to refund any payment made by a patient for dental services performed by the dentist;

(i) Limiting or imposing requirements on the advertising of a dental practice if it would result in a violation of this chapter or RCW 18.130.020(12)(b) by the dental practice; or

(j) Limiting or imposing requirements on communications with a dentist's patients.

(2) For the purpose of this section, "dentist" means a dentist licensed under this chapter.

(3) Violations of this section shall be enforced pursuant to RCW 18.130.190, including the authority to issue subpoenas pursuant to RCW 18.130.050(4). Communication of complaints or information to a state agency pursuant to RCW 4.24.500 through 4.24.520 are covered by those provisions. [2017 c 320 § 3.]

Finding—Intent—2017 c 320: "The legislature finds that Washington law should allow dentists to determine, based on their individual circumstances, which dental practice model would allow them to best serve the needs of their patients. Dentists should have the option to contract for administrative support services and dentists should also be able to lease real or personal property in a manner that meets their individual business needs. The legislature intends that these contract decisions must not interfere with the independent clinical judgment of the dentist entering the contract." [2017 c 320 § 1.]

18.32.683 Patient abandonment. (1) The attending dentist, without reasonable cause, must not neglect, ignore, abandon, or refuse to complete the current procedure for a patient. If the dentist chooses to withdraw responsibility for a patient of record, the dentist shall:

(a) Advise the patient that termination of treatment is contemplated and that another dentist should be sought to complete the current procedure and for future care; and

(b) Advise the patient that the dentist will remain reasonably available under the circumstances for up to fifteen days from the date of such notice to render emergency care related to that current procedure.

(2) If a dentist provides dental services as an employee or contractor of another dentist or an entity authorized to render dental services pursuant to chapter 18.100, 25.05, or 25.15 RCW or to operate a dental office pursuant to RCW 18.32.675(1), the other dentist or entity shall be responsible

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for the continuing treatment of patients and a dentist who ceases to be an employee or contractor of such other dentist or entity is not deemed to have abandoned any patient, and is not obligated to advise any patient as provided in this section, with respect to which the continuing treatment responsibility is retained by the other dentist or entity. If an entity is responsible for the continuing treatment of patients, any licensed dentist who is the owner of the entity is considered the attending dentist responsible for ensuring compliance by the entity with this section.

(3) A dental practice owner who is discontinuing a dental practice or moving a dental practice to a new location must comply with the requirements of subsection (1) of this section, or must make reasonable arrangements for the transfer of the patient records of active patients of the dental practice, or copies of the records, to a licensed dentist or professional entity, or at the written request of any patient, transfer of the patient's records, or copies of the records, to the patient. An unlicensed person or entity shall not intentionally prevent a dental practice owner from complying with this subsection. [2017 c 320 § 4.]

Finding—Intent—2017 c 320: See note following RCW 18.32.677.

18.32.800 Opioid drug prescribing rules—Adoption.

(1) By January 1, 2019, the commission must adopt rules establishing requirements for prescribing opioid drugs. The rules may contain exemptions based on education, training, amount of opioids prescribed, patient panel, and practice environment.

(2) In developing the rules, the commission must consider the agency medical directors' group and centers for disease control guidelines, and may consult with the department of health, the University of Washington, and the largest professional association of dentists in the state. [2017 c 297 § 3.]

Findings—Intent—2017 c 297: See note following RCW 18.22.800.

Chapter 18.57 RCW

OSTEOPATHY—OSTEOPATHIC MEDICINE AND SURGERY

Sections

- 18.57.003 State board of osteopathic medicine and surgery—Membership—Qualifications—Officers—Meetings—Compensation and travel expenses—Removal.
- 18.57.800 Opioid drug prescribing rules—Adoption.

18.57.003 State board of osteopathic medicine and surgery—Membership—Qualifications—Officers—Meetings—Compensation and travel expenses—Removal. There is hereby created an agency of the state of Washington, consisting of eleven individuals appointed by the governor to be known as the Washington state board of osteopathic medicine and surgery.

On expiration of the term of any member, the governor shall appoint for a period of five years a qualified individual to take the place of such member. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been appointed and shall have qualified. Initial appointments shall be made and vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor.

Each member of the board shall be a citizen of the United States and must be an actual resident of this state. Two members must be consumers who have neither a financial nor a fiduciary relationship to a health care delivery system, one member must have been in active practice as a licensed osteopathic physician assistant in this state for at least five years immediately preceding appointment, and every other member must have been in active practice as a licensed osteopathic physician and surgeon in this state for at least five years immediately preceding appointment.

The board shall elect a chairperson, a secretary, and a vice chairperson from its members. Meetings of the board shall be held at least four times a year and at such place as the board shall determine and at such other times and places as the board deems necessary.

An affirmative vote of a simple majority of the members present at a meeting or hearing shall be required for the board to take any official action. The board may not take any action without a quorum of the board members present. A simple majority of the board members currently serving constitutes a quorum of the board.

Each member of the board shall be compensated in accordance with RCW 43.03.265 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. The board is a class five group for purposes of chapter 43.03 RCW.

Any member of the board may be removed by the governor for neglect of duty, misconduct, malfeasance or misfeasance in office, or upon written request of two-thirds of the physicians licensed under this chapter and in active practice in this state. [2017 c 101 § 1; 1991 c 160 § 2; 1984 c 287 § 42; 1979 c 117 § 2.]

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

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

18.57.800 Opioid drug prescribing rules—Adoption.

(1) By January 1, 2019, the board must adopt rules establishing requirements for prescribing opioid drugs. The rules may contain exemptions based on education, training, amount of opioids prescribed, patient panel, and practice environment.

(2) In developing the rules, the board must consider the agency medical directors' group and centers for disease control guidelines, and may consult with the department of health, the University of Washington, and the largest professional association of osteopathic physicians and surgeons in the state. [2017 c 297 § 4.]

Findings—Intent—2017 c 297: See note following RCW 18.22.800.

Chapter 18.57A RCW

OSTEOPATHIC PHYSICIAN ASSISTANTS

Sections

18.57A.800 Opioid drug prescribing rules—Adoption.

18.57A.800 Opioid drug prescribing rules—Adoption. (1) By January 1, 2019, the board must adopt rules establishing requirements for prescribing opioid drugs. The rules may contain exemptions based on education, training,

amount of opioids prescribed, patient panel, and practice environment.

(2) In developing the rules, the board must consider the agency medical directors' group and centers for disease control guidelines, and may consult with the department of health, the University of Washington, and the largest professional association of osteopathic physician assistants in the state. [2017 c 297 § 5.]

Findings—Intent—2017 c 297: See note following RCW 18.22.800.

Chapter 18.71 RCW PHYSICIANS

Sections

18.71.095 Limited licenses.

18.71.800 Opioid drug prescribing rules—Adoption.

18.71.095 Limited licenses. The commission may, without examination, issue a limited license to persons who possess the qualifications set forth herein:

(1) The commission may, upon the written request of the secretary of the department of social and health services or the secretary of corrections, issue a limited license to practice medicine in this state to persons who have been accepted for employment by the department of social and health services or the department of corrections as physicians; who are licensed to practice medicine in another state of the United States or in the country of Canada or any province or territory thereof; and who meet all of the qualifications for licensure set forth in RCW 18.71.050.

Such license shall permit the holder thereof to practice medicine only in connection with patients, residents, or inmates of the state institutions under the control and supervision of the secretary of the department of social and health services or the department of corrections.

(2) The commission may issue a limited license to practice medicine in this state to persons who have been accepted for employment by a county or city health department as physicians; who are licensed to practice medicine in another state of the United States or in the country of Canada or any province or territory thereof; and who meet all of the qualifications for licensure set forth in RCW 18.71.050.

Such license shall permit the holder thereof to practice medicine only in connection with his or her duties in employment with the city or county health department.

(3) Upon receipt of a completed application showing that the applicant meets all of the requirements for licensure set forth in RCW 18.71.050 except for completion of two years of postgraduate medical training, and that the applicant has been appointed as a resident physician in a program of postgraduate clinical training in this state approved by the commission, the commission may issue a limited license to a resident physician. Such license shall permit the resident physician to practice medicine only in connection with his or her duties as a resident physician and shall not authorize the physician to engage in any other form of practice. Each resident physician shall practice medicine only under the supervision and control of a physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician at the place where services are rendered.

(4)(a) Upon nomination by the dean of an accredited school of medicine in the state of Washington or the chief executive officer of a hospital or other appropriate health care facility licensed in the state of Washington, the commission may issue a limited license to a physician applicant invited to serve as a teaching-research member of the institution's instructional staff if the sponsoring institution and the applicant give evidence that he or she has graduated from a recognized medical school and has been licensed or otherwise privileged to practice medicine at his or her location of origin. Such license shall permit the recipient to practice medicine only within the confines of the instructional program specified in the application and shall terminate whenever the holder ceases to be involved in that program, or at the end of one year, whichever is earlier. Upon request of the applicant and the institutional authority, the license may be renewed. The holder of a teaching research license under this subsection (4)(a) is eligible for full licensure if the following conditions are met:

(i) If the applicant has not graduated from a school of medicine located in any state, territory, or possession of the United States, the District of Columbia, or the Dominion of Canada, the applicant must satisfactorily pass the certification process by the educational commission for foreign medical graduates;

(ii) The applicant has successfully completed the exam requirements set forth by the commission by rule;

(iii) The applicant has the ability to read, write, speak, understand, and be understood in the English language at a level acceptable for performing competent medical care in all practice settings;

(iv) The applicant has continuously held a position of associate professor or higher at an accredited Washington state medical school for no less than three years; and

(v) The applicant has had no disciplinary action taken in the previous five years.

(b) Upon nomination by the dean of an accredited school of medicine in the state of Washington or the chief executive officer of any hospital or appropriate health care facility licensed in the state of Washington, the commission may issue a limited license to an applicant selected by the sponsoring institution to be enrolled in one of its designated departmental or divisional fellowship programs provided that the applicant shall have graduated from a recognized medical school and has been granted a license or other appropriate certificate to practice medicine in the location of the applicant's origin. Such license shall permit the holder only to practice medicine within the confines of the fellowship program to which he or she has been appointed and, upon the request of the applicant and the sponsoring institution, the license may be renewed by the commission.

All persons licensed under this section shall be subject to the jurisdiction of the commission to the same extent as other members of the medical profession, in accordance with this chapter and chapter 18.130 RCW.

Persons applying for licensure and renewing licenses pursuant to this section shall comply with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. Any person who obtains a limited license pursuant to this section may apply for licensure under this chapter, but shall submit a new appli-

cation form and comply with all other licensing requirements of this chapter. [2017 c 45 § 1; 2001 c 114 § 1; 1996 c 191 § 54; 1994 sp.s. c 9 § 315; 1991 c 3 § 164; 1990 c 160 § 1; 1987 c 129 § 1. Prior: 1986 c 259 § 110; 1985 c 322 § 6; 1975 1st ex.s. c 171 § 13; 1973 1st ex.s. c 4 § 1; 1967 c 138 § 1; 1965 c 29 § 1; 1959 c 189 § 1.]

Additional notes found at www.leg.wa.gov

18.71.800 Opioid drug prescribing rules—Adoption.

(1) By January 1, 2019, the commission must adopt rules establishing requirements for prescribing opioid drugs. The rules may contain exemptions based on education, training, amount of opioids prescribed, patient panel, and practice environment.

(2) In developing the rules, the commission must consider the agency medical directors' group and centers for disease control guidelines, and may consult with the department of health, the University of Washington, and the largest professional association of physicians in the state. [2017 c 297 § 6.]

Findings—Intent—2017 c 297: See note following RCW 18.22.800.

Chapter 18.71A RCW PHYSICIAN ASSISTANTS

Sections

18.71A.800 Opioid drug prescribing rules—Adoption.

18.71A.800 Opioid drug prescribing rules—Adoption.

(1) By January 1, 2019, the commission must adopt rules establishing requirements for prescribing opioid drugs. The rules may contain exemptions based on education, training, amount of opioids prescribed, patient panel, and practice environment.

(2) In developing the rules, the commission must consider the agency medical directors' group and centers for disease control guidelines, and may consult with the department of health, the University of Washington, and the largest professional association of physician assistants in the state. [2017 c 297 § 7.]

Findings—Intent—2017 c 297: See note following RCW 18.22.800.

Chapter 18.71B RCW INTERSTATE MEDICAL LICENSURE COMPACT

Sections

18.71B.010 Purpose.
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18.71B.010 Purpose. In order to strengthen access to health care, and in recognition of the advances in the delivery of health care, the member states of the interstate medical licensure compact have allied in common purpose to develop a comprehensive process that complements the existing licensing and regulatory authority of state medical boards, provides a streamlined process that allows physicians to become licensed in multiple states, thereby enhancing the portability of a medical license and ensuring the safety of patients. The compact creates another pathway for licensure and does not otherwise change a state's existing medical practice act. The compact also adopts the prevailing standard for licensure and affirms that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter, and therefore, requires the physician to be under the jurisdiction of the state medical board where the patient is located. State medical boards that participate in the compact retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the compact. [2017 c 195 § 1.]

18.71B.020 Definitions. In this compact:

- (1) "Bylaws" means those bylaws established by the interstate commission pursuant to RCW 18.71B.110 for its governance, or for directing and controlling its actions and conduct.
- (2) "Commissioner" means the voting representative appointed by each member board pursuant to RCW 18.71B.110.
- (3) "Conviction" means a finding by a court that an individual is guilty of a criminal offense through adjudication, or entry of a plea of guilt or no contest to the charge by the offender. Evidence of an entry of a conviction of a criminal offense by the court shall be considered final for purposes of disciplinary action by a member board.
- (4) "Expedited license" means a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the compact.
- (5) "Interstate commission" means the interstate commission created pursuant to RCW 18.71B.110.
- (6) "License" means authorization by a state for a physician to engage in the practice of medicine, which would be unlawful without the authorization.
- (7) "Medical practice act" means laws and regulations governing the practice of allopathic and osteopathic medicine within a member state.
- (8) "Member board" means a state agency in a member state that acts in the sovereign interests of the state by protecting the public through licensure, regulation, and education of physicians as directed by the state government.
- (9) "Member state" means a state that has enacted the compact.
- (10) "Offense" means a felony, gross misdemeanor, or crime of moral turpitude.
- (11) "Physician" means any person who:

(a) Is a graduate of a medical school accredited by the liaison committee on medical education, the commission on osteopathic college accreditation, or a medical school listed in the international medical education directory or its equivalent;

(b) Passed each component of the United States medical licensing examination (USMLE) or the comprehensive osteopathic medical licensing examination (COMLEX-USA) within three attempts, or any of its predecessor examinations accepted by a state medical board as an equivalent examination for licensure purposes;

(c) Successfully completed graduate medical education approved by the accreditation council for graduate medical education or the American osteopathic association;

(d) Holds specialty certification or a time-unlimited specialty certificate recognized by the American board of medical specialties or the American osteopathic association bureau of osteopathic specialists;

(e) Possesses a full and unrestricted license to engage in the practice of medicine issued by a member board;

(f) Has never been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(g) Has never held a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license;

(h) Has never had a controlled substance license or permit suspended or revoked by a state or the United States drug enforcement administration; and

(i) Is not under active investigation by a licensing agency or law enforcement authority in any state, federal, or foreign jurisdiction.

(12) "Practice of medicine" means the clinical prevention, diagnosis, or treatment of human disease, injury, or condition requiring a physician to obtain and maintain a license in compliance with the medical practice act of a member state.

(13) "Rule" means a written statement by the interstate commission promulgated pursuant to RCW 18.71B.120 that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the interstate commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

(14) "State" means any state, commonwealth, district, or territory of the United States.

(15) "State of principal license" means a member state where a physician holds a license to practice medicine and which has been designated as such by the physician for purposes of registration and participation in the compact. [2017 c 195 § 2.]

18.71B.030 Eligibility. (1) A physician must meet the eligibility requirements as defined in RCW 18.71B.020(11) to receive an expedited license under the terms and provisions of the compact.

(2) A physician who does not meet the requirements of RCW 18.71B.020(11) may obtain a license to practice medi-

cine in a member state if the individual complies with all laws and requirements, other than the compact, relating to the issuance of a license to practice medicine in that state. [2017 c 195 § 3.]

18.71B.040 Designation of state of principal license.

(1) A physician shall designate a member state as the state of principal license for purposes of registration for expedited licensure through the compact if the physician possesses a full and unrestricted license to practice medicine in that state, and the state is:

- (a) The state of primary residence for the physician; or
- (b) The state where at least twenty-five percent of the practice of medicine occurs; or
- (c) The location of the physician's employer; or
- (d) If no state qualifies under (a), (b), or (c) of this subsection, the state designated as state of residence for purpose of federal income tax.

(2) A physician may redesignate a member state as state of principal license at any time, as long as the state meets the requirements in subsection (1) of this section.

(3) The interstate commission is authorized to develop rules to facilitate redesignation of another member state as the state of principal license. [2017 c 195 § 4.]

18.71B.050 Application and issuance of expedited licensure. (1) A physician seeking licensure through the compact shall file an application for an expedited license with the member board of the state selected by the physician as the state of principal license.

(2) Upon receipt of an application for an expedited license, the member board within the state selected as the state of principal license shall evaluate whether the physician is eligible for expedited licensure and issue a letter of qualification, verifying or denying the physician's eligibility, to the interstate commission.

(a) Static qualifications which include verification of medical education, graduate medical education, results of any medical or licensing examination, and other qualifications as determined by the interstate commission through rule, shall not be subject to additional primary source verification where already primary source verified by the state of principal license.

(b) The member board within the state selected as the state of principal license shall, in the course of verifying eligibility, perform a criminal background check of an applicant, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the federal bureau of investigation, with the exception of federal employees who have suitability determination in accordance [with] United States 5 C.F.R. § 731.202.

(c) Appeal on the determination of eligibility shall be made to the member state where the application was filed and shall be subject to the laws of that state.

(3) Upon verification in subsection (2) of this section, physicians eligible for an expedited license shall complete the registration process established by the interstate commission to receive a license in a member state selected pursuant to subsection (1) of this section, including the payment of any applicable fees.

(4) After receiving verification of eligibility under subsection (2) of this section and any fees under subsection (3) of this section, a member board shall issue an expedited license to the physician. This license shall authorize the physician to practice medicine in the issuing state consistent with the medical practice act and all applicable laws and regulations of the issuing member board and member state.

(5) An expedited license shall be valid for a period consistent with the licensure period in the member state and in the same manner as required for other physicians holding a full and unrestricted license within the member state.

(6) An expedited license obtained through the compact shall be terminated if a physician fails to maintain a license in the state of principal licensure for a nondisciplinary reason, without redesignation of a new state of principal licensure.

(7) The interstate commission is authorized to develop rules regarding the application process, including payment of any applicable fees, and the issuance of an expedited license. [2017 c 195 § 5.]

18.71B.060 Fees for expedited licensure. (1) A member state issuing an expedited license authorizing the practice of medicine in that state may impose a fee for a license issued or renewed through the compact.

(2) The interstate commission is authorized to develop rules regarding fees for expedited licenses. [2017 c 195 § 6.]

18.71B.070 Renewal and continued participation. (1) A physician seeking to renew an expedited license granted in a member state shall complete a renewal process with the interstate commission if the physician:

(a) Maintains a full and unrestricted license in a state of principal license;

(b) Has not been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(c) Has not had a license authorizing the practice of medicine subject to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license; and

(d) Has not had a controlled substance license or permit suspended or revoked by a state or the United States drug enforcement administration.

(2) Physicians shall comply with all continuing professional development or continuing medical education requirements for renewal of a license issued by a member state.

(3) The interstate commission shall collect any renewal fees charged for the renewal of a license and distribute the fees to the applicable member board.

(4) Upon receipt of any renewal fees collected in subsection (3) of this section, a member board shall renew the physician's license.

(5) Physician information collected by the interstate commission during the renewal process with [will] be distributed to all member boards.

(6) The interstate commission is authorized to develop rules to address renewal of licenses obtained through the compact. [2017 c 195 § 7.]

18.71B.080 Coordinated information system. (1) The interstate commission shall establish a database of all physicians licensed, or who have applied for licensure, under RCW 18.71B.050.

(2) Notwithstanding any other provision of law, member boards shall report to the interstate commission any public action or complaints against a licensed physician who has applied or received an expedited license through the compact.

(3) Member boards shall report disciplinary or investigatory information determined as necessary and proper by rule of the interstate commission.

(4) Member boards may report any nonpublic complaint, disciplinary, or investigatory information not required by subsection (3) of this section to the interstate commission.

(5) Member boards shall share complaint or disciplinary information about a physician upon request of another member board.

(6) All information provided to the interstate commission or distributed by member boards shall be confidential, filed under seal, and used only for investigatory or disciplinary matters.

(7) The interstate commission is authorized to develop rules for mandated or discretionary sharing of information by member boards. [2017 c 195 § 8.]

18.71B.090 Joint investigations. (1) Licensure and disciplinary records of physicians are deemed investigative.

(2) In addition to the authority granted to a member board by its respective medical practice act or other applicable state law, a member board may participate with other member boards in joint investigations of physicians licensed by the member boards.

(3) A subpoena issued by a member state shall be enforceable in other member states.

(4) Member boards may share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

(5) Any member state may investigate actual or alleged violations of the statutes authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine. [2017 c 195 § 9.]

18.71B.100 Disciplinary actions. (1) Any disciplinary action taken by any member board against a physician licensed through the compact shall be deemed unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the medical practice act or regulations in that state.

(2) If a license granted to a physician by the member board in the state of principal license is revoked, surrendered or relinquished in lieu of discipline, or suspended, then all licenses issued to the physician by member boards shall automatically be placed, without further action necessary by any member board, on the same status. If the member board in the state of principal license subsequently reinstates the physician's license, a license issued to the physician by any other member board shall remain encumbered until that respective member board takes action to reinstate the license in a manner consistent with the medical practice act of that state.

(3) If disciplinary action is taken against a physician by a member board not in the state of principal license, any other

member board may deem the action conclusive as to matter of law and fact decided, and:

(a) Impose the same or lesser sanctions against the physician so long as such sanctions are consistent with the medical practice act of that state; or

(b) Pursue separate disciplinary action against the physician under its respective medical practice act, regardless of the action taken in other member states.

(4) If a license granted to a physician by a member board is revoked, surrendered or relinquished in lieu of discipline, or suspended, then any licenses issued to the physician by any other member boards shall be suspended, automatically and immediately without further action necessary by the other member boards, for ninety days upon entry of the order by the disciplining board, to permit the member boards to investigate the basis for the action under the medical practice act of that state. A member board may terminate the automatic suspension of the license it issued prior to the completion of the ninety-day suspension period in a manner consistent with the medical practice act of that state. [2017 c 195 § 10.]

18.71B.110 Interstate medical licensure compact commission. (1) The member states hereby create the "interstate medical licensure compact commission."

(2) The purpose of the interstate commission is the administration of the interstate medical licensure compact, which is a discretionary state function.

(3) The interstate commission shall be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth in the compact, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of the compact.

(4) The interstate commission shall consist of two voting representatives appointed by each member state who shall serve as commissioners. In states where allopathic and osteopathic physicians are regulated by separate member boards, or if the licensing and disciplinary authority is split between multiple member boards within a member state, the member state shall appoint one representative from each member board. A commissioner shall be:

(a) An allopathic or osteopathic physician appointed to a member board;

(b) An executive director, executive secretary, or similar executive of a member board; or

(c) A member of the public appointed to a member board.

(5) The interstate commission shall meet at least once each calendar year. A portion of this meeting shall be a business meeting to address such matters as may properly come before the commission, including the election of officers. The chairperson may call additional meetings and shall call for a meeting upon the request of a majority of the member states.

(6) The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication.

(7) Each commissioner participating at a meeting of the interstate commission is entitled to one vote. A majority of commissioners shall constitute a quorum for the transaction

of business, unless a larger quorum is required by the bylaws of the interstate commission. A commissioner shall not delegate a vote to another commissioner. In the absence of its commissioner, a member state may delegate voting authority for a specified meeting to another person from that state who shall meet the requirements of subsection (4) of this section.

(8) The interstate commission shall provide public notice of all meetings and all meetings shall be open to the public. The interstate commission may close a meeting, in full or in portion, where it determines by a two-thirds vote of the commissioners present that an open meeting would be likely to:

- (a) Relate solely to the internal personnel practices and procedures of the interstate commission;
- (b) Discuss matters specifically exempted from disclosure by federal statute;
- (c) Discuss trade secrets, commercial, or financial information that is privileged or confidential;
- (d) Involve accusing a person of a crime, or formally censuring a person;
- (e) Discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(f) Discuss investigative records compiled for law enforcement purposes; or

(g) Specifically relate to the participation in a civil action or other legal proceeding.

(9) The interstate commission shall keep minutes which shall fully describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, including record of any roll call votes.

(10) The interstate commission shall make its information and official records, to the extent not otherwise designated in the compact or by its rules, available to the public for inspection.

(11) The interstate commission shall establish an executive committee, which shall include officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission, with the exception of rule making, during periods when the interstate commission is not in session. When acting on behalf of the interstate commission, the executive committee shall oversee the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as necessary.

(12) The interstate commission may establish other committees for governance and administration of the compact. [2017 c 195 § 11.]

18.71B.120 Interstate commission—Powers and duties. The interstate commission shall have the duty and power to:

- (1) Oversee and maintain the administration of the compact;
- (2) Promulgate rules which shall be binding to the extent and in the manner provided for in the compact;
- (3) Issue, upon the request of a member state or member board, advisory opinions concerning the meaning or interpretation of the compact, its bylaws, rules, and actions;
- (4) Enforce compliance with compact provisions, the rules promulgated by the interstate commission, and the

bylaws, using all necessary and proper means including, but not limited to, the use of judicial process;

(5) Establish and appoint committees including, but not limited to, an executive committee as required by RCW 18.71B.110, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties;

(6) Pay, or provide for the payment of[,] the expenses related to the establishment, organization, and ongoing activities of the interstate commission;

(7) Establish and maintain one or more offices;

(8) Borrow, accept, hire, or contract for services of personnel;

(9) Purchase and maintain insurance and bonds;

(10) Employ an executive director who shall have such powers to employ, select[,] or appoint employees, agents, or consultants, and to determine their qualifications[,] define their duties, and fix their compensation;

(11) Establish personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

(12) Accept donations and grants of money, equipment, supplies, materials and services, and to receive, utilize, and dispose of it in a manner consistent with the conflict of interest policies established by the interstate commission;

(13) Lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve[,] or use, any property, real, personal, or mixed;

(14) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(15) Establish a budget and make expenditures;

(16) Adopt a seal and bylaws governing the management and operation of the interstate commission;

(17) Report annually to the legislatures and governors of the member states concerning the activities of the interstate commission during the preceding year. Such reports shall also include reports of financial audits and any recommendations that may have been adopted by the interstate commission;

(18) Coordinate education, training, and public awareness regarding the compact, its implementation, and its operation;

(19) Maintain records in accordance with the bylaws;

(20) Seek and obtain trademarks, copyrights, and patents; and

(21) Perform such functions as may be necessary or appropriate to achieve the purposes of the compact. [2017 c 195 § 12.]

18.71B.130 Interstate commission—Finance powers.

(1) The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff. The total assessment must be sufficient to cover the annual budget approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.

(2) The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same.

(3) The interstate commission shall not pledge the credit of any of the member states, except by, and with the authority of, the member state.

(4) The interstate commission shall be subject to a yearly financial audit conducted by a certified or licensed public accountant and the report of the audit shall be included in the annual report of the interstate commission. [2017 c 195 § 13.]

18.71B.140 Interstate commission—Organization and operation. (1) The interstate commission shall, by a majority of commissioners present and voting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact within twelve months of the first interstate commission meeting.

(2) The interstate commission shall elect or appoint annually from among its commissioners a chair, a vice-chair, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chair, or in the chair's absence or disability, the vice-chair, shall preside at all meetings of the interstate commission.

(3) Officers selected in subsection (2) of this section shall serve without remuneration from the interstate commission.

(4) The officers and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of, or relating to, an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities, provided that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(a) The liability of the executive director and employees of the interstate commission or representatives of the interstate commission, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state, may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(b) The interstate commission shall defend the executive director, its employees, and subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities,

provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(c) To the extent not covered by the state involved, member state, or the interstate commission, the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorneys' fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons. [2017 c 195 § 14.]

Reviser's note: The language in bold print was a part of the underlying Session Law but was inadvertently omitted from the original publication of this section in the Revised Code of Washington. The Code Reviser has restored the language to accurately reflect the law.

18.71B.150 Interstate commission—Rule-making functions. (1) The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rule-making authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the interstate commission shall be invalid and have no force or effect.

(2) Rules deemed appropriate for the operations of the interstate commission shall be made pursuant to a rule-making process that substantially conforms to the "model state administrative procedure act" of 2010, and subsequent amendments thereto.

(3) Not later than thirty days after a rule is promulgated, any person may file a petition for judicial review of the rule in the United States district court for the District of Columbia or the federal district where the interstate commission has its principal offices, provided that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the authority granted to the interstate commission. [2017 c 195 § 15.]

18.71B.160 State enforcement—Judicial notice—Service of process. (1) The executive, legislative, and judicial branches of state government in each member state shall enforce the compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of the compact and the rules promulgated hereunder shall have standing as statutory law but shall not override existing state authority to regulate the practice of medicine.

(2) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter [matter] of the

compact which may affect the powers, responsibilities, or actions of the interstate commission.

(3) The interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, the compact, or promulgated rules. [2017 c 195 § 16.]

18.71B.170 Enforcement by interstate commission.

(1) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the compact.

(2) The interstate commission may, by majority vote of the commissioners, initiate legal action in the United States district court for the District of Columbia, or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact, and its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

(3) The remedies herein shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession. [2017 c 195 § 17.]

18.71B.180 Default. (1) The grounds for default include, but are not limited to, failure of a member state to perform such obligations or responsibilities imposed upon it by the compact, or the rules and bylaws of the interstate commission promulgated under the compact.

(2) If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the compact, or the bylaws or promulgated rules, the interstate commission shall:

(a) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default, and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default; and

(b) Provide remedial training and specific technical assistance regarding the default.

(3) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the commissioners and all rights, privileges, and benefits conferred by the compact shall terminate on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(4) Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(5) The interstate commission shall establish rules and procedures to address licenses and physicians that are materi-

ally impacted by the termination of a member state, or the withdrawal of a member state.

(6) The member state which has been terminated is responsible for all dues, obligations, and liabilities incurred through the effective date of termination including obligations, the performance of which extends beyond the effective date of termination.

(7) The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(8) The defaulting state may appeal the action of the interstate commission by petitioning the United States district court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees. [2017 c 195 § 18.]

18.71B.190 Dispute resolution. (1) The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states or member boards.

(2) The interstate commission shall promulgate rules providing for both mediation and binding dispute resolution as appropriate. [2017 c 195 § 19.]

18.71B.200 Withdrawal. (1) Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(2) Withdrawal from the compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state.

(3) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing the compact in the withdrawing state.

(4) The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty days of its receipt of notice provided under subsection (3) of this section.

(5) The withdrawing state is responsible for all dues, obligations, and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

(6) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(7) The interstate commission is authorized to develop rules to address the impact of the withdrawal of a member state on licenses granted in other member states to physicians who designated the withdrawing member state as the state of principal license. [2017 c 195 § 21.]

18.71B.210 Dissolution. (1) The compact shall dissolve effective upon the date of the withdrawal or default of

the member state which reduces the membership in the compact to one member state.

(2) Upon the dissolution of the compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws. [2017 c 195 § 22.]

18.71B.900 Member states, effective date, and amendment. (1) Any state is eligible to become a member state of the compact.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than seven states. Thereafter, it shall become effective and binding on a state upon enactment of the compact into law by that state.

(3) The governors of nonmember states, or their designees, shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states.

(4) The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states. [2017 c 195 § 20.]

18.71B.901 Severability—Construction. (1) The provisions of the compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(2) The provisions of the compact shall be liberally construed to effectuate its purposes.

(3) Nothing in the compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members. [2017 c 195 § 23.]

18.71B.902 Binding effect of compact and other laws.

(1) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the compact.

(2) All laws in a member state in conflict with the compact are superseded to the extent of the conflict.

(3) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.

(4) All agreements between the interstate commission and the member states are binding in accordance with their terms.

(5) In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state. [2017 c 195 § 24.]

Chapter 18.73 RCW EMERGENCY MEDICAL CARE AND TRANSPORTATION SERVICES

Sections

18.73.150 Ambulance personnel requirements.

18.73.150 Ambulance personnel requirements. (1)(a) Any ambulance operated as such shall operate with sufficient personnel for adequate patient care, at least one of whom shall be an emergency medical technician under standards promulgated by the secretary. The emergency medical technician shall have responsibility for its operation and for the care of patients both before they are placed aboard the vehicle and during transit. If there are two or more emergency medical technicians operating the ambulance, a nondriving medical technician shall be in command of the vehicle. The emergency medical technician in command of the vehicle shall be in the patient compartment and in attendance to the patient.

(b) Except as provided in subsection (2) of this section, the driver of the ambulance shall have at least a certificate of advance first aid qualification recognized by the secretary pursuant to RCW 18.73.120 unless there are at least two certified emergency medical technicians in attendance of the patient, in which case the driver shall not be required to have such certificate.

(2) With approval from the department, an ambulance service established by volunteer or municipal corporations in a rural area with insufficient personnel may use a driver without any medical or first aid training so long as the driver is at least eighteen years old, successfully passes a background check issued or approved by the department, possesses a valid driver's license with no restrictions, is accompanied by a nondriving emergency medical technician while operating the ambulance during a response or transport of a patient, and only provides medical care to patients to the level that they are trained. [2017 c 70 § 1; 1992 c 128 § 4; 1979 ex.s. c 261 § 15; 1973 1st ex.s. c 208 § 15.]

Additional notes found at www.leg.wa.gov

Chapter 18.74 RCW PHYSICAL THERAPY

Sections

18.74.050 Licenses—Fees.
18.74.090 False advertising—Use of name and words—License required—Prosecutions of violations.
18.74.150 Unlawful activities—Persons exempt from licensure under chapter.
18.74.500 Physical Therapy Licensure Compact.
18.74.510 Physical therapy licensure compact—Compact privilege—Fees.
18.74.520 Physical therapy licensure compact—Criminal history information.

18.74.050 Licenses—Fees. (1) The secretary shall furnish a license upon the authority of the board to any person who applies and who has qualified under the provisions of this chapter. At the time of applying, the applicant shall comply with administrative procedures, administrative requirements, and fees established pursuant to RCW 43.70.250 and 43.70.280. No person registered or licensed on July 24, 1983, as a physical therapist shall be required to pay an additional fee for a license under this chapter.

(2) No fees collected pursuant to subsection (1) of this section may be used to meet the state's monetary obligations as a member state to the physical therapy licensure compact. [2017 c 108 § 4; 1996 c 191 § 59; 1991 c 3 § 178; 1985 c 7 § 63; 1983 c 116 § 9; 1975 1st ex.s. c 30 § 65; 1961 c 64 § 4; 1949 c 239 § 5; Rem. Supp. 1949 § 10163-5.]

18.74.090 False advertising—Use of name and words—License required—Prosecutions of violations.

(1) A person who is not licensed with the secretary of health as a physical therapist under the requirements of this chapter shall not represent him or herself as being so licensed and shall not use in connection with his or her name the words or letters "P.T.", "R.P.T.", "L.P.T.", "physical therapy", "physiotherapy", "physical therapist" or "physiotherapist", or any other letters, words, signs, numbers, or insignia indicating or implying that he or she is a physical therapist. No person may practice physical therapy without first having a valid license. Nothing in this chapter prohibits any person licensed in this state under any other act from engaging in the practice for which he or she is licensed. It shall be the duty of the prosecuting attorney of each county to prosecute all cases involving a violation of this chapter arising within his or her county. The attorney general may assist in such prosecution and shall appear at all hearings when requested to do so by the board.

(2) No person assisting in the practice of physical therapy may use the title "physical therapist assistant," the letters "PTA," or any other words, abbreviations, or insignia in connection with his or her name to indicate or imply, directly or indirectly, that he or she is a physical therapist assistant without being licensed in accordance with this chapter as a physical therapist assistant.

(3) Subsections (1) and (2) of this section do not apply to an individual who is authorized to practice as a physical therapist or work as a physical therapist assistant by compact privilege as defined in RCW 18.74.500. [2017 c 108 § 5; 2007 c 98 § 10; 1991 c 3 § 181; 1987 c 150 § 48; 1986 c 259 § 125; 1983 c 116 § 18; 1961 c 64 § 8; 1949 c 239 § 9; Rem. Supp. 1949 § 10163-9.]

False advertising: Chapter 9.04 RCW.

Additional notes found at www.leg.wa.gov

18.74.150 Unlawful activities—Persons exempt from licensure under chapter.

(1) It is unlawful for any person to practice or in any manner hold himself or herself out to practice physical therapy or designate himself or herself as a physical therapist or physical therapist assistant, unless he or she is licensed in accordance with this chapter or has unnumbered compact privilege as defined in RCW 18.74.500.

(2) This chapter does not restrict persons licensed under any other law of this state from engaging in the profession or practice for which they are licensed, if they are not representing themselves to be physical therapists, physical therapist assistants, or providers of physical therapy.

(3) The following persons are exempt from licensure as physical therapists under this chapter when engaged in the following activities:

(a) A person who is pursuing a course of study leading to a degree as a physical therapist in an approved professional education program and is satisfying supervised clinical education requirements related to his or her physical therapy education while under direct supervision of a licensed physical therapist;

(b) A physical therapist while practicing in the United States armed services, United States public health service, or veterans administration as based on requirements under federal regulations for state licensure of health care providers; and

(c) A physical therapist licensed in another United States jurisdiction, or a foreign-educated physical therapist credentialed in another country, performing physical therapy as part of teaching or participating in an educational seminar of no more than sixty days in a calendar year.

(4) The following persons are exempt from licensure as physical therapist assistants under this chapter when engaged in the following activities:

(a) A person who is pursuing a course of study leading to a degree as a physical therapist assistant in an approved professional education program and is satisfying supervised clinical education requirements related to his or her physical therapist assistant education while under direct supervision of a licensed physical therapist or licensed physical therapist assistant;

(b) A physical therapist assistant while practicing in the United States armed services, United States public health service, or veterans administration as based on requirements under federal regulations for state licensure of health care providers; and

(c) A physical therapist assistant licensed in another United States jurisdiction, or a foreign-educated physical therapist assistant credentialed in another country, or a physical therapist assistant who is teaching or participating in an educational seminar of no more than sixty days in a calendar year. [2017 c 108 § 6; 2013 c 280 § 1; 2007 c 98 § 13; 2005 c 501 § 4.]

18.74.500 Physical Therapy Licensure Compact. The Physical Therapy Licensure Compact as set forth in this section is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

PHYSICAL THERAPY LICENSURE COMPACT ARTICLE I - PURPOSE

The purpose of this compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state where the patient/client is located at the time of the patient/client encounter. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This compact is designed to achieve the following objectives:

(1) Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;

(2) Enhance the states' ability to protect the public's health and safety;

(3) Encourage the cooperation of member states in regulating multistate physical therapy practice;

(4) Support spouses of relocating military members;

(5) Enhance the exchange of licensure, investigative, and disciplinary information between member states; and

(6) Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards.

ARTICLE II - DEFINITIONS

As used in this compact, and except as otherwise provided, the following definitions apply:

(1) "Active duty military" means full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. Secs. 1209 and 1211.

(2) "Adverse action" means disciplinary action taken by a physical therapy licensing board based upon misconduct, unacceptable performance, or a combination of both.

(3) "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a physical therapy licensing board. This includes, but is not limited to, substance abuse issues.

(4) "Compact privilege" means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.

(5) "Continuing competence" means a requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.

(6) "Data system" means a repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action.

(7) "Encumbered license" means a license that a physical therapy licensing board has limited in any way.

(8) "Executive board" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

(9) "Home state" means the member state that is the licensee's primary state of residence.

(10) "Investigative information" means information, records, and documents received or generated by a physical therapy licensing board pursuant to an investigation.

(11) "Jurisprudence requirement" means the assessment of an individual's knowledge of the laws and rules governing the practice of physical therapy in a state.

(12) "Licensee" means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.

(13) "Member state" means a state that has enacted the compact.

(14) "Party state" means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.

(15) "Physical therapist" means an individual who is licensed by a state to practice physical therapy.

(16) "Physical therapist assistant" means an individual who is licensed/certified by a state and who assists the physical therapist in selected components of physical therapy.

(17) "Physical therapy" has the same meaning given in RCW 18.74.010. "Physical therapy practice" and "the practice of physical therapy" have the same meaning given to "practice of physical therapy" in RCW 18.74.010.

(18) "Physical therapy compact commission" or "commission" means the national administrative body whose

membership consists of all states that have enacted the compact.

(19) "Physical therapy licensing board" or "licensing board" means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.

(20) "Remote state" means a member state other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

(21) "Rule" means a regulation, principle, or directive promulgated by the commission that has the force of law.

(22) "State" means any state, commonwealth, district, or territory of the United States of America that regulates the practice of physical therapy.

ARTICLE III - STATE PARTICIPATION IN THE COMPACT

(1) To participate in the compact, a state must:

(a) Participate fully in the commission's data system, including using the commission's unique identifier as defined in rule;

(b) Have a mechanism in place for receiving and investigating complaints about licensees;

(c) Notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee;

(d) Fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the federal bureau of investigation record search on criminal background checks and use the results in making licensure decisions in accordance with subsection (2) of this Article;

(e) Comply with the rules of the commission;

(f) Utilize a recognized national examination as a requirement for licensure pursuant to the rules of the commission; and

(g) Have continuing competence requirements as a condition for license renewal.

(2) Upon adoption of this statute, the member state shall have the authority to obtain biometric-based information from each physical therapy licensure applicant and submit this information to the federal bureau of investigation for a criminal background check in accordance with 28 U.S.C. Sec. 534 and 42 U.S.C. Sec. 14616.

(3) A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules.

(4) Member states may charge a fee for granting a compact privilege.

ARTICLE IV - COMPACT PRIVILEGE

(1) To exercise the compact privilege under the terms and provisions of the compact, the licensee shall:

(a) Hold a license in the home state;

(b) Have no encumbrance on any state license;

(c) Be eligible for a compact privilege in any member state in accordance with subsections (4), (7), and (8) of this Article;

(d) Have not had any adverse action against any license or compact privilege within the previous two years;

(e) Notify the commission that the licensee is seeking the compact privilege within a remote state(s);

(f) Pay any applicable fees, including any state fee, for the compact privilege;

(g) Meet any jurisprudence requirements established by the remote state(s) in which the licensee is seeking a compact privilege; and

(h) Report to the commission adverse action taken by any nonmember state within thirty days from the date the adverse action is taken.

(2) The compact privilege is valid until the expiration date of the home license. The licensee must comply with the requirements of subsection (1) of this Article to maintain the compact privilege in the remote state.

(3) A licensee providing physical therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

(4) A licensee providing physical therapy in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

(5) If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

(a) The home state license is no longer encumbered; and

(b) Two years have elapsed from the date of the adverse action.

(6) Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of subsection (1) of this Article to obtain a compact privilege in any remote state.

(7) If a licensee's compact privilege in any remote state is removed, the individual shall lose the compact privilege in any remote state until the following occur:

(a) The specific period of time for which the compact privilege was removed has ended;

(b) All fines have been paid; and

(c) Two years have elapsed from the date of the adverse action.

(8) Once the requirements of subsection (7) of this Article have been met, the licensee must meet the requirements in subsection (1) of this Article to obtain a compact privilege in a remote state.

ARTICLE V - ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

A licensee who is active duty military or is the spouse of an individual who is active duty military may designate one of the following as the home state:

(1) Home of record;

(2) Permanent change of station; or

(3) State of current residence if it is different than the permanent change of station state or home of record.

ARTICLE VI - ADVERSE ACTIONS

(1) A home state shall have exclusive power to impose adverse action against a license issued by the home state.

(2) A home state may take adverse action based on the investigative information of a remote state, so long as the home state follows its own procedures for imposing adverse action.

(3) Nothing in this compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the member state's laws. Member states must require licensees who enter any alternative programs in lieu of discipline to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

(4) Any member state may investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.

(5) A remote state shall have the authority to:

(a) Take adverse actions as set forth in subsection (4) of Article IV of this compact against a licensee's compact privilege in the state;

(b) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and

(c) If otherwise permitted by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

(6)(a) In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.

(b) Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

ARTICLE VII - ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION

(1) The compact member states hereby create and establish a joint public agency known as the physical therapy compact commission:

(a) The commission is an instrumentality of the compact states.

(b) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it

adopts or consents to participate in alternative dispute resolution proceedings.

(c) Nothing in this compact shall be construed to be a waiver of sovereign immunity.

(2)(a) Each member state shall have and be limited to one delegate selected by that member state's licensing board.

(b) The delegate shall be a current member of the licensing board, who is a physical therapist, physical therapist assistant, public member, or the board administrator.

(c) Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

(d) The member state board shall fill any vacancy occurring in the commission.

(e) Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission.

(f) A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

(g) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

(3) The commission shall have the following powers and duties:

(a) Establish the fiscal year of the commission;

(b) Establish bylaws;

(c) Maintain its financial records in accordance with the bylaws;

(d) Meet and take such actions as are consistent with the provisions of this compact and the bylaws;

(e) Promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all member states;

(f) Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state physical therapy licensing board to sue or be sued under applicable law shall not be affected;

(g) Purchase and maintain insurance and bonds;

(h) Borrow, accept, or contract for services of personnel including, but not limited to, employees of a member state;

(i) Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(j) Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the commission shall avoid any appearance of impropriety and/or conflict of interest;

(k) Lease, purchase, or accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use any property real, personal, or mixed; provided that at all times the commission shall avoid any appearance of impropriety;

(l) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

(m) Establish a budget and make expenditures;

(n) Borrow money;

(o) Appoint committees, including standing committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

(p) Provide and receive information from, and cooperate with, law enforcement agencies;

(q) Establish and elect an executive board; and

(r) Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of physical therapy licensure and practice.

(4) The executive board shall have the power to act on behalf of the commission according to the terms of this compact.

(a) The executive board shall be comprised of nine members:

(i) Seven voting members who are elected by the commission from the current membership of the commission;

(ii) One ex officio, nonvoting member from a recognized national physical therapy professional association; and

(iii) One ex officio, nonvoting member from a recognized membership organization of the physical therapy licensing boards.

(b) The ex officio members will be selected by their respective organizations.

(c) The commission may remove any member of the executive board as provided in bylaws.

(d) The executive board shall meet at least annually.

(e) The executive board shall have the following duties and responsibilities:

(i) Recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states such as annual dues, and any commission compact fee charged to licensees for the compact privilege;

(ii) Ensure compact administration services are appropriately provided, contractual or otherwise;

(iii) Prepare and recommend the budget;

(iv) Maintain financial records on behalf of the commission;

(v) Monitor compact compliance of member states and provide compliance reports to the commission;

(vi) Establish additional committees as necessary; and

(vii) Other duties as provided in rules or bylaws.

(5)(a) All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rule-making provisions in Article IX of this compact.

(b) The commission or the executive board or other committees of the commission may convene in a closed, nonpublic meeting if the commission or executive board or other committees of the commission must discuss:

(i) Noncompliance of a member state with its obligations under the compact;

(ii) The employment, compensation, discipline, or other matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(iii) Current, threatened, or reasonably anticipated litigation;

(iv) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

(v) Accusing any person of a crime or formally censuring any person;

(vi) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(vii) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(viii) Disclosure of investigative records compiled for law enforcement purposes;

(ix) Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or

(x) Matters specifically exempt from disclosure by federal or member state statute.

(c) If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

(d) The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

(6)(a) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

(c) The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.

(d) The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state.

(e) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all

receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

(7)(a) The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing in this subsection shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

(b) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

(c) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE VIII - DATA SYSTEM

(1) The commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

(2) Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this compact is applicable as required by the rules of the commission, including:

(a) Identifying information;

(b) Licensure data;

(c) Adverse actions against a license or compact privilege;

(d) Nonconfidential information related to alternative program participation;

(e) Any denial of application for licensure, and the reason(s) for such denial; and

(f) Other information that may facilitate the administration of this compact, as determined by the rules of the commission.

(3) Investigative information pertaining to a licensee in any member state will only be available to other party states.

(4) The commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

(5) Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

(6) Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

ARTICLE IX - RULE MAKING

(1) The commission shall exercise its rule-making powers pursuant to the criteria set forth in this Article IX and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

(2) Notwithstanding subsection (1) of Article IX, the board shall review the rules of the commission. The board may reject or approve and adopt the rules of the commission as rules of the board. The state of Washington is subject to a rule of the commission only if the rule of the commission is adopted by the board and the rule does not violate any right guaranteed by the state Constitution or the United States Constitution.

(3) If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within four years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state.

(4) Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

(5) Prior to promulgation and adoption of a final rule or rules by the commission, and at least thirty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rule making:

(a) On the web site of the commission or other publicly accessible platform; and

(b) On the web site of each member state physical therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

(6) The notice of proposed rule making shall include:

(a) The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

(b) The text of the proposed rule or amendment and the reason for the proposed rule;

(c) A request for comments on the proposed rule from any interested person; and

(d) The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

(7) Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

(8) The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

(a) At least twenty-five persons;

(b) A state or federal governmental subdivision or agency; or

(c) An association having at least twenty-five members.

(9) If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.

(a) All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

(b) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(c) All hearings will be recorded. A copy of the recording will be made available on request.

(d) Nothing in this Article IX shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this Article IX.

(10) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

(11) If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.

(12) The commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rule-making record and the full text of the rule.

(13) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rule-making procedures provided in the compact and in this Article IX shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

(a) Meet an imminent threat to public health, safety, or welfare;

(b) Prevent a loss of commission or member state funds;

(c) Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

(d) Protect public health and safety.

(14) The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the

web site of the commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

ARTICLE X - OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

(1) Oversight.

(a) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

(b) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.

(c) The commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission shall render a judgment or order void as to the commission, this compact, or promulgated rules.

(2) Default, technical assistance, and termination.

(a) If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:

(i) Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, and/or any other action to be taken by the commission; and

(ii) Provide remedial training and specific technical assistance regarding the default.

(b) If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(c) Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(d) A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(e) The commission shall not bear any costs related to a state that is found to be in default or that has been terminated

from the compact, unless agreed upon in writing between the commission and the defaulting state.

(f) The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(3) Dispute resolution.

(a) Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and non-member states.

(b) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(4) Enforcement.

(a) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(b) By majority vote, the commission may initiate legal action in the United States district court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(c) The remedies herein shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE XI - DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR PHYSICAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

(1) The compact shall come into effect on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rule-making powers necessary to the implementation and administration of the compact.

(2) Any state that joins the compact subsequent to the commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission shall have the full force and effect of law on the day the compact becomes law in that state.

(3) Any member state may withdraw from this compact by enacting a statute repealing the same.

(a) A member state's withdrawal shall not take effect until six months after enactment of the repealing statute.

(b) Withdrawal shall not affect the continuing requirement of the withdrawing state's physical therapy licensing board to comply with the investigative and adverse action

reporting requirements of this compact prior to the effective date of withdrawal.

(4) Nothing contained in this compact shall be construed to invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this compact.

(5) This compact may be amended by the member states. No amendment to this compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

ARTICLE XII - CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters. [2017 c 108 § 1.]

Short title—2017 c 108 §§ 1 and 2: "RCW 18.74.500 and 18.74.510 shall be known and cited as the physical therapy licensure compact." [2017 c 108 § 8.]

18.74.510 Physical therapy licensure compact—Compact privilege—Fees. (1) The secretary, in consultation with the board, shall establish fees pursuant to RCW 43.70.250 for physical therapists and physical therapist assistants seeking to practice in this state by use of compact privilege as defined in RCW 18.74.500. At the time of applying for compact privilege in this state, the applicant shall comply with established fee requirements.

(2) The fees established in subsection (1) of this section must be an amount sufficient to cover the state's monetary obligations as a member state to the physical therapy licensure compact. [2017 c 108 § 2.]

Short title—2017 c 108 §§ 1 and 2: See note following RCW 18.74.500.

18.74.520 Physical therapy licensure compact—Criminal history information. The board shall not disseminate any criminal history information gained through a federal background check, ordered pursuant to RCW 18.74.500, the physical therapy licensure compact, to the physical therapy compact commission or another state or state licensure board. [2017 c 108 § 3.]

Chapter 18.79 RCW NURSING CARE

Sections

18.79.380 Repealed.
18.79.800 Opioid drug prescribing rules—Adoption.

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

18.79.800 Opioid drug prescribing rules—Adoption. (1) By January 1, 2019, the commission must adopt rules establishing requirements for prescribing opioid drugs. The rules may contain exemptions based on education, training, amount of opioids prescribed, patient panel, and practice environment.

(2) In developing the rules, the commission must consider the agency medical directors' group and centers for disease control guidelines, and may consult with the department of health, the University of Washington, and the largest professional associations for advanced registered nurse practitioners and certified registered nurse anesthetists in the state. [2017 c 297 § 8.]

Findings—Intent—2017 c 297: See note following RCW 18.22.800.

Chapter 18.85 RCW REAL ESTATE BROKERS AND MANAGING BROKERS

Sections

18.85.011 Definitions.

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

(1) "Advertising" means any attempt by publication or broadcast, whether oral, written, or otherwise, to induce a person to use the services of a real estate firm, broker, managing broker, or designated broker.

(2) "Broker" means a natural person acting on behalf of a real estate firm to perform real estate brokerage services under the supervision of a designated broker or managing broker.

(3) "Business opportunity" means and includes business, business entity, and good will of an existing business or any one or combination thereof when the transaction or business includes an interest in real property.

(4) "Clear and conspicuous" in an advertising statement means the representation or term being used is of such a color, contrast, size, or audibility, and presented in a manner so as to be readily noticed and understood.

(5) "Clock hours of instruction" means actual hours spent in classroom instruction in any tax supported, public technical college, community college, or any other institution of higher learning or a correspondence course from any of the aforementioned institutions certified by such institution as the equivalent of the required number of clock hours, and the real estate commission may certify courses of instruction other than in the aforementioned institutions.

(6) "Commercial real estate" means any parcel of real estate in this state other than real estate containing one to four residential units. "Commercial real estate" does not include a single-family residential lot or single-family residential units such as condominiums, townhouses, manufactured homes, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit-by-unit basis, even when those units are part of a larger building or parcel of real estate, unless the property is sold or leased for a commercial purpose.

(7) "Commission" means the real estate commission of the state of Washington.

(8) "Controlling interest" means the ability to control either the operational or financial, or both, decisions of a firm.

(9) "Department" means the Washington department of licensing.

(10) "Designated broker" means:

(a) A natural person who owns a sole proprietorship real estate firm; or

(b) A natural person with a controlling interest in the firm who is designated by a legally recognized business entity such as a corporation, limited liability company, limited liability partnership, or partnership real estate firm, to act as a designated broker on behalf of the real estate firm, and whose managing broker's license receives an endorsement from the department of "designated broker."

(11) "Director" means the director of the department of licensing.

(12) "Inactive license" means the status of a license that is not expired and is not affiliated with a firm.

(13) "Independent contractor relationship" means a relationship between a broker or managing broker and a real estate firm that satisfies both of the following conditions: (a) No written agreement with the broker or managing broker provides that the broker or managing broker is an employee of the firm; and (b) substantially all of the broker's or managing broker's compensation is for services related to real estate brokerage services provided by the firm. Nothing in this subsection is intended to relieve the managing broker or real estate firm of the supervisory duties identified in this chapter.

(14) "Licensee" means a person holding a license as a real estate firm, managing broker, or broker.

(15) "Managing broker" means a natural person acting on behalf of a real estate firm to perform real estate brokerage services under the supervision of the designated broker, and who may supervise other brokers or managing brokers licensed to the firm.

(16) "Person" includes a natural person, corporation, limited liability company, limited liability partnership, partnership, or public or private organization or entity of any character, except where otherwise restricted.

(17) "Real estate brokerage services" means any of the following services offered or rendered directly or indirectly to another, or on behalf of another for compensation or the promise or expectation of compensation, or by a licensee on the licensee's own behalf:

(a) Listing, selling, purchasing, exchanging, optioning, leasing, renting of real estate, or any real property interest therein; or any interest in a cooperative; or any interest in a floating home or floating on-water residence, as defined in RCW 90.58.270;

(b) Negotiating or offering to negotiate, either directly or indirectly, the purchase, sale, exchange, lease, or rental of real estate, or any real property interest therein; or any interest in a cooperative; or any interest in a floating home or floating on-water residence, as defined in RCW 90.58.270;

(c) Listing, selling, purchasing, exchanging, optioning, leasing, renting, or negotiating the purchase, sale, lease, or exchange of a manufactured or mobile home in conjunction with the purchase, sale, lease, exchange, or rental of the land

upon which the manufactured or mobile home is or will be located;

(d) Advertising or holding oneself out to the public by any solicitation or representation that one is engaged in real estate brokerage services;

(e) Advising, counseling, or consulting buyers, sellers, landlords, or tenants in connection with a real estate transaction;

(f) Issuing a broker's price opinion. For the purposes of this chapter, "broker's price opinion" means an oral or written report of property value that is prepared by a licensee under this chapter and is not an appraisal as defined in RCW 18.140.010 unless it complies with the requirements established under chapter 18.140 RCW;

(g) Collecting, holding, or disbursing funds in connection with the negotiating, listing, selling, purchasing, exchanging, optioning, leasing, or renting of real estate or any real property interest; and

(h) Performing property management services, which includes with no limitation: Marketing; leasing; renting; the physical, administrative, or financial maintenance of real property; or the supervision of such actions.

(18) "Real estate firm" or "firm" means a sole proprietorship, partnership, limited liability partnership, corporation, limited liability company, or other legally recognized business entity conducting real estate brokerage services in this state and licensed by the department as a real estate firm. [2017 c 59 § 1; 2015 c 133 § 1; 2008 c 23 § 1; 2003 c 201 § 1; 1998 c 46 § 2; 1997 c 322 § 1; 1987 c 332 § 1; 1981 c 305 § 1; 1979 c 158 § 68; 1977 ex.s. c 370 § 1; 1973 1st ex.s. c 57 § 1; 1972 ex.s. c 139 § 1; 1969 c 78 § 1; 1953 c 235 § 1; 1951 c 222 § 1; 1943 c 118 § 1; 1941 c 252 § 2; Rem. Supp. 1943 § 8340-25. Prior: 1925 ex.s. c 129 § 4. Formerly RCW 18.85.010.]

Chapter 18.108 RCW MESSAGE THERAPISTS

Sections

18.108.050 Exemptions.

18.108.050 Exemptions. This chapter does not apply to:

(1) An individual giving massage or reflexology to members of his or her immediate family;

(2) The practice of a profession by individuals who are licensed, certified, or registered under other laws of this state and who are performing services within their authorized scope of practice;

(3) Massage or reflexology practiced at the athletic department of:

(a) Any institution maintained by the public funds of the state, or any of its political subdivisions;

(b) Any primary or secondary school or institution of higher education;

(c) Any school or college approved by the department of health by rule using recognized national professional standards; or

(d) Any nonprofit organization licensed under RCW 66.24.400 and 66.24.450;

(4) Students enrolled in an approved massage school, approved program, or approved apprenticeship program, practicing massage techniques, incidental to the massage school or program and supervised by the approved school or program. Students must identify themselves as a student when performing massage services on members of the public. Students may not be compensated for the massage services they provide;

(5) Students enrolled in an approved reflexology school, approved program, or approved apprenticeship program, practicing reflexology techniques, incidental to the reflexologist school or program and supervised by the approved school or program. Students must identify themselves as a student when performing reflexology services on members of the public. Students may not be compensated for the reflexology services they provide; or

(6)(a) Individuals who have completed a somatic education training program approved by the secretary.

(b) For purposes of this subsection (6), "somatic education" means: Using minimal touch, words, and directed movement to deepen awareness of existing patterns of movement and suggest new possibilities of movement; and using minimal touch over specific points of the body to facilitate balance in the nervous system. It includes: (i) Any somatic education training program approved by the secretary as of July 23, 2017; (ii) the practice of ortho-bionomy; and (iii) the Feldenkrais method of somatic education. [2017 c 77 § 1; 2012 c 137 § 8; 2002 c 277 § 2; 1997 c 297 § 3; 1995 c 198 § 16; 1987 c 443 § 5; 1975 1st ex.s. c 280 § 5.]

Finding—Purpose—Rules—Effective date—2012 c 137: See notes following RCW 18.108.005.

Chapter 18.120 RCW REGULATION OF HEALTH PROFESSIONS— CRITERIA

Sections

18.120.020 Definitions.

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

(1) "Applicant group" includes any health professional group or organization, any individual, or any other interested party which proposes that any health professional group not presently regulated be regulated or which proposes to substantially increase the scope of practice of the profession.

(2) "Certificate" and "certification" mean a voluntary process by which a statutory regulatory entity grants recognition to an individual who (a) has met certain prerequisite qualifications specified by that regulatory entity, and (b) may assume or use "certified" in the title or designation to perform prescribed health professional tasks.

(3) "Grandfather clause" means a provision in a regulatory statute applicable to practitioners actively engaged in the regulated health profession prior to the effective date of the regulatory statute which exempts the practitioners from meeting the prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

(4) "Health professions" means and includes the following health and health-related licensed or regulated profes-

sions and occupations: Podiatric medicine and surgery under chapter 18.22 RCW; chiropractic under chapter 18.25 RCW; dental hygiene under chapter 18.29 RCW; dentistry under chapter 18.32 RCW; denturism under chapter 18.30 RCW; dental anesthesia assistants under chapter 18.350 RCW; dispensing opticians under chapter 18.34 RCW; hearing instruments under chapter 18.35 RCW; naturopaths under chapter 18.36A RCW; embalming and funeral directing under chapter 18.39 RCW; midwifery under chapter 18.50 RCW; nursing home administration under chapter 18.52 RCW; optometry under chapters 18.53 and 18.54 RCW; ocularists under chapter 18.55 RCW; osteopathic medicine and surgery under chapters 18.57 and 18.57A RCW; pharmacy under chapters 18.64 and 18.64A RCW; medicine under chapters 18.71 and 18.71A RCW; emergency medicine under chapter 18.73 RCW; physical therapy under chapter 18.74 RCW; practical nurses under chapter 18.79 RCW; psychologists under chapter 18.83 RCW; registered nurses under chapter 18.79 RCW; occupational therapists licensed under chapter 18.59 RCW; respiratory care practitioners licensed under chapter 18.89 RCW; veterinarians and veterinary technicians under chapter 18.92 RCW; massage therapists under chapter 18.108 RCW; East Asian medicine practitioners licensed under chapter 18.06 RCW; persons registered under chapter 18.19 RCW; persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW; dietitians and nutritionists certified by chapter 18.138 RCW; radiologic technicians under chapter 18.84 RCW; nursing assistants registered or certified under chapter 18.88A RCW; reflexologists certified under chapter 18.108 RCW; medical assistants-certified, medical assistants-hemodialysis technician, medical assistants-phlebotomist, forensic phlebotomist, and medical assistants-registered certified and registered under chapter 18.360 RCW; and licensed behavior analysts, licensed assistant behavior analysts, and certified behavior technicians under chapter 18.380 RCW.

(5) "Inspection" means the periodic examination of practitioners by a state agency in order to ascertain whether the practitioners' occupation is being carried out in a fashion consistent with the public health, safety, and welfare.

(6) "Legislative committees of reference" means the standing legislative committees designated by the respective rules committees of the senate and house of representatives to consider proposed legislation to regulate health professions not previously regulated.

(7) "License," "licensing," and "licensure" mean permission to engage in a health profession which would otherwise be unlawful in the state in the absence of the permission. A license is granted to those individuals who meet prerequisite qualifications to perform prescribed health professional tasks and for the use of a particular title.

(8) "Practitioner" means an individual who (a) has achieved knowledge and skill by practice, and (b) is actively engaged in a specified health profession.

(9) "Professional license" means an individual, nontransferable authorization to carry on a health activity based on qualifications which include: (a) Graduation from an accredited or approved program, and (b) acceptable performance on a qualifying examination or series of examinations.

(10) "Public member" means an individual who is not, and never was, a member of the health profession being reg-

ulated or the spouse of a member, or an individual who does not have and never has had a material financial interest in either the rendering of the health professional service being regulated or an activity directly related to the profession being regulated.

(11) "Registration" means the formal notification which, prior to rendering services, a practitioner shall submit to a state agency setting forth the name and address of the practitioner; the location, nature and operation of the health activity to be practiced; and, if required by the regulatory entity, a description of the service to be provided.

(12) "Regulatory entity" means any board, commission, agency, division, or other unit or subunit of state government which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

(13) "State agency" includes every state office, department, board, commission, regulatory entity, and agency of the state, and, where provided by law, programs and activities involving less than the full responsibility of a state agency. [2017 c 336 § 19. Prior: 2016 c 41 § 17; 2015 c 118 § 12; prior: 2012 c 153 § 15; 2012 c 153 § 14; 2012 c 137 § 18; 2012 c 23 § 8; 2010 c 286 § 14; 2001 c 251 § 26; 2000 c 93 § 15; 1997 c 334 § 13; 1996 c 178 § 9; prior: 1995 c 323 § 15; 1995 c 1 § 18 (Initiative Measure No. 607, approved November 8, 1994); 1994 sp.s. c 9 § 718; 1989 c 300 § 14; prior: 1988 c 277 § 12; 1988 c 267 § 21; prior: 1987 c 512 § 21; 1987 c 447 § 17; 1987 c 415 § 16; 1987 c 412 § 14; prior: 1985 c 326 § 28; 1985 c 117 § 3; prior: 1984 c 279 § 57; 1984 c 9 § 18; 1983 c 168 § 2.]

Effective date—2017 c 336 §§ 18 and 19: See note following RCW 18.130.040.

Finding—2017 c 336: See note following RCW 9.96.060.

Effective date—2016 c 41: See note following RCW 18.108.010.

Effective date—2015 c 118: See note following RCW 18.380.010.

Effective date—2012 c 153 §§ 15 and 17: "Sections 15 and 17 of this act take effect July 1, 2016." [2012 c 153 § 23.]

Rules—2012 c 153: See note following RCW 18.360.005.

Finding—Purpose—Rules—Effective date—2012 c 137: See notes following RCW 18.108.005.

Intent—2010 c 286: See RCW 18.06.005.

Additional notes found at www.leg.wa.gov

Chapter 18.130 RCW

REGULATION OF HEALTH PROFESSIONS— UNIFORM DISCIPLINARY ACT

Sections

- 18.130.040 Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules.
18.130.410 Collecting blood samples without consent under direction of law enforcement.

18.130.040 Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules. (1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

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(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Midwives licensed under chapter 18.50 RCW;

(iii) Ocularists licensed under chapter 18.55 RCW;

(iv) Massage therapists and businesses licensed under chapter 18.108 RCW;

(v) Dental hygienists licensed under chapter 18.29 RCW;

(vi) East Asian medicine practitioners licensed under chapter 18.06 RCW;

(vii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(viii) Respiratory care practitioners licensed under chapter 18.89 RCW;

(ix) Hypnotherapists and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;

(x) Persons licensed as mental health counselors, mental health counselor associates, marriage and family therapists, marriage and family therapist associates, social workers, social work associates—advanced, and social work associates—-independent clinical under chapter 18.225 RCW;

(xi) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xii) Nursing assistants registered or certified or medication assistants endorsed under chapter 18.88A RCW;

(xiii) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xiv) Chemical dependency professionals and chemical dependency professional trainees certified under chapter 18.205 RCW;

(xv) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xvi) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xvii) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xviii) Surgical technologists registered under chapter 18.215 RCW;

(xix) Recreational therapists under chapter 18.230 RCW;

(xx) Animal massage therapists certified under chapter 18.240 RCW;

(xxi) Athletic trainers licensed under chapter 18.250 RCW;

(xxii) Home care aides certified under chapter 18.88B RCW;

(xxiii) Genetic counselors licensed under chapter 18.290 RCW;

(xxiv) Reflexologists certified under chapter 18.108 RCW;

(xxv) Medical assistants-certified, medical assistants-hemodialysis technician, medical assistants-phlebotomist, forensic phlebotomist, and medical assistants-registered certified and registered under chapter 18.360 RCW; and

(xxvi) Behavior analysts, assistant behavior analysts, and behavior technicians under chapter 18.380 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW, licenses and registrations issued under chapter 18.260 RCW, and certifications issued under chapter 18.350 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The pharmacy quality assurance commission as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW;

(xiv) The veterinary board of governors as established in chapter 18.92 RCW;

(xv) The board of naturopathy established in chapter 18.36A RCW; and

(xvi) The board of denturists established in chapter 18.30 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the uniform disciplinary act, among the disciplining authorities listed in subsection (2) of this section. [2017 c 336 § 18; 2016 c 41 § 18; 2015 c 118 § 13. Prior: 2013 c 171 § 8; 2013 c 19 § 45; prior: 2012 c 208 § 10; 2012 c 153 § 17; 2012 c 153 § 16; 2012 c 137 § 19; 2012 c 23 § 6; 2011 c 41 § 11; prior: 2010 c 286 § 18; (2010 c 286 § 17 expired August 1, 2010); (2010 c 286 § 16 expired July 1, 2010); 2010 c 65 § 3; (2010 c 65 § 2 expired August 1, 2010); (2010 c 65 § 1 expired July 1, 2010); prior: 2009 c 302 § 14; 2009 c 301 § 8; 2009 c 52 § 2; 2009 c 52 § 1; 2009 c 2 § 16 (Initiative Measure No. 1029, approved November 4, 2008); 2008 c 134 § 18; (2008 c 134 § 17 expired July 1, 2008); prior: 2007 c 269 § 17; 2007 c 253 § 13; 2007 c 70 § 11; 2004 c 38 § 2; prior: 2003 c 275 § 2; 2003 c 258 § 7; prior: 2002 c 223 § 6; 2002 c 216 § 11; 2001

c 251 § 27; 1999 c 335 § 10; 1998 c 243 § 16; prior: 1997 c 392 § 516; 1997 c 334 § 14; 1997 c 285 § 13; 1997 c 275 § 2; prior: 1996 c 200 § 32; 1996 c 81 § 5; prior: 1995 c 336 § 2; 1995 c 323 § 16; 1995 c 260 § 11; 1995 c 1 § 19 (Initiative Measure No. 607, approved November 8, 1994); prior: 1994 sp.s. c 9 § 603; 1994 c 17 § 19; 1993 c 367 § 4; 1992 c 128 § 6; 1990 c 3 § 810; prior: 1988 c 277 § 13; 1988 c 267 § 22; 1988 c 243 § 7; prior: 1987 c 512 § 22; 1987 c 447 § 18; 1987 c 415 § 17; 1987 c 412 § 15; 1987 c 150 § 1; prior: 1986 c 259 § 3; 1985 c 326 § 29; 1984 c 279 § 4.]

Effective date—2017 c 336 §§ 18 and 19: "Sections 18 and 19 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2017." [2017 c 336 § 20.]

Finding—2017 c 336: See note following RCW 9.96.060.

Effective date—2016 c 41: See note following RCW 18.108.010.

Effective date—2015 c 118: See note following RCW 18.380.010.

Effective date—2013 c 171 § 8: "Section 8 of this act takes effect July 1, 2016." [2013 c 171 § 10.]

Effective date—2013 c 19 § 45: "Section 45 of this act takes effect July 1, 2016." [2013 c 19 § 129.]

Effective date—2012 c 208 §§ 2-10: See note following RCW 18.88A.020.

Findings—Rules—2012 c 208: See notes following RCW 18.88A.082.

Effective date—2012 c 153 §§ 15 and 17: See note following RCW 18.360.005.

Rules—2012 c 153: See note following RCW 18.360.005.

Finding—Purpose—Rules—Effective date—2012 c 137: See notes following RCW 18.108.005.

Effective date—2010 c 286 § 18: "Section 18 of this act takes effect August 1, 2010." [2010 c 286 § 22.]

Expiration date—2010 c 286 § 17: "Section 17 of this act expires August 1, 2010." [2010 c 286 § 21.]

Effective date—2010 c 286 § 17: "Section 17 of this act takes effect July 1, 2010." [2010 c 286 § 20.]

Expiration date—2010 c 286 § 16: "Section 16 of this act expires July 1, 2010." [2010 c 286 § 19.]

Intent—2010 c 286: See RCW 18.06.005.

Effective date—2010 c 65 § 3: "Section 3 of this act takes effect August 1, 2010." [2010 c 65 § 9.]

Expiration date—2010 c 65 § 2: "Section 2 of this act expires August 1, 2010." [2010 c 65 § 8.]

Effective date—2010 c 65 § 2: "Section 2 of this act takes effect July 1, 2010." [2010 c 65 § 7.]

Expiration date—2010 c 65 § 1: "Section 1 of this act expires July 1, 2010." [2010 c 65 § 6.]

Effective date—Implementation—2009 c 302: See RCW 18.290.900 and 18.290.901.

Intent—Implementation—2009 c 301: See notes following RCW 18.35.010.

Speech-language pathology assistants—Certification requirements—2009 c 301: See note following RCW 18.35.040.

Effective date—2009 c 52 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 52 § 3.]

Effective date—2009 c 52 § 2: "Section 2 of this act takes effect July 1, 2010." [2009 c 52 § 4.]

Contingent effective date—2009 c 2 (Initiative Measure No. 1029) § 16: "Section 16 of this act takes effect if section 18, chapter 134, Laws of 2008 is signed into law by April 6, 2008." [2009 c 2 § 24 (Initiative Measure No. 1029, approved November 4, 2008).]

Intent—Findings—Construction—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.050.

Effective date—2008 c 134 § 18: "Section 18 of this act takes effect July 1, 2008." [2008 c 134 § 37.]

Expiration date—2008 c 134 § 17: "Section 17 of this act expires July 1, 2008." [2008 c 134 § 36.]

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

Application—Implementation—2007 c 269: See RCW 18.260.900 and 18.260.901.

Effective date—Implementation—2007 c 253: See RCW 18.250.901 and 18.250.902.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Intent—Purpose—1997 c 285: See RCW 18.200.005.

Additional notes found at www.leg.wa.gov

18.130.410 Collecting blood samples without consent under direction of law enforcement. It is not professional misconduct for a physician licensed under chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57 RCW; registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed under chapter 18.79 RCW; physician assistant licensed under chapter 18.71A RCW; osteopathic physician assistant licensed under chapter 18.57A RCW; advanced emergency medical technician or paramedic certified under chapter 18.71 RCW; or medical assistant-certified, medical assistant-phlebotomist, or forensic phlebotomist certified under chapter 18.360 RCW, or person holding another credential under Title 18 RCW whose scope of practice includes performing venous blood draws, or hospital, or duly licensed clinical laboratory employing or utilizing services of such licensed or certified health care provider, to collect a blood sample without a person's consent when the physician licensed under chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57 RCW; registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed under chapter 18.79 RCW; physician assistant licensed under chapter 18.71A RCW; osteopathic physician assistant licensed under chapter 18.57A RCW; advanced emergency medical technician or paramedic certified under chapter 18.71 RCW; or medical assistant-certified, medical assistant-phlebotomist, or forensic phlebotomist certified under chapter 18.360 RCW, or person holding another credential under Title 18 RCW whose scope of practice includes performing venous blood draws, or hospital, or duly licensed clinical laboratory employing or utilizing services of such licensed or certified health care provider withdrawing blood was directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant or exigent circumstances: PROVIDED, That nothing in this section shall relieve a physician licensed under chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57 RCW; registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed under chapter 18.79 RCW; physician assistant licensed under chapter 18.71A RCW; osteopathic physician assistant licensed under chapter 18.57A RCW; advanced emergency medical technician or paramedic certified under chapter 18.71 RCW; or medical assistant-certified, medical assistant-phlebotomist, or forensic phlebotomist certified under chapter 18.360 RCW, or person holding another credential under Title 18 RCW whose scope of practice includes

performing venous blood draws, or hospital, or duly licensed clinical laboratory employing or utilizing services of such licensed or certified health care provider withdrawing blood from professional discipline arising from the use of improper procedures or from failing to exercise the required standard of care. [2017 c 336 § 9; 2015 2nd sp.s. c 3 § 21.]

Finding—2017 c 336: See note following RCW 9.96.060.

Finding—Intent—2015 2nd sp.s. c 3: See note following RCW 10.21.055.

Chapter 18.205 RCW

CHEMICAL DEPENDENCY PROFESSIONALS

Sections

18.205.040 Repealed.

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

Chapter 18.235 RCW

UNIFORM REGULATION OF BUSINESS AND PROFESSIONS ACT

Sections

18.235.010 Definitions. (*Effective July 1, 2018.*)

18.235.020 Application of chapter—Director's authority—Disciplinary authority. (*Effective July 1, 2018.*)

18.235.215 Application of chapter to notarial officers.

18.235.010 Definitions. (*Effective July 1, 2018.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means those boards specified in RCW 18.235.020(2)(b).

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

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

(4) "Disciplinary action" means sanctions identified in RCW 18.235.110.

(5) "Disciplinary authority" means the director, board, or commission having the authority to take disciplinary action against a holder of, or applicant for, a professional or business license upon a finding of a violation of this chapter or a chapter specified under RCW 18.235.020.

(6) "License," "licensing," and "licensure" are deemed equivalent to the terms "license," "licensing," "licensure," "certificate," "certification," and "registration" as those terms are defined in RCW 18.118.020. Each of these terms, and the term "commission" under chapter 42.45 RCW, are interchangeable under the provisions of this chapter.

(7) "Unlicensed practice" means:

(a) Practicing a profession or operating a business identified in RCW 18.235.020 without holding a valid, unexpired, unrevoked, and unsuspended license to do so; or

(b) Representing to a person, through offerings, advertisements, or use of a professional title or designation, that the individual or business is qualified to practice a profession or operate a business identified in RCW 18.235.020 without holding a valid, unexpired, unrevoked, and unsuspended license to do so. [2017 c 281 § 36; 2007 c 256 § 11; 2002 c 86 § 102.]

Effective date—2017 c 281: See RCW 42.45.905.

18.235.020 Application of chapter—Director's authority—Disciplinary authority. (Effective July 1, 2018.)

(1) This chapter applies only to the director and the boards and commissions having jurisdiction in relation to the businesses and professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The director has authority under this chapter in relation to the following businesses and professions:

- (i) Auctioneers under chapter 18.11 RCW;
- (ii) Bail bond agents and bail bond recovery agents under chapter 18.185 RCW;
- (iii) Camping resorts' operators and salespersons under chapter 19.105 RCW;
- (iv) Commercial telephone solicitors under chapter 19.158 RCW;
- (v) Cosmetologists, barbers, manicurists, and estheticians under chapter 18.16 RCW;
- (vi) Court reporters under chapter 18.145 RCW;
- (vii) Driver training schools and instructors under chapter 46.82 RCW;
- (viii) Employment agencies under chapter 19.31 RCW;
- (ix) For hire vehicle operators under chapter 46.72 RCW;
- (x) Limousines under chapter 46.72A RCW;
- (xi) Notaries public under chapter 42.45 RCW;
- (xii) Private investigators under chapter 18.165 RCW;
- (xiii) Professional boxing, martial arts, and wrestling under chapter 67.08 RCW;
- (xiv) Real estate appraisers under chapter 18.140 RCW;
- (xv) Real estate brokers and salespersons under chapters 18.85 and 18.86 RCW;
- (xvi) Scrap metal processors, scrap metal recyclers, and scrap metal suppliers under chapter 19.290 RCW;
- (xvii) Security guards under chapter 18.170 RCW;
- (xviii) Sellers of travel under chapter 19.138 RCW;
- (xix) Timeshares and timeshare salespersons under chapter 64.36 RCW;
- (xx) Whitewater river outfitters under chapter 79A.60 RCW;
- (xxi) Home inspectors under chapter 18.280 RCW;
- (xxii) Body artists, body piercers, and tattoo artists, and body art, body piercing, and tattooing shops and businesses, under chapter 18.300 RCW; and
- (xxiii) Appraisal management companies under chapter 18.310 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

- (i) The state board for architects established in chapter 18.08 RCW;
- (ii) The Washington state collection agency board established in chapter 19.16 RCW;
- (iii) The state board of registration for professional engineers and land surveyors established in chapter 18.43 RCW governing licenses issued under chapters 18.43 and 18.210 RCW;

(iv) The funeral and cemetery board established in chapter 18.39 RCW governing licenses issued under chapters 18.39 and 68.05 RCW;

(v) The state board of licensure for landscape architects established in chapter 18.96 RCW; and

(vi) The state geologist licensing board established in chapter 18.220 RCW.

(3) In addition to the authority to discipline license holders, the disciplinary authority may grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered under RCW 18.235.110 by the disciplinary authority. [2017 c 281 § 37; 2013 c 322 § 29; 2010 c 179 § 18. Prior: 2009 c 412 § 22; 2009 c 370 § 20; 2009 c 102 § 5; 2008 c 119 § 21; 2007 c 256 § 12; 2006 c 219 § 13; 2002 c 86 § 103.]

Effective date—2017 c 281: See RCW 42.45.905.

Effective date—2010 c 179: See RCW 18.310.901.

Short title—Implementation—2009 c 412: See RCW 18.300.900 and 18.300.902.

Effective date—2009 c 370 §§ 1-16, 18, 20, and 21: See note following RCW 18.96.010.

Finding—2009 c 370: See note following RCW 18.96.010.

Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102: See note following RCW 18.39.810.

Additional notes found at www.leg.wa.gov

18.235.215 Application of chapter to notarial officers. See RCW 42.45.270.

Chapter 18.260 RCW DENTAL PROFESSIONALS

Sections

18.260.110 Limitation of chapter.

18.260.110 Limitation of chapter. Nothing in this chapter may be construed to prohibit or restrict:

(1) The practice of a dental assistant in the discharge of official duties by dental assistants in the United States federal services on federal reservations, including but not limited to the armed services, coast guard, public health service, veterans' bureau, or bureau of Indian affairs;

(2) Expanded function dental auxiliary education and training programs approved by the commission and the practice as an expanded function dental auxiliary by students in expanded function dental auxiliary education and training programs approved by the commission, when acting under the direction and supervision of persons licensed under chapter 18.29 or 18.32 RCW;

(3) Dental assistant education and training programs, and the practice of dental assisting by students in dental assistant education and training programs approved by the commission or offered at a school approved or licensed by the workforce training and education coordinating board, student achievement council, state board for community and technical colleges, or Washington state skill centers certified by the office of the superintendent of public instruction, when acting

under the direction and supervision of persons registered or licensed under this chapter or chapter 18.29 or 18.32 RCW;

(4) The practice of a volunteer dental assistant providing services under the supervision of a licensed dentist in a charitable dental clinic, as approved by the commission in rule; or

(5) The performance of dental health aide therapist services to the extent authorized under chapter 70.350 RCW. [2017 c 5 § 6; 2012 c 229 § 502; 2008 c 150 § 1; 2007 c 269 § 11.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Chapter 18.350 RCW DENTAL ANESTHESIA ASSISTANTS

Sections

18.350.060 Limitation of chapter.

18.350.060 Limitation of chapter. Nothing in this chapter may be construed to prohibit or restrict dental health aide therapist services to the extent authorized under chapter 70.350 RCW. [2017 c 5 § 7.]

Chapter 18.360 RCW MEDICAL ASSISTANTS

Sections

18.360.010 Definitions.
18.360.020 Certification or registration required.
18.360.030 Minimum qualifications—Rules—Review of other specialties.
18.360.040 Certification and registration requirements.

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

(1) "Administer" means the retrieval of medication, and its application to a patient, as authorized in RCW 18.360.050.

(2) "Delegation" means direct authorization granted by a licensed health care practitioner to a medical assistant to perform the functions authorized in this chapter which fall within the scope of practice of the health care provider and the training and experience of the medical assistant.

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

(4) "Forensic phlebotomist" means a police officer, law enforcement officer, or employee of a correctional facility or detention facility, who is certified under this chapter and meets any additional training and proficiency standards of his or her employer to collect a venous blood sample for forensic testing pursuant to a search warrant, a waiver of the warrant requirement, or exigent circumstances.

(5) "Health care practitioner" means:

(a) A physician licensed under chapter 18.71 RCW;

(b) An osteopathic physician and surgeon licensed under chapter 18.57 RCW; or

(c) Acting within the scope of their respective licensure, a podiatric physician and surgeon licensed under chapter 18.22 RCW, a registered nurse or advanced registered nurse practitioner licensed under chapter 18.79 RCW, a naturopath licensed under chapter 18.36A RCW, a physician assistant licensed under chapter 18.71A RCW, an osteopathic physi-

cian assistant licensed under chapter 18.57A RCW, or an optometrist licensed under chapter 18.53 RCW.

(6) "Medical assistant-certified" means a person certified under RCW 18.360.040 who assists a health care practitioner with patient care, executes administrative and clinical procedures, and performs functions as provided in RCW 18.360.050 under the supervision of the health care practitioner.

(7) "Medical assistant-hemodialysis technician" means a person certified under RCW 18.360.040 who performs hemodialysis and other functions pursuant to RCW 18.360.050 under the supervision of a health care practitioner.

(8) "Medical assistant-phlebotomist" means a person certified under RCW 18.360.040 who performs capillary, venous, and arterial invasive procedures for blood withdrawal and other functions pursuant to RCW 18.360.050 under the supervision of a health care practitioner.

(9) "Medical assistant-registered" means a person registered under RCW 18.360.040 who, pursuant to an endorsement by a health care practitioner, clinic, or group practice, assists a health care practitioner with patient care, executes administrative and clinical procedures, and performs functions as provided in RCW 18.360.050 under the supervision of the health care practitioner.

(10) "Secretary" means the secretary of the department of health.

(11) "Supervision" means supervision of procedures permitted pursuant to this chapter by a health care practitioner who is physically present and is immediately available in the facility. The health care practitioner does not need to be present during procedures to withdraw blood, but must be immediately available. [2017 c 336 § 14; 2016 c 124 § 1; 2012 c 153 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Finding—2017 c 336: See note following RCW 9.96.060.

Effective date—2012 c 153 §§ 1-12, 14, 16, and 18: See note following RCW 18.360.005.

Rules—2012 c 153: See note following RCW 18.360.005.

18.360.020 Certification or registration required. (1) No person may practice as a medical assistant-certified, medical assistant-hemodialysis technician, medical assistant-phlebotomist, or forensic phlebotomist unless he or she is certified under RCW 18.360.040.

(2) No person may practice as a medical assistant-registered unless he or she is registered under RCW 18.360.040. [2017 c 336 § 15; 2012 c 153 § 3.]

Finding—2017 c 336: See note following RCW 9.96.060.

Effective date—2012 c 153 §§ 1-12, 14, 16, and 18: See note following RCW 18.360.005.

Rules—2012 c 153: See note following RCW 18.360.005.

18.360.030 Minimum qualifications—Rules—Review of other specialties. (1) The secretary shall adopt rules specifying the minimum qualifications for a medical assistant-certified, medical assistant-hemodialysis technician, medical assistant-phlebotomist, and forensic phlebotomist.

(a) The qualifications for a medical assistant-hemodialysis technician must be equivalent to the qualifications for

hemodialysis technicians regulated pursuant to *chapter 18.135 RCW as of January 1, 2012.

(b) The qualifications for a forensic phlebotomist must include training consistent with the occupational safety and health administration guidelines and must include between twenty and thirty hours of work in a clinical setting with the completion of more than one hundred successful venipunctures. The secretary may not require more than forty hours of classroom training for initial training, which may include online preclass homework.

(2) The secretary shall adopt rules that establish the minimum requirements necessary for a health care practitioner, clinic, or group practice to endorse a medical assistant as qualified to perform the duties authorized by this chapter and be able to file an attestation of that endorsement with the department.

(3) The medical quality assurance commission, the board of osteopathic medicine and surgery, the podiatric medical board, the nursing care quality assurance commission, the board of naturopathy, and the optometry board shall each review and identify other specialty assistive personnel not included in this chapter and the tasks they perform. The department of health shall compile the information from each disciplining authority listed in this subsection and submit the compiled information to the legislature no later than December 15, 2012. [2017 c 336 § 16; 2012 c 153 § 4.]

*Reviser's note: Chapter 18.135 RCW was repealed by 2012 c 153 § 20.

Finding—2017 c 336: See note following RCW 9.96.060.

Effective date—2012 c 153 §§ 1-12, 14, 16, and 18: See note following RCW 18.360.005.

Rules—2012 c 153: See note following RCW 18.360.005.

18.360.040 Certification and registration requirements. (1)(a) The secretary shall issue a certification as a medical assistant-certified to any person who has satisfactorily completed a medical assistant training program approved by the secretary, passed an examination approved by the secretary, and met any additional qualifications established under RCW 18.360.030.

(b) The secretary shall issue an interim certification to any person who has met all of the qualifications in (a) of this subsection, except for the passage of the examination. A person holding an interim permit possesses the full scope of practice of a medical assistant-certified. The interim permit expires upon passage of the examination or after one year, whichever occurs first, and may not be renewed.

(2) The secretary shall issue a certification as a medical assistant-hemodialysis technician to any person who meets the qualifications for a medical assistant-hemodialysis technician established under RCW 18.360.030.

(3) The secretary shall issue a certification as a medical assistant-phlebotomist to any person who meets the qualifications for a medical assistant-phlebotomist established under RCW 18.360.030.

(4) The secretary shall issue a certification as a forensic phlebotomist to any person who meets the qualifications for a forensic phlebotomist established under RCW 18.360.030.

(5)(a) The secretary shall issue a registration as a medical assistant-registered to any person who has a current

endorsement from a health care practitioner, clinic, or group practice.

(b) In order to be endorsed under this subsection (5), a person must:

(i) Be endorsed by a health care practitioner, clinic, or group practice that meets the qualifications established under RCW 18.360.030; and

(ii) Have a current attestation of his or her endorsement to perform specific medical tasks signed by a supervising health care practitioner filed with the department. A medical assistant-registered may only perform the medical tasks listed in his or her current attestation of endorsement.

(c) A registration based on an endorsement by a health care practitioner, clinic, or group practice is not transferable to another health care practitioner, clinic, or group practice.

(d) An applicant for registration as a medical assistant-registered who applies to the department within seven days of employment by the endorsing health care practitioner, clinic, or group practice may work as a medical assistant-registered for up to sixty days while the application is processed. The applicant must stop working on the sixtieth day of employment if the registration has not been granted for any reason.

(6) A certification issued under subsections (1) through (3) of this section is transferable between different practice settings. A certification under subsection (4) of this section is transferable between law enforcement agencies. [2017 c 336 § 17; 2013 c 128 § 2; 2012 c 153 § 5.]

Finding—2017 c 336: See note following RCW 9.96.060.

Implementation—Effective date—2013 c 128: See notes following RCW 18.360.005.

Effective date—2012 c 153 §§ 1-12, 14, 16, and 18: See note following RCW 18.360.005.

Rules—2012 c 153: See note following RCW 18.360.005.

Title 19

BUSINESS REGULATIONS—MISCELLANEOUS

Chapters

19.02	Business license center act.
19.27	State building code.
19.30	Farm labor contractors.
19.34	Washington electronic authentication act.
19.40	Uniform voidable transactions act.
19.60	Pawnbrokers and secondhand dealers.
19.85	Regulatory fairness act.
19.118	Motor vehicle warranties.
19.122	Underground utilities.
19.154	Immigration services fraud prevention act.
19.230	Uniform money services act.
19.285	Energy independence act.
19.375	Biometric identifiers.

Chapter 19.02 RCW

BUSINESS LICENSE CENTER ACT

Sections

19.02.110	Business license—System to include additional licenses.
19.02.115	Licensing information—Authorized disclosure—Penalty.

19.02.110 Business license—System to include additional licenses. (1) In addition to the licenses processed under the business licensing system prior to April 1, 1982, on

July 1, 1982, use of the business licensing system is expanded as provided by this section.

(2) Applications for the following must be filed with the business licensing service and must be processed, and renewals must be issued, under the business licensing system:

(a) Nursery dealer's licenses required by chapter 15.13 RCW;

(b) Seed dealer's licenses required by chapter 15.49 RCW;

(c) Pesticide dealer's licenses required by chapter 15.58 RCW;

(d) Shopkeeper's licenses required by chapter 18.64 RCW;

(e) Egg dealer's licenses required by chapter 69.25 RCW; and

(f) Marijuana-infused edible endorsements required by chapter 69.07 RCW. [2017 c 138 § 3; 2013 c 144 § 25; 2007 c 52 § 1; 2000 c 171 § 43; 1988 c 5 § 3; 1982 c 182 § 11.]

19.02.115 Licensing information—Authorized disclosure—Penalty. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Disclose" means to make known to any person in any manner licensing information.

(b) "Licensing information" means any information created or obtained by the department in the administration of this chapter and chapters 19.80 and 59.30 RCW, which information relates to any person who: (i) Has applied for or has been issued a license or trade name; or (ii) has been issued an assessment or delinquency fee. Licensing information includes initial and renewal business license applications, and business licenses.

(c) "Person" has the same meaning as in RCW 82.04.030 and also includes the state and the state's departments and institutions.

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency.

(2) Licensing information is confidential and privileged, and except as authorized by this section, neither the department nor any other person may disclose any licensing information. Nothing in this chapter requires any person possessing licensing information made confidential and privileged by this section to delete information from such information so as to permit its disclosure.

(3) This section does not prohibit the department of revenue, or any other person receiving licensing information from the department under this subsection, from:

(a) Disclosing licensing information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In which the person about whom such licensing information is sought and the department, another state agency, or a local government are adverse parties in the proceeding; or

(ii) Involving a dispute arising out of the department's administration of chapter 19.80 or 59.30 RCW, or this chapter if the licensing information relates to a party in the proceeding;

(b) Disclosing, subject to such requirements and conditions as the director prescribes by rules adopted pursuant to chapter 34.05 RCW, such licensing information regarding a

license applicant or license holder to such license applicant or license holder or to such person or persons as that license applicant or license holder may designate in a request for, or consent to, such disclosure, or to any other person, at the license applicant's or license holder's request, to the extent necessary to comply with a request for information or assistance made by the license applicant or license holder to such other person. However, licensing information not received from the license applicant or holder must not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the license applicant, license holder, or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies, which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the license applicant or license holder by the order of any court;

(c) Publishing statistics so classified as to prevent the identification of particular licensing information;

(d) Disclosing licensing information for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions, or licensing;

(e) Permitting the department's records to be audited and examined by the proper state officer, his or her agents and employees;

(f) Disclosing any licensing information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax or license enforcement. A peace officer or county prosecuting attorney who receives the licensing information may disclose that licensing information only for use in the investigation and a related court proceeding, or in the court proceeding for which the licensing information originally was sought;

(g) Disclosing, in a manner that is not associated with other licensing information, the name of a license applicant or license holder, entity type, registered trade name, business address, mailing address, unified business identifier number, list of licenses issued to a person through the business licensing system established in this chapter and their issuance and expiration dates, and the dates of opening of a business. This subsection may not be construed as giving authority to the department to give, sell, or provide access to any list of persons for any commercial purpose;

(h) Disclosing licensing information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

(i) Disclosing any licensing information when the disclosure is specifically authorized under any other section of the Revised Code of Washington;

(j) Disclosing licensing information to the proper officer of the licensing or tax department of any city, town, or county of this state, for official purposes. If the licensing information does not relate to a license issued by the city, town, or county requesting the licensing information, disclosure may be made only if the laws of the requesting city, town, or county grants substantially similar privileges to the proper officers of this state; or

(k) Disclosing licensing information to the federal government for official purposes.

(4) Notwithstanding anything to the contrary in this section, a state agency or local government agency may disclose licensing information relating to a license issued on its behalf by the department pursuant to this chapter if the disclosure is authorized by another statute, local law, or administrative rule.

(5) The department, any other state agency, or local government may refuse to disclose licensing information that is otherwise disclosable under subsection (3) of this section if such disclosure would violate federal law or any information sharing agreement between the state or local government and federal government.

(6) Any person acquiring knowledge of any licensing information in the course of his or her employment with the department and any person acquiring knowledge of any licensing information as provided under subsection (3)(d), (e), (f), (j), or (k) of this section, who discloses any such licensing information to another person not entitled to knowledge of such licensing information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person must forfeit such office or employment and is incapable of holding any public office or employment in this state for a period of two years thereafter. [2017 c 323 § 701; 2013 c 144 § 26; 2011 c 298 § 12.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Chapter 19.27 RCW STATE BUILDING CODE

Sections

19.27.550 Accessible parking space access aisles. (*Effective January 1, 2018.*)

19.27.550 Accessible parking space access aisles. (*Effective January 1, 2018.*) (1) In addition to the requirements under RCW 46.61.581, each accessible parking space reserved for a person with a physical disability and designated as "van accessible" under the Americans with disabilities act must have a ninety-six inch or greater adjacent access aisle. The adjacent access aisle space must be in addition to the adjacent van parking space. Two van accessible parking spaces may share a common adjacent access aisle.

(2) A sign must be erected at the head of each access aisle that prohibits parking in any access aisle located adjacent to an accessible parking space reserved for a person with a physical disability. The sign may include additional lan-

guage such as, but not limited to, an indication of any penalty for parking in an access aisle.

(3) By January 1, 2018, the building code council shall adopt rules to implement in the building code the access aisle width and access aisle marking requirements of this section. [2017 c 132 § 1.]

Effective date—2017 c 132: "This act takes effect January 1, 2018." [2017 c 132 § 2.]

Chapter 19.30 RCW FARM LABOR CONTRACTORS

Sections

19.30.010 Definitions—Exceptions from chapter.

19.30.010 Definitions—Exceptions from chapter. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agricultural employee" means any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity.

(2) "Agricultural employer" means any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the forestation or reforestation of lands, which includes but is not limited to the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling, and disposal of brush and slash, the harvest of Christmas trees, and other related activities.

(3) "Director" as used in this chapter means the director of the department of labor and industries of the state of Washington.

(4) "Farm labor contracting activity" means recruiting, soliciting, employing, supplying, transporting, or hiring agricultural employees.

(5) "Farm labor contractor" means any person, or his or her agent or subcontractor, who, for a fee, performs any farm labor contracting activity. "Farm labor contractor" does not include a person performing farm labor contracting activity solely for a small forest landowner as defined in RCW 76.09.450 who receives services of no more than two agricultural employees at any given time.

(6) "Fee" means:

(a) Any money or other valuable consideration paid or promised to be paid for services rendered or to be rendered by a farm labor contractor.

(b) Any valuable consideration received or to be received by a farm labor contractor for or in connection with any of the services described in subsection (4) of this section, and shall include the difference between any amount received or to be received by him, and the amount paid out by him for or in connection with the rendering of such services.

(7) "Person" includes any individual, firm, partnership, association, corporation, or unit or agency of state or local government.

(8) This chapter shall not apply to employees of the employment security department acting in their official capacity or their agents, nor to any common carrier or full time regular employees thereof while transporting agricultural employees, nor to any person who performs any of the

services enumerated in subsection (4) of this section only within the scope of his or her regular employment for one agricultural employer on whose behalf he or she is so acting, unless he or she is receiving a commission or fee, which commission or fee is determined by the number of workers recruited, or to a nonprofit corporation or organization which performs the same functions for its members. Such nonprofit corporation or organization shall be one in which:

(a) None of its directors, officers, or employees are deriving any profit beyond a reasonable salary for services performed in its behalf.

(b) Membership dues and fees are used solely for the maintenance of the association or corporation. [2017 c 253 § 1; 1985 c 280 § 1; 1955 c 392 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Chapter 19.34 RCW

WASHINGTON ELECTRONIC AUTHENTICATION ACT

Sections

19.34.340 Certificate as acknowledgment—Requirements—Exception—Responsibility of certification authority. (*Effective July 1, 2018.*)

19.34.340 Certificate as acknowledgment—Requirements—Exception—Responsibility of certification authority. (*Effective July 1, 2018.*) (1) Unless otherwise provided by law or contract, if so provided in the certificate issued by a licensed certification authority, a digital signature verified by reference to the public key listed in a valid certificate issued by a licensed certification authority satisfies the requirements for an acknowledgment under RCW 42.45.010(1) and for acknowledgment of deeds and other real property conveyances under RCW 64.04.020 if words of an express acknowledgment appear with the digital signature regardless of whether the signer personally appeared before either the certification authority or some other person authorized to take acknowledgments of deeds, mortgages, or other conveyance instruments under RCW 64.08.010 when the digital signature was created, if that digital signature is:

- (a) Verifiable by that certificate; and
- (b) Affixed when that certificate was valid.

(2) If the digital signature is used as an acknowledgment, then the certification authority is responsible to the same extent as a notary up to the recommended reliance limit for failure to satisfy the requirements for an acknowledgment. The certification authority may not disclaim or limit, other than as provided in RCW 19.34.280, the effect of this section. [2017 c 281 § 38; 1997 c 27 § 21; 1996 c 250 § 405.]

Effective date—2017 c 281: See RCW 42.45.905.

Additional notes found at www.leg.wa.gov

Chapter 19.40 RCW

UNIFORM VOIDABLE TRANSACTIONS ACT

(Formerly: Uniform fraudulent transfer act)

Sections

19.40.011 Definitions.
19.40.021 Insolvency.
19.40.031 Value.

19.40.041 Transfers voidable as to present and future creditors.
19.40.051 Transfers voidable as to present creditors.
19.40.061 When transfer is made or obligation is incurred.
19.40.071 Remedies of creditors.
19.40.081 Defenses, liability, and protection of transferee.
19.40.091 Extinguishment of claim for relief.
19.40.101 Governing law.
19.40.111 Application to series organization.
19.40.121 Relation to electronic signatures in global and national commerce act.
19.40.900 Short title.
19.40.905 Effect on prior transfers and obligations—2017 c 57.

19.40.011 Definitions. As used in this chapter:

(1) "Affiliate" means:

(a) A person that directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

(i) As a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) Solely to secure a debt, if the person has not in fact exercised the power to vote;

(b) A corporation twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person that directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

(i) As a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) Solely to secure a debt, if the person has not in fact exercised the power to vote;

(c) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(d) A person that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but the term does not include:

(a) Property to the extent it is encumbered by a valid lien; or

(b) Property to the extent it is generally exempt under nonbankruptcy law.

(3) "Claim," except as used in "claim for relief," means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) "Creditor" means a person that has a claim.

(5) "Debt" means liability on a claim.

(6) "Debtor" means a person that is liable on a claim.

(7) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(8) "Insider" includes:

(a) If the debtor is an individual:

(i) A relative of the debtor or of a general partner of the debtor;

(ii) A partnership in which the debtor is a general partner;

(iii) A general partner in a partnership described in (a)(ii) of this subsection; or

(iv) A corporation of which the debtor is a director, officer, or person in control;

(b) If the debtor is a corporation:

(i) A director of the debtor;

(ii) An officer of the debtor;

(iii) A person in control of the debtor;

(iv) A partnership in which the debtor is a general partner;

(v) A general partner in a partnership described in (b)(iv) of this subsection; or

(vi) A relative of a general partner, director, officer, or person in control of the debtor;

(c) If the debtor is a partnership:

(i) A general partner in the debtor;

(ii) A relative of a general partner in, or a general partner of, or a person in control of the debtor;

(iii) Another partnership in which the debtor is a general partner;

(iv) A general partner in a partnership described in (c)(iii) of this subsection; or

(v) A person in control of the debtor;

(d) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(e) A managing agent of the debtor.

(9) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(10) "Organization" means a person other than an individual.

(11) "Person" means an individual, estate, partnership, association, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal or commercial entity.

(12) "Property" means anything that may be the subject of ownership.

(13) "Reasonably equivalent value" includes, without limitation, a transfer or an obligation that is within the range of values for which the transferor would have sold the property or services to, or purchased the property or services from, the transferee in an arm's length transaction at market rates.

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(16) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(17) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and

includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

(18) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings. [2017 c 57 § 1; 1987 c 444 § 1.]

Additional notes found at www.leg.wa.gov

19.40.021 Insolvency. (1) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets.

(2) A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(3) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

(4) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset. [2017 c 57 § 2; 1987 c 444 § 2.]

Additional notes found at www.leg.wa.gov

19.40.031 Value. (1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(2) For the purposes of RCW 19.40.041(1)(b) and 19.40.051, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(3) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous. [2017 c 57 § 3; 1987 c 444 § 3.]

Additional notes found at www.leg.wa.gov

19.40.041 Transfers voidable as to present and future creditors. (1) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(2) In determining actual intent under subsection (1)(a) of this section, consideration may be given, among other factors, to whether:

- (a) The transfer or obligation was to an insider;
- (b) The debtor retained possession or control of the property transferred after the transfer;
- (c) The transfer or obligation was disclosed or concealed;
- (d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- (e) The transfer was of substantially all the debtor's assets;
- (f) The debtor absconded;
- (g) The debtor removed or concealed assets;
- (h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (j) The transfer occurred shortly before or shortly after a substantial debt was incurred; and
- (k) The debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

(3) A creditor making a claim for relief under subsection (1) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence. [2017 c 57 § 4; 1987 c 444 § 4.]

Additional notes found at www.leg.wa.gov

19.40.051 Transfers voidable as to present creditors.

(1) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(3) Subject to RCW 19.40.021(2), a creditor making a claim for relief under subsection (1) or (2) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence. [2017 c 57 § 5; 1987 c 444 § 5.]

Additional notes found at www.leg.wa.gov

19.40.061 When transfer is made or obligation is incurred. For the purposes of this chapter:

- (1) A transfer is made:
 - (a) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against which applicable law permits

the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(b) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee;

(2) If applicable law permits the transfer to be perfected as provided in subsection (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action;

(3) If applicable law does not permit the transfer to be perfected as provided in subsection (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee;

(4) A transfer is not made until the debtor has acquired rights in the asset transferred; and

(5) An obligation is incurred:

(a) If oral, when it becomes effective between the parties; or

(b) If evidenced by a record, when the record signed by the obligor is delivered to or for the benefit of the obligee. [2017 c 57 § 6; 1987 c 444 § 6.]

Additional notes found at www.leg.wa.gov

19.40.071 Remedies of creditors. (1) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in RCW 19.40.081, may obtain:

(a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(b) An attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law; and

(c) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) Any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds. [2017 c 57 § 7; 2000 c 171 § 54; 1987 c 444 § 7.]

Additional notes found at www.leg.wa.gov

19.40.081 Defenses, liability, and protection of transferee. (1) A transfer or obligation is not voidable under RCW 19.40.041(1) or 19.40.051(1) against a person that took in good faith and for a reasonably equivalent value whether or not given to the debtor or against any subsequent transferee or obligee.

(2) To the extent a transfer is avoidable in an action by a creditor under RCW 19.40.071(1)(a), the following rules apply:

(a) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the

amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(i) The first transferee of the asset or the person for whose benefit the transfer was made; or

(ii) An immediate or mediate transferee of the first transferee, other than:

(A) A good-faith transferee that took for value; or

(B) An immediate or mediate good-faith transferee of a person described in (a)(ii)(A) of this subsection.

(b) Recovery pursuant to RCW 19.40.071 (1)(a) or (2) or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in (a)(i) or (ii) of this subsection.

(3) If the judgment under subsection (2) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) A lien on or a right to retain an interest in the asset transferred;

(b) Enforcement of an obligation incurred; or

(c) A reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under RCW 19.40.041(1)(b) or 19.40.051 if the transfer results from:

(a) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) Enforcement of a security interest in compliance with Article 9A of Title 62A RCW, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(6) A transfer is not voidable under RCW 19.40.051(2):

(a) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent the new value was secured by a valid lien;

(b) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) If made pursuant to a good faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(7) The following rules determine the burden of proving matters referred to in this section:

(a) A party that seeks to invoke subsection (1), (4), (5), or (6) of this section has the burden of proving the applicability of that subsection.

(b) Except as otherwise provided in (c) and (d) of this subsection, the creditor has the burden of proving each applicable element of subsection (2) or (3) of this section.

(c) The transferee has the burden of proving the applicability to the transferee of subsection (2)(a)(ii)(A) or (B) of this subsection.

(d) A party that seeks adjustment under subsection (3) of this section has the burden of proving the adjustment.

(8) The standard of proof required to establish matters referred to in this section is preponderance of the evidence. [2017 c 57 § 8; 2001 c 32 § 1; 1987 c 444 § 8.]

Additional notes found at www.leg.wa.gov

19.40.091 Extinguishment of claim for relief. A claim for relief with respect to a transfer or obligation under this chapter is extinguished unless action is brought:

(1) Under RCW 19.40.041(1)(a), not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) Under RCW 19.40.041(1)(b) or 19.40.051(1), not later than four years after the transfer was made or the obligation was incurred; or

(3) Under RCW 19.40.051(2), not later than one year after the transfer was made. [2017 c 57 § 9; 1987 c 444 § 9.]

Additional notes found at www.leg.wa.gov

19.40.101 Governing law. (1) In this section, the following rules determine a debtor's location:

(a) A debtor who is an individual is located at the individual's principal residence.

(b) A debtor that is an organization and has only one place of business is located at its place of business.

(c) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(2) A claim for relief in the nature of a claim for relief under this chapter is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred. [2017 c 57 § 10.]

19.40.111 Application to series organization. (1) In this section:

(a) "Protected series" means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in (b) of this subsection.

(b) "Series organization" means an organization that, pursuant to the law under which it is organized, has the following characteristics:

(i) The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series.

(ii) Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization.

(iii) Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

(2) A series organization and each protected series of the organization is a separate person for purposes of this chapter, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization. [2017 c 57 § 11.]

19.40.121 Relation to electronic signatures in global and national commerce act. This chapter modifies, limits, or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b). [2017 c 57 § 12.]

19.40.900 Short title. This chapter, which was formerly cited as the uniform fraudulent transfer act, may be cited as the uniform voidable transactions act. [2017 c 57 § 13; 1987 c 444 § 12.]

Additional notes found at www.leg.wa.gov

19.40.905 Effect on prior transfers and obligations—2017 c 57. (1) Chapter 57, Laws of 2017 applies to a transfer made or obligation incurred on or after July 23, 2017.

(2) Chapter 57, Laws of 2017 does not apply to a transfer made or obligation incurred before July 23, 2017.

(3) Chapter 57, Laws of 2017 does not apply to a right of action that has accrued before July 23, 2017.

(4) For the purposes of this section, a transfer is made and an obligation is incurred at the time provided in RCW 19.40.061. [2017 c 57 § 14.]

Chapter 19.60 RCW

PAWNBROKERS AND SECONDHAND DEALERS

Sections

19.60.010	Definitions.
19.60.020	Duty to record information.
19.60.055	Retention of property by secondhand dealers—Inspection.
19.60.060	Rates of interest and other fees—Sale of pledged property.
19.60.105	Automated kiosks.

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

(1) "Automated kiosk" means a self-serve interactive machine that purchases secondhand electronic devices.

(2) "Loan period" means the period of time from the date the loan is made until the date the loan is paid off, the loan is in default, or the loan is refinanced and new loan documents are issued, including all grace or extension periods.

(3) "Melted metals" means metals derived from metal junk or precious metals that have been reduced to a melted state from other than ore or ingots which are produced from ore that has not previously been processed.

(4) "Metal junk" means any metal that has previously been milled, shaped, stamped, or forged and that is no longer useful in its original form, except precious metals.

(5) "Nonmetal junk" means any nonmetal, commonly discarded item that is worn out, or has outlasted its usefulness as intended in its original form except nonmetal junk does not include an item made in a former period which has enhanced value because of its age.

(6) "Pawnbroker" means every person engaged, in whole or in part, in the business of loaning money on the security of pledges of personal property, or deposits or conditional sales of personal property, or the purchase or sale of personal property.

(7) "Precious metals" means gold, silver, and platinum.

(8) "Secondhand dealer" means every person engaged in whole or in part in the business of purchasing, selling, trading, consignment selling, or otherwise transferring for value, secondhand property including metal junk, melted metals, precious metals, whether or not the person maintains a fixed place of business within the state. Secondhand dealer also includes persons or entities conducting business, more than three times per year, at flea markets or swap meets. Secondhand dealer also includes persons or entities operating an automated kiosk.

(9) "Secondhand precious metal dealer" means any person or entity engaged in whole or in part in the commercial activity or business of purchasing, selling, trading, consignment selling, or otherwise transferring for value, more than three times per year, secondhand property that is a precious metal, whether or not the person or entity maintains a permanent or fixed place of business within the state, or engages in the business at flea markets or swap meets. The terms "precious metal" and "secondhand property," for purposes of transactions by a secondhand precious metal dealer, do not include: (a) Gold, silver, or platinum coins, or other precious metal coins, that are legal tender, or precious metal coins that have numismatic or precious metal value, (b) gold, silver, platinum, or other precious metal bullion, or (c) gold, silver, platinum, or other precious metal dust, flakes, or nuggets.

(10) "Secondhand property" means any item of personal property offered for sale which is not new, including metals in any form, except postage stamps, coins that are legal tender, bullion in the form of fabricated hallmarked bars, used books, and clothing of a resale value of seventy-five dollars or less, except furs.

(11) "Transaction" means a pledge, or the purchase of, or consignment of, or the trade of any item of personal property by a pawnbroker or a secondhand dealer from a member of the general public. [2017 c 169 § 1. Prior: 2011 c 289 § 2; 1995 c 133 § 1; 1991 c 323 § 1; 1985 c 70 § 1; 1984 c 10 § 1; 1981 c 279 § 3; 1909 c 249 § 235; RRS § 2487. FORMER PARTS OF SECTION: (i) 1909 c 249 § 236; RRS § 2488, now codified as RCW 19.60.015. (ii) 1939 c 89 § 1; RRS § 2488-1, now codified as RCW 19.60.065.]

Findings—Intent—2011 c 289:

"The legislature finds:

(1) The market price of gold has increased significantly in recent years and there has been a proliferation of secondhand dealers, including temporary, transient secondhand businesses, engaging in "cash for gold" type precious metal transactions. Frequently, these "cash for gold" type operations are operated by persons desiring to exploit unsuspecting consumers based on current market conditions;

(2) The increasing number of "cash for gold" type transactions in communities and neighborhoods throughout Washington has been linked to increased crimes involving the theft of gold and other precious metal objects, including home burglaries, robberies, and other crimes, resulting in depressed home values and other threats to the health, safety, and welfare of Washington state residents; and

(3) With the growing number of precious metal transactions, there is a corresponding significant increase in the number of "cash for gold" type storefront businesses, including temporary, transient secondhand businesses, in Washington state which may not be consistent with the quality of life and personal security sought by communities and neighborhoods and the state as a whole.

Therefore, to better protect legitimate owners, consumers, and secondhand dealers, the legislature intends to establish and implement stricter standards relating to transactions involving property consisting of gold and other precious metals." [2011 c 289 § 1.]

19.60.020 Duty to record information. (1) Every pawnbroker and secondhand dealer doing business in this state shall maintain wherever that business is conducted a record in which shall be legibly written in the English language, at the time of each transaction the following information:

(a) The signature of the person with whom the transaction is made;

(b) The date of the transaction;

(c) The name of the person or employee or the identification number of the person or employee conducting the transaction, as required by the applicable chief of police or the county's chief law enforcement officer;

(d) The name, date of birth, sex, height, weight, race, and address and telephone number of the person with whom the transaction is made;

(e) A complete description of the property pledged, bought, or consigned, including the brand name, serial number, model number or name, any initials or engraving, size, pattern, and color or stone or stones, and in the case of firearms, the caliber, barrel length, type of action, and whether it is a pistol, rifle, or shotgun;

(f) The price paid or the amount loaned;

(g) The type and identifying number of identification used by the person with whom the transaction was made, which shall consist of a valid drivers license or identification card issued by any state or two pieces of identification issued by a governmental agency, one of which shall be descriptive of the person identified. At all times, one piece of current government issued picture identification will be required; and

(h) The nature of the transaction, a number identifying the transaction, the store identification as designated by the applicable law enforcement agency, or the name and address of the business and the name of the person or employee, conducting the transaction, and the location of the property.

(2) This record shall at all times during the ordinary hours of business, or at reasonable times if ordinary hours of business are not kept, be open to the inspection of any commissioned law enforcement officer of the state or any of its political subdivisions, and shall be maintained wherever that business is conducted, or at the secondhand dealer's principal place of business if the transaction took place through the use of an automated kiosk, for three years following the date of the transaction. [2017 c 169 § 2; 1991 c 323 § 2; 1984 c 10 § 3; 1909 c 249 § 229; RRS § 2481.]

19.60.055 Retention of property by secondhand dealers—Inspection. (1) Property bought or received on consignment by any secondhand dealer with a permanent place of business in the state shall not be removed from that place of business except consigned property returned to the owner, within thirty days after the receipt of the property. Property shall at all times during the ordinary hours of business be open to inspection to any commissioned law enforcement officer of the state or any of its political subdivisions.

(2) Property bought or received on consignment by any secondhand dealer without a permanent place of business in the state, shall be held within the city or county in which the property was received, except consigned property returned to the owner, within thirty days after receipt of the property. The property shall be available within the appropriate jurisdiction

for inspection at reasonable times by any commissioned law enforcement officer of the state or any of its political subdivisions.

(3) Property bought by any secondhand dealer through the use of an automated kiosk must be held for at least thirty days after the secondhand property was accepted by the automated kiosk. To satisfy this requirement the secondhand property may be held inside the automated kiosk or at a secure location maintained by the secondhand dealer. The secondhand property purchased through an automated kiosk must be made available to any commissioned law enforcement officer of the state, or any of its political subdivisions, for inspection within a reasonable time. The cost of transporting the secondhand property to the law enforcement officer must be paid by the secondhand dealer. [2017 c 169 § 3; 1991 c 323 § 6; 1984 c 10 § 7.]

Auction of secondhand property, exemption by rule of department of licensing: RCW 18.11.075.

19.60.060 Rates of interest and other fees—Sale of pledged property. All pawnbrokers are authorized to charge and receive interest and other fees at the following rates for money on the security of personal property actually received in pledge:

(1) The interest for the loan period shall not exceed:

(a) For an amount loaned up to \$9.99 - interest at \$1.00 for each thirty-day period to include the loan date.

(b) For an amount loaned from \$10.00 to \$19.99 - interest at the rate of \$1.25 for each thirty-day period to include the loan date.

(c) For an amount loaned from \$20.00 to \$24.99 - interest at the rate of \$1.50 for each thirty-day period to include the loan date.

(d) For an amount loaned from \$25.00 to \$34.99 - interest at the rate of \$1.75 for each thirty-day period to include the loan date.

(e) For an amount loaned from \$35.00 to \$39.99 - interest at the rate of \$2.00 for each thirty-day period to include the loan date.

(f) For an amount loaned from \$40.00 to \$49.99 - interest at the rate of \$2.25 for each thirty-day period to include the loan date.

(g) For the amount loaned from \$50.00 to \$59.99 - interest at the rate of \$2.50 for each thirty-day period to include the loan date.

(h) For the amount loaned from \$60.00 to \$69.99 - interest at the rate of \$2.75 for each thirty-day period to include the loan date.

(i) For the amount loaned from \$70.00 to \$79.99 - interest at the rate of \$3.00 for each thirty-day period to include the loan date.

(j) For the amount loaned from \$80.00 to \$89.99 - interest at the rate of \$3.25 for each thirty-day period to include the loan date.

(k) For the amount loaned from \$90.00 to \$99.99 - interest at the rate of \$3.50 for each thirty-day period to include the loan date.

(l) For loan amounts of \$100.00 or more - interest at the rate of four percent for each thirty-day period to include the loan date.

(2) The fee for the preparation of loan documents, pledges, or reports required under the laws of the United States of America, the state of Washington, or the counties, cities, towns, or other political subdivisions thereof, shall not exceed:

- (a) For the amount loaned up to \$4.99 - the sum of \$1.50.
- (b) For the amount loaned from \$5.00 to \$9.99 - the sum of \$3.00.
- (c) For the amount loaned from \$10.00 to \$14.99 - the sum of \$4.00.
- (d) For the amount loaned from \$15.00 to \$19.99 - the sum of \$4.50.
- (e) For the amount loaned from \$20.00 to \$24.99 - the sum of \$5.00.
- (f) For the amount loaned from \$25.00 to \$29.99 - the sum of \$5.50.
- (g) For the amount loaned from \$30.00 to \$34.99 - the sum of \$6.00.
- (h) For the amount loaned from \$35.00 to \$39.99 - the sum of \$6.50.
- (i) For the amount loaned from \$40.00 to \$44.99 - the sum of \$7.00.
- (j) For the amount loaned from \$45.00 to \$49.99 - the sum of \$7.50.
- (k) For the amount loaned from \$50.00 to \$99.99 - fifteen percent of the loan amount.
- (l) For the amount loaned from \$100.00 to \$249.99 - thirteen percent of the loan amount.
- (m) For the amount loaned from \$250.00 to \$499.99 - ten percent of the loan amount.
- (n) For the amount loaned from \$500.00 to \$999.99 - eight percent of the loan amount.
- (o) For the amount loaned from \$1000.00 to \$1499.99 - seven and one-half percent of the loan amount.
- (p) For the amount loaned from \$1500.00 to \$1999.99 - seven percent of the loan amount.
- (q) For the amount loaned of \$2000.00 or more - six percent of the loan amount.

(3) For each thirty-day period, a pawnbroker may charge:

- (a) A storage fee of \$5.00; and
- (b) An additional fee of \$5.00 for storing a firearm.

(4) Fees under subsection (2) of this section may be charged one time only for each loan period; no additional fees, other than interest allowed under subsection (1) of this section and storage fees allowed under subsection (3) of this section, shall be charged for making the loan.

A copy of this section, set in twelve point type or larger, shall be posted prominently in each premises subject to this chapter. [2015 c 294 § 1; 2007 c 125 § 1; 1995 c 133 § 2; 1991 c 323 § 7; 1984 c 10 § 9; 1973 1st ex.s. c 91 § 1; 1909 c 249 § 234; RRS § 2486.]

Interest—Usury: Chapter 19.52 RCW.

19.60.105 Automated kiosks. For a secondhand dealer to utilize an automated kiosk to purchase secondhand property in this state, the automated kiosk must have the capability to:

- (1) Collect all information required under RCW 19.60.020(1);

[2017 RCW Supp—page 172]

(2) Connect with a live customer service representative that can remotely verify the identity of the person engaged in the transaction;

(3) Compare the secondhand property purchased against a state or federal database of stolen items using the serial number, International Mobile Equipment Identity (IMEI), the mobile equipment identifier (MEID), or other unique identifying number assigned to the device by the manufacturer; and

(4) Securely store all secondhand property purchased. [2017 c 169 § 4.]

Chapter 19.85 RCW REGULATORY FAIRNESS ACT

Sections

- 19.85.025 Application of chapter—Limited.
- 19.85.030 Agency rules—Small business economic impact statement—Reduction of costs imposed by rule.

19.85.025 Application of chapter—Limited. (1) Unless an agency receives a written objection to the expedited repeal of a rule, this chapter does not apply to a rule proposed for expedited repeal pursuant to RCW 34.05.353. If an agency receives a written objection to expedited repeal of the rule, this chapter applies to the rule-making proceeding.

(2) This chapter does not apply to a rule proposed for expedited adoption under RCW 34.05.353, unless a written objection is timely filed with the agency and the objection is not withdrawn.

(3) This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).

(4) This chapter does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small businesses.

(5) An agency is not required to prepare a separate small business economic impact statement under RCW 19.85.040 if it prepared an analysis under RCW 34.05.328 that meets the requirements of a small business economic impact statement, and if the agency reduced the costs imposed by the rule on small business to the extent required by RCW 19.85.030(2). The portion of the analysis that meets the requirements of RCW 19.85.040 shall be filed with the code reviser and provided to any person requesting it in lieu of a separate small business economic impact statement. [2017 c 53 § 1; 1997 c 409 § 212; 1995 c 403 § 401.]

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

Additional notes found at www.leg.wa.gov

19.85.030 Agency rules—Small business economic impact statement—Reduction of costs imposed by rule.

(1)(a) In the adoption of a rule under chapter 34.05 RCW, an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry; or (ii) if requested to do so by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320. However, if the agency has completed the pilot rule process as defined by RCW 34.05.313 before filing the notice of a proposed rule,

the agency is not required to prepare a small business economic impact statement.

(b) An agency must prepare the small business economic impact statement in accordance with RCW 19.85.040, and file it with the code reviser along with the notice required under RCW 34.05.320. An agency shall file a statement prepared at the request of the joint administrative rules review committee with the code reviser upon its completion before the adoption of the rule. An agency must provide a copy of the small business economic impact statement to any person requesting it.

(2) Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

(a) Reducing, modifying, or eliminating substantive regulatory requirements;

(b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;

(c) Reducing the frequency of inspections;

(d) Delaying compliance timetables;

(e) Reducing or modifying fine schedules for noncompliance; or

(f) Any other mitigation techniques including those suggested by small businesses or small business advocates.

(3) If a proposed rule affects only small businesses, the proposing agency must consider all mitigation options defined in this chapter.

(4) In the absence of sufficient data to calculate disproportionate impacts, an agency whose rule imposes more than minor costs must mitigate the costs to small businesses, where legal and feasible, as defined in this chapter.

(5) If the agency determines it cannot reduce the costs imposed by the rule on small businesses, the agency must provide a clear explanation of why it has made that determination and include that statement with its filing of the proposed rule pursuant to RCW 34.05.320.

(6)(a) All small business economic impact statements are subject to selective review by the joint administrative rules review committee pursuant to RCW 34.05.630.

(b) Any person affected by a proposed rule where there is a small business economic impact statement may petition the joint administrative rules review committee for review pursuant to the procedure in RCW 34.05.655. [2017 c 53 § 2; 2011 c 249 § 2; 2007 c 239 § 3; 2000 c 171 § 60; 1995 c 403 § 402; 1994 c 249 § 11. Prior: 1989 c 374 § 2; 1989 c 175 § 72; 1982 c 6 § 3.]

Findings—2007 c 239: See note following RCW 19.85.020.

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

Publication of small business economic impact statement in Washington State Register: RCW 34.08.020.

Additional notes found at www.leg.wa.gov

Chapter 19.118 RCW MOTOR VEHICLE WARRANTIES

Sections

19.118.110 Arbitration fee—New motor vehicle arbitration account—Report by attorney general.

19.118.110 Arbitration fee—New motor vehicle arbitration account—Report by attorney general. If the new motor vehicle will be registered in the state of Washington, a three-dollar arbitration fee shall be collected by either the new motor vehicle dealer or vehicle lessor from the consumer upon execution of a retail sale or lease agreement. The fee shall be forwarded to the department of licensing at the time of title application for deposit in the new motor vehicle arbitration account hereby created in the state treasury. Moneys in the account shall be used for the purposes of this chapter, subject to appropriation. During the 1995-97 fiscal biennium, the legislature may transfer moneys from the account to the extent that the moneys are not necessary for the purposes of this chapter.

At the end of each fiscal year, the attorney general shall prepare a report listing the annual revenue generated and the expenses incurred in implementing and operating the arbitration program under this chapter.

During the 2017-2019 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys in the new motor vehicle arbitration account to the state general fund. [2017 3rd sp.s. c 1 § 951; 2008 c 93 § 1; 1995 2nd sp.s. c 18 § 910; 1995 c 254 § 7; 1989 c 347 § 7; 1987 c 344 § 9.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Additional notes found at www.leg.wa.gov

Chapter 19.122 RCW UNDERGROUND UTILITIES

Sections

19.122.130 Commission to contract with nonprofit entity—Safety committee—Review of violations of chapter.

19.122.140 Commission authority—Receipt of notification of violation of chapter—Referral to attorney general.

19.122.150 Commission authority—Violations of chapter—Imposition of penalties.

19.122.130 Commission to contract with nonprofit entity—Safety committee—Review of violations of chapter. (1) The commission must contract with a statewide, nonprofit entity whose purpose is to reduce damages to underground and above ground facilities, promote safe excavation practices, and review complaints of alleged violations of this chapter. The contract must not obligate funding by the commission for activities performed by the nonprofit entity or the safety committee under this section.

(2) The contracting entity must create a safety committee to:

(a) Advise the commission and other state agencies, the legislature, and local governments on best practices and training to prevent damage to underground utilities, and policies to enhance worker and public safety; and

(b) Review complaints alleging violations of this chapter involving practices related to underground facilities.

(3)(a) The safety committee will consist of thirteen members, who must be nominated by represented groups and appointed by the contracting entity to staggered three-year terms. The safety committee must include representatives of:

- (i) Local governments;
- (ii) A natural gas utility subject to regulation under Titles 80 and 81 RCW;
- (iii) Contractors;
- (iv) Excavators;
- (v) An electric utility subject to regulation under Title 80 RCW;
- (vi) A consumer-owned utility, as defined in RCW 19.27A.140;
- (vii) A pipeline company;
- (viii) The insurance industry;
- (ix) The commission; and
- (x) A telecommunications company.

(b) The safety committee may pass bylaws and provide for those organizational processes that are necessary to complete the safety committee's tasks.

(4) The safety committee must meet at least once every three months.

(5) The safety committee may review complaints of alleged violations of this chapter involving practices related to underground facilities. Any person may bring a complaint to the safety committee regarding an alleged violation occurring on or after January 1, 2013.

(6) To review complaints of alleged violations, the safety committee must appoint at least three and not more than five members as a review committee. The review committee must include the same number of members representing excavators and facility operators. One member representing facility operators must also be a representative of a pipeline company or a natural gas utility subject to regulation under Titles 80 and 81 RCW. The review committee must also include a member representing the insurance industry.

(7) Before reviewing a complaint alleging a violation of this chapter, the review committee must notify the person making the complaint and the alleged violator of its review and of the opportunity to participate.

(8) The safety committee may provide written notification to the commission, with supporting documentation, that a person has likely committed a violation of this chapter, and recommend remedial action that may include a penalty amount, training, or education to improve public safety, or some combination thereof. [2017 c 20 § 1; 2012 c 96 § 1; 2011 c 263 § 18.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

19.122.140 Commission authority—Receipt of notification of violation of chapter—Referral to attorney general. (1) The commission may enforce the civil penalties authorized in RCW 19.122.070 or 19.122.075 when it receives written notification from the safety committee created under RCW 19.122.130 indicating that a violation of this chapter has likely been committed by a person subject to regulation by the commission, or involving the underground facilities of such a person.

(2) If the commission receives written notification from the safety committee pursuant to RCW 19.122.130 that a vio-

lation of this chapter has likely been committed by a person who is not subject to regulation by the commission, and in which the underground facility involved is also not subject to regulation by the commission, the commission may refer the matter to the attorney general for enforcement of a civil penalty under RCW 19.122.070 or 19.122.075. The commission must provide funding for such enforcement. However, any costs and fees recovered by the attorney general pursuant to subsection (3) of this section must be deposited by the commission in the fund that paid for such enforcement.

(3) In a matter referred to it by the commission pursuant to subsection (2) of this section, the attorney general may bring an action to enforce the penalties authorized in RCW 19.122.070 or 19.122.075. In such an action, the court may award the state all costs of investigation and trial, including a reasonable attorneys' fee fixed by the court. [2017 c 20 § 2; 2011 c 263 § 19.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

19.122.150 Commission authority—Violations of chapter—Imposition of penalties. (1) The commission may investigate and enforce violations of RCW 19.122.055, 19.122.075, and 19.122.090 relating to pipeline facilities without initial referral to the safety committee created under RCW 19.122.130.

(2) If the commission's investigation of notifications received pursuant to RCW 19.122.140 or subsection (1) of this section substantiates violations of this chapter, the commission may impose penalties authorized by RCW 19.122.055, 19.122.070, 19.122.075, and 19.122.090, and require training, education, or any combination thereof.

(3) With respect to referrals from the safety committee, the commission must consider any recommendation by the committee regarding enforcement and remedial actions involving an alleged violator.

(4) In an action to impose a penalty initiated by the commission under subsection (1) or (2) of this section, the penalty is due and payable when the person incurring the penalty receives a notice of penalty in writing from the commission describing the violation and advising the person that the penalty is due. The person incurring the penalty has fifteen days from the date the person receives the notice of penalty to file with the commission a request for mitigation or a request for a hearing. The commission must include this time limit information in the notice of penalty. After receiving a timely request for mitigation or hearing, the commission must suspend collection of the penalty until it issues a final order concerning the penalty or mitigation of that penalty. A person aggrieved by the commission's final order may seek judicial review, subject to provisions of the administrative procedure act, chapter 34.05 RCW.

(5) If a penalty imposed by the commission is not paid, the attorney general may, on the commission's behalf, file a civil action in superior court to collect the penalty. [2017 c 20 § 3; 2011 c 263 § 21.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Chapter 19.154 RCW

IMMIGRATION SERVICES FRAUD PREVENTION ACT

(Formerly: Immigration assistant practices act)

Sections

19.154.060 Prohibited practices—Assistance with immigration matters.
(Effective July 1, 2018.)

19.154.060 Prohibited practices—Assistance with immigration matters. (Effective July 1, 2018.) (1) Persons, other than those licensed to practice law in this state or otherwise permitted to practice law or represent others under federal law in an immigration matter, are prohibited from engaging in the practice of law in an immigration matter for compensation.

(2) Persons, other than those licensed to practice law in this state or otherwise permitted to practice law or represent others under federal law in an immigration matter, are prohibited from engaging in the following acts or practices, for compensation:

(a) Advising or assisting another person in determining the person's legal or illegal status for the purpose of an immigration matter;

(b) Selecting or assisting another in selecting, or advising another as to his or her answers on, a government agency form or document in an immigration matter;

(c) Selecting or assisting another in selecting, or advising another in selecting, a benefit, visa, or program to apply for in an immigration matter;

(d) Soliciting to prepare documents for, or otherwise representing the interests of, another in a judicial or administrative proceeding in an immigration matter;

(e) Explaining, advising, or otherwise interpreting the meaning or intent of a question on a government agency form in an immigration matter;

(f) Charging a fee for referring another to a person licensed to practice law;

(g) Selecting, drafting, or completing legal documents affecting the legal rights of another in an immigration matter.

(3) Persons, other than those holding an active license to practice law issued by the Washington state bar association or otherwise permitted to practice law or represent others under federal law in an immigration matter, are prohibited from engaging in the following acts or practices, regardless of whether compensation is sought:

(a) Representing, either orally or in any document, letterhead, advertisement, stationery, business card, web site, or other comparable written material, that he or she is a notario publico, notario, immigration assistant, immigration consultant, immigration specialist, or using any other designation or title, in any language, that conveys or implies that he or she possesses professional legal skills in the area of immigration law;

(b) Representing, in any language, either orally or in any document, letterhead, advertisement, stationery, business card, web site, or other comparable written material, that he or she can or is willing to provide services in an immigration matter, if such services would constitute the practice of law.

(4)(a) The prohibitions of subsections (1) through (3) of this section shall not apply to the activities of nonlawyer assistants acting under the supervision of a person holding an

active license to practice law issued by the Washington state bar association or otherwise permitted to practice law or represent others under federal law in an immigration matter.

(b) This section does not prohibit a person from offering translation services, regardless of whether compensation is sought. Translating words contained on a government form from English to another language and translating a person's words from another language to English does not constitute the unauthorized practice of law.

(5) In addition to complying with the prohibitions of subsections (1) through (3) of this section, persons licensed as a notary public under chapter 42.45 RCW who do not hold an active license to practice law issued by the Washington state bar association shall not use the term notario publico, notario, immigration assistant, immigration consultant, immigration specialist, or any other designation or title, in any language, that conveys or implies that he or she possesses professional legal skills in the areas of immigration law, when advertising notary public services in the conduct of their business. A violation of any provision of this chapter by a person licensed as a notary public under chapter 42.45 RCW shall constitute unprofessional conduct under the uniform regulation of business and professions act, chapter 18.235 RCW. [2017 c 281 § 39; 2011 c 244 § 3; 1989 c 117 § 6.]

Effective date—2017 c 281: See RCW 42.45.905.

Effective date—2011 c 244: See note following RCW 19.154.010.

Chapter 19.230 RCW

UNIFORM MONEY SERVICES ACT

Sections

19.230.010	Definitions.
19.230.020	Application of chapter—Exclusions.
19.230.030	Money transmitter license required.
19.230.040	Application for a money transmitter license.
19.230.050	Money transmitters—Surety bond.
19.230.055	Online currency exchangers—Surety bond.
19.230.070	Issuance of money transmitter license.
19.230.100	Issuance of a currency exchange license—Surrender of license.
19.230.110	Annual assessment and annual report.
19.230.130	Authority to conduct examinations and investigations.
19.230.140	Examinations—Joint and concurrent examinations.
19.230.150	Reports.
19.230.152	Reports—Nationwide licensing system.
19.230.180	Money laundering reports.
19.230.190	Confidentiality.
19.230.200	Maintenance of permissible investments.
19.230.210	Types of permissible investments.
19.230.250	Unlicensed persons.
19.230.290	Civil penalties.
19.230.320	Fees.
19.230.330	Money transmitter delivery, receipts, and refunds.
19.230.370	Virtual currency licensees—Disclosures.

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

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

(2) "Annual assessment due date" means the date specified in rule by the director upon which the annual assessment is due.

(3) "Applicant" means a person that files an application for a license under this chapter, including the applicant's pro-

posed responsible individual and executive officers, and persons in control of the applicant.

(4) "Authorized delegate" means a person a licensee designates to provide money services on behalf of the licensee. A person that is exempt from licensing under this chapter cannot have an authorized delegate.

(5) "Board director" means a natural person who is a member of the applicant's or licensee's board of directors if the applicant is a corporation or limited liability company, or a partner if the applicant or licensee is a partnership.

(6) "Closed loop prepaid access" means prepaid access that can only be redeemed for a limited universe of goods, intangibles, services, or other items provided by the issuer of the prepaid access, its affiliates, or others involved in transactions functionally related to the issuer or its affiliates.

(7) "Control" means:

(a) Ownership of, or the power to vote, directly or indirectly, at least twenty-five percent of a class of voting securities or voting interests of a licensee or applicant, or person in control of a licensee or applicant;

(b) Power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or applicant, or person in control of a licensee or applicant; or

(c) Power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or applicant, or person in control of a licensee or applicant.

(8) "Currency exchange" means exchanging the money of one government for money of another government, or holding oneself out as able to exchange the money of one government for money of another government. The following persons are not considered currency exchangers:

(a) Affiliated businesses that engage in currency exchange for a business purpose other than currency exchange;

(b) A person who provides currency exchange services for a person acting primarily for a business, commercial, agricultural, or investment purpose when the currency exchange is incidental to the transaction;

(c) A person who deals in coins or a person who deals in money whose value is primarily determined because it is rare, old, or collectible; and

(d) A person who in the regular course of business chooses to accept from a customer the currency of a country other than the United States in order to complete the sale of a good or service other than currency exchange, that may include cash back to the customer, and does not otherwise trade in currencies or transmit money for compensation or gain.

(9) "Currency exchanger" means a person that is engaged in currency exchange.

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

(11) "Executive officer" means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

(12) "Financial institution" means any person doing business under the laws of any state or the United States relating to commercial banks, bank holding companies, savings

banks, savings and loan associations, trust companies, or credit unions.

(13) "Licensee" means a person licensed under this chapter. "Licensee" also means any person, whether located within or outside of this state, who fails to obtain a license required by this chapter.

(14) "Material litigation" means litigation that according to generally accepted accounting principles is significant to an applicant's or a licensee's financial health and would be required to be disclosed in the applicant's or licensee's annual audited financial statements, report to shareholders, or similar records.

(15) "Mobile location" means a vehicle or movable facility where money services are provided.

(16) "Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government or other recognized medium of exchange. "Money" includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(17) "Money services" means money transmission or currency exchange.

(18) "Money transmission" means receiving money or its equivalent value (equivalent value includes virtual currency) to transmit, deliver, or instruct to be delivered to another location, inside or outside the United States, by any means including but not limited to by wire, facsimile, or electronic transfer. "Money transmission" includes selling, issuing, or acting as an intermediary for open loop prepaid access and payment instruments, but not closed loop prepaid access. "Money transmission" does not include: The provision solely of connection services to the internet, telecommunications services, or network access; units of value that are issued in affinity or rewards programs that cannot be redeemed for either money or virtual currencies; and units of value that are used solely within online gaming platforms that have no market or application outside of the gaming platforms.

(19) "Money transmitter" means a person that is engaged in money transmission.

(20) "Open loop prepaid access" means prepaid access redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines.

(21) "Outstanding money transmission" means the value of all money transmissions reported to the licensee for which the money transmitter has received money or its equivalent value from the customer for transmission, but has not yet completed the money transmission by delivering the money or monetary value to the person designated by the customer.

(22) "Payment instrument" means a check, draft, money order, or traveler's check for the transmission or payment of money or its equivalent value, whether or not negotiable. "Payment instrument" does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

(23) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture; government, governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(24) "Prepaid access" means access to money that has been paid in advance and can be retrieved or transferred

through an electronic device or vehicle, such as a card, code, electronic serial number, mobile identification number, or personal identification number.

(25) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium, and is retrievable in perceivable form.

(26) "Responsible individual" means an individual who is employed by a licensee and has principal managerial authority over the provision of money services by the licensee in this state.

(27) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(28) "Tangible net worth" means the physical worth of a licensee, calculated by taking a licensee's assets and subtracting its liabilities and its intangible assets, such as copyrights, patents, intellectual property, and goodwill.

(29) "Unsafe or unsound practice" means a practice or conduct by a licensee or an authorized delegate which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the financial condition of the licensee or the interests of its customers.

(30) "Virtual currency" means a digital representation of value used as a medium of exchange, a unit of account, or a store of value, but does not have legal tender status as recognized by the United States government. "Virtual currency" does not include the software or protocols governing the transfer of the digital representation of value or other uses of virtual distributed ledger systems to verify ownership or authenticity in a digital capacity when the virtual currency is not used as a medium of exchange. [2017 c 30 § 1; 2013 c 106 § 1. Prior: 2010 c 73 § 1; 2003 c 287 § 3.]

19.230.020 Application of chapter—Exclusions. This chapter does not apply to:

(1) The United States or a department, agency, or instrumentality thereof;

(2) The United States postal service or a contractor on behalf of the United States postal service;

(3) A state, county, city, or a department, agency, or instrumentality thereof;

(4) A financial institution or its subsidiaries, affiliates, and service corporations, or any office of an international banking corporation, branch of a foreign bank, or corporation organized pursuant to the Bank Service Corporation Act (12 U.S.C. Sec. 1861-1867) or a corporation organized under the Edge Act (12 U.S.C. Sec. 611-633);

(5) Electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a state or governmental subdivision, agency, or instrumentality thereof;

(6) A board of trade designated as a contract market under the federal Commodity Exchange Act (7 U.S.C. Sec. 1-25) or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as, or for, a board of trade;

(7) A registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant;

(8) A person that provides clearance or settlement services under a registration as a clearing agency, or an exemption from that registration granted under the federal securities laws, to the extent of its operation as such a provider;

(9) A person:

(a) Operating a payment system that provides processing, clearing, or settlement services, between or among persons who are all excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, prepaid access transactions, automated clearinghouse transfers, or similar funds transfers;

(b) Who is a contracted service provider of an entity in subsection (4) of this section that provides processing, clearing, or settlement services in connection with wire transfers, credit card transactions, debit card transactions, prepaid access transactions, automated clearinghouse transfers, or similar funds transfers; or

(c) That facilitates payment for goods or services (not including money transmission itself) or bill payment through a clearance and settlement process using bank secrecy act regulated institutions pursuant to a written contract with the payee and either payment to the person facilitating the payment processing satisfies the payor's obligation to the payee or that obligation is otherwise extinguished;

(10) A person registered as a securities broker-dealer or investment advisor under federal or state securities laws to the extent of its operation as such a broker-dealer or investment advisor;

(11) An insurance company, title insurance company, or escrow agent to the extent that such an entity is lawfully authorized to conduct business in this state as an insurance company, title insurance company, or escrow agent and to the extent that they engage in money transmission or currency exchange as an ancillary service when conducting insurance, title insurance, or escrow activity;

(12) The issuance, sale, use, redemption, or exchange of closed loop prepaid access or of payment instruments by a person licensed under chapter 31.45 RCW;

(13) An attorney, to the extent that the attorney is lawfully authorized to practice law in this state and to the extent that the attorney engages in money transmission or currency exchange as an ancillary service to the practice of law;

(14) A seller or issuer of prepaid access when the funds are covered by federal deposit insurance immediately upon sale or issue;

(15) A person that transmits wages, salaries, or employee benefits on behalf of employers when the money transmission or currency exchange is an ancillary service in a suite of services that may include, but is not limited to, the following: Facilitate the payment of payroll taxes to state and federal agencies, make payments relating to employee benefit plans, make distribution of other authorized deductions from an employees' wages or salaries, or transmit other funds on behalf of an employer in connection with transactions related to employees; or

(16) The lawful business of bookkeeping or accounting to the extent the money transmission or currency exchange is an ancillary service.

The director may, at his or her discretion, waive applicability of the licensing provisions of this chapter when the director determines it necessary to facilitate commerce and protect consumers. The burden of proving the applicability of an exclusion or exception from licensing is upon the person claiming the exclusion or exception. The director may adopt rules to implement this section. [2017 c 30 § 2; 2013 c 106 § 2; 2010 c 73 § 2; 2003 c 287 § 4.]

19.230.030 Money transmitter license required. (1) A person may not engage in the business of money transmission, or advertise, solicit, or hold itself out as providing money transmission, unless the person is:

- (a) Licensed as a money transmitter under this chapter;
 - (b) An authorized delegate of a person licensed as a money transmitter under this chapter; or
 - (c) Excluded under RCW 19.230.020.
- (2) A money transmitter license is not transferable or assignable. [2017 c 30 § 3; 2003 c 287 § 5.]

19.230.040 Application for a money transmitter license. (1) A person applying for a money transmitter license under this chapter shall do so in a form and in a medium prescribed in rule by the director. The application must state or contain:

- (a) The legal name, business addresses, and residential address, if applicable, of the applicant and any fictitious or trade name used by the applicant in conducting its business;
- (b) The legal name, residential and business addresses, date of birth, social security number, employment history for the five-year period preceding the submission of the application of the applicant's proposed responsible individual, and documentation that the proposed responsible individual is a citizen of the United States or has obtained legal immigration status to work in the United States. In addition, the applicant shall provide the fingerprints of the proposed responsible individual upon the request of the director;
- (c) For the ten-year period preceding submission of the application, a list of any criminal convictions of the proposed responsible individual of the applicant, any material litigation in which the applicant has been involved, and any litigation involving the proposed responsible individual relating to the provision of money services;
- (d) A description of any money services previously provided by the applicant and the money services that the applicant seeks to provide to persons in Washington state;
- (e) A list of the applicant's proposed authorized delegates and the locations where the applicant and its authorized delegates will engage in the provision of money services to persons in Washington state on behalf of the licensee;
- (f) A list of other states in which the applicant is licensed to engage in money transmission, or provide other money services, and any license revocations, suspensions, restrictions, or other disciplinary action taken against the applicant in another state;
- (g) A list of any license revocations, suspensions, restrictions, or other disciplinary action taken against any money services business involving the proposed responsible individual;

(h) Information concerning any bankruptcy or receivership proceedings involving or affecting the applicant or the proposed responsible individual;

(i) A sample form of contract for authorized delegates, if applicable;

(j) A description of the source of money and credit to be used by the applicant to provide money services; and

(k) Any other information regarding the background, experience, character, financial responsibility, and general fitness of the applicant, the applicant's responsible individual, or authorized delegates that the director may require in rule.

(2) If an applicant is a corporation, limited liability company, partnership, or other entity, the applicant shall also provide:

(a) The date of the applicant's incorporation or formation and state or country of incorporation or formation;

(b) If applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;

(c) A brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(d) The legal name, any fictitious or trade name, all business and residential addresses, date of birth, social security number, and employment history in the ten-year period preceding the submission of the application for each executive officer, board director, or person that has control of the applicant;

(e) If the applicant or its corporate parent is not a publicly traded entity, the director may request the fingerprints of each executive officer, board director, or person that has control of the applicant;

(f) A list of any criminal convictions, material litigation, and any litigation related to the provision of money services, in the ten-year period preceding the submission of the application in which any executive officer, board director, or person in control of the applicant has been involved;

(g) A copy of the applicant's audited financial statements for the most recent fiscal year or, if the applicant is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the applicant's most recent audited consolidated annual financial statement, and in each case, if available, for the two-year period preceding the submission of the application;

(h) A copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period preceding the submission of the application;

(i) If the applicant is publicly traded, a copy of the most recent report filed with the United States securities and exchange commission under section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m);

(j) If the applicant is a wholly owned subsidiary of:

(i) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m); or

(ii) A corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;

(k) If the applicant has a registered agent in this state, the name and address of the applicant's registered agent in this state; and

(l) Any other information that the director may require in rule regarding the applicant, each executive officer, or each board director to determine the applicant's background, experience, character, financial responsibility, and general fitness.

(3) A nonrefundable application fee and an initial license fee, as determined in rule by the director, must accompany an application for a license under this chapter. The initial license fee must be refunded if the application is denied.

(4) As part of or in connection with an application for any license under this section, or periodically upon license renewal, each officer, director, responsible individual, and owner applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol or the federal bureau of investigation for a state and national criminal history background check, personal history, experience, business record, purposes, and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, or periodically upon license renewal, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 32 and 33 RCW. The requirements of this subsection do not apply when the applicant or its corporate parents are publicly traded entities.

(5) For business models that store virtual currency on behalf of others, the applicant must provide a third-party security audit of all electronic information and data systems acceptable to the director.

(6) The director or the director's designated representative may deny an application for a proposed license or trade name if the proposed license or trade name is similar to a currently existing licensee name, including trade names.

(7) The director may waive one or more requirements of this section or permit an applicant to submit other information in lieu of the required information. [2017 c 30 § 4; 2013 c 106 § 3; 2003 c 287 § 6.]

19.230.050 Money transmitters—Surety bond. (1) Each money transmitter licensee shall maintain a surety bond in an amount based on the previous year's money transmission dollar volume; and the previous year's payment instrument dollar volume. The minimum surety bond must be at least ten thousand dollars, and not to exceed five hundred fifty thousand dollars. The director may adopt rules to implement this section.

(2) The surety bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of a licensee's or licensee's authorized delegate's violation of this chapter or the rules adopted under this chapter. A claimant against a money

transmitter licensee may maintain an action on the bond, or the director may maintain an action on behalf of the claimant.

(3) The surety bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation is effective thirty days after the notice of cancellation is received by the director or the director's designee. Whether or not the bond is renewed, continued, replaced, or modified, including increases or decreases in the penal sum, it is considered one continuous obligation, and the surety upon the bond is not liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event may the penal sum, or any portion thereof, at two or more points in time, be added together in determining the surety's liability.

(4) A surety bond must cover claims for at least five years after the date of a money transmitter licensee's violation of this chapter, or at least five years after the date the money transmitter licensee ceases to provide money services in this state, whichever is longer. However, the director may permit the amount of the surety bond to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee's obligations outstanding in this state are reduced.

(5) In the event that a money transmitter licensee does not maintain a surety bond in the amount required under subsection (1) of this section, the director may issue a temporary cease and desist order under RCW 19.230.260.

(6) The director may increase the amount of the bond required up to a maximum of one million dollars based on the nature and volume of business activities, the financial health of the company, and other criteria specified by the director in rule. [2017 c 30 § 5; 2010 c 73 § 3; 2003 c 287 § 7.]

19.230.055 Online currency exchangers—Surety bond. (1) Each online currency exchanger licensee shall maintain a surety bond in an amount based on the previous year's currency exchange dollar volume. The minimum surety bond must be at least ten thousand dollars, and not to exceed fifty thousand dollars. The director may adopt rules to implement this section.

(2) The surety bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of a licensee's violation of this chapter or the rules adopted under this chapter. A claimant against the bond may maintain an action on the bond, or the director may maintain an action on behalf of the claimant.

(3) The surety bond must be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation is effective thirty days after the notice of cancellation is received by the director or the director's designee. Whether or not the bond is renewed, continued, replaced, or modified, including increases or decreases in the penal sum, it is considered one continuous obligation, and the surety upon the bond is not liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event may the penal sum, or any portion thereof, at two or more points in time, be added together in determining the surety's liability.

(4) A surety bond must cover claims for at least one year after the date of an online currency exchanger licensee's violation of this chapter, or at least one year after the date the online currency exchanger licensee ceases to provide online currency exchange services in this state, whichever is longer. However, the director may permit the amount of the surety bond to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee's obligations outstanding in this state are reduced.

(5) In the event that an online currency exchanger licensee does not maintain a surety bond in the amount required under subsection (1) of this section, the director may issue a temporary cease and desist order under RCW 19.230.260.

(6) The director may increase the amount of the bond required up to a maximum of one million dollars based on the nature and volume of the business activities, the financial health of the company, and other criteria specified by the director in rule. [2017 c 30 § 7.]

19.230.070 Issuance of money transmitter license.

(1) When an application for a money transmitter license is filed under this chapter, the director or the director's designee shall investigate the applicant's financial condition and responsibility, financial and business experience, competence, character, and general fitness. The director or the director's designee may conduct an on-site investigation of the applicant, the cost of which must be paid by the applicant as specified in RCW 19.230.320 or rules adopted under this chapter. The director shall issue a money transmitter license to an applicant under this chapter if the director or the director's designee finds that all of the following conditions have been fulfilled:

(a) The applicant has complied with RCW 19.230.040, 19.230.050, and 19.230.060;

(b) The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, financial and business experience, character, and general fitness of the executive officers, proposed responsible individual, board directors, and persons in control of the applicant; indicate that it is in the interest of the public to permit the applicant to engage in the business of providing money transmission services; and

(c) Neither the applicant, nor any executive officer, nor person who exercises control over the applicant, nor the proposed responsible individual is listed on the specially designated nationals and blocked persons list prepared by the United States department of the treasury or department of state under Presidential Executive Order No. 13224.

(2) The director may for good cause extend the application review period or condition the issuance of the license.

(3) An applicant whose application is denied by the director under this chapter may appeal under chapter 34.05 RCW.

(4) A money transmitter license issued under this chapter is valid from the date of issuance and remains in effect with no fixed date of expiration unless otherwise suspended or revoked by the director or unless the license expires for nonpayment of the annual assessment and any late fee, if applicable.

(5) A money transmitter licensee may surrender a license by providing the director with a written notice of surrender through the nationwide licensing system. The written notice of surrender must include notice of where the records of the licensee will be stored and the name, address, telephone number, and other contact information of a responsible party who is authorized to provide access to the records. The surrender of a license does not reduce or eliminate the licensee's civil or criminal liability arising from acts or omissions occurring prior to the surrender of the license, including any administrative actions undertaken by the director or the director's designee to revoke or suspend a license, to assess fines, to order payment of restitution, or to exercise any other authority authorized under this chapter. [2017 c 30 § 6; 2010 c 73 § 5; 2003 c 287 § 9.]

19.230.100 Issuance of a currency exchange license—

Surrender of license. (1) When an application for a currency exchange license is filed under this chapter, the director or the director's designee shall investigate the applicant's financial condition and responsibility, financial and business experience, competence, character, and general fitness. The director or the director's designee may conduct an on-site investigation of the applicant, the cost of which must be paid by the applicant as specified in RCW 19.230.320 or rules adopted under this chapter. The director shall issue a currency exchange license to an applicant under this chapter if the director or the director's designee finds that all of the following conditions have been fulfilled:

(a) The applicant has complied with RCW 19.230.090;

(b) The financial and business experience, competence, character, and general fitness of the applicant; and the competence, financial and business experience, character, and general fitness of the executive officers, proposed responsible individual, board directors, and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in the business of providing currency exchange; and

(c) Neither the applicant, nor any executive officer, nor person who exercises control over the applicant, nor the proposed responsible individual are listed on the specially designated nationals and blocked persons list prepared by the United States department of treasury or department of state under Presidential Executive Order No. 13224.

(2) The director may for good cause extend the application review period.

(3) An applicant whose application is denied by the director under this chapter may appeal under chapter 34.05 RCW.

(4) A currency exchange license issued under this chapter is valid from the date of issuance and remains in effect with no fixed date of expiration unless otherwise suspended or revoked by the director, or unless the license expires for nonpayment of the annual assessment and any late fee, if applicable.

(5) A currency exchange licensee may surrender a license by providing the director with a written notice of surrender through the nationwide licensing system. The written notice of surrender must include notice of where the records of the licensee will be stored and the name, address, telephone number, and other contact information of a responsible

party who is authorized to provide access to the records. The surrender of a license does not reduce or eliminate the licensee's civil or criminal liability arising from acts or omissions occurring prior to the surrender of the license, including any administrative actions undertaken by the director or the director's designee to revoke or suspend a license, to assess fines, to order payment of restitution, or to exercise any other authority authorized under this chapter. [2017 c 30 § 8; 2003 c 287 § 12.]

19.230.110 Annual assessment and annual report.

(1) A licensee shall pay an annual assessment as established in rule by the director no later than the annual assessment due date or, if the annual assessment due date is not a business day, on the next business day. A licensee shall pay an annual assessment based on the previous year's Washington dollar volume of: (a) Money transmissions; (b) payment instruments; (c) currency exchanges; and (d) prepaid access sales. The total minimum assessment must be one thousand dollars per year, and the maximum assessment may not exceed one hundred thousand dollars per year.

(2) A licensee shall submit an accurate annual report with the annual assessment, in a form and in a medium prescribed by the director in rule. The annual report must state or contain:

(a) If the licensee is a money transmitter, a copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the licensee's most recent audited consolidated annual financial statement;

(b) A description of each material change, as defined in rule by the director, to information submitted by the licensee in its original license application which has not been previously reported to the director on any required report;

(c) If the licensee is a money transmitter, a list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in RCW 19.230.200 and 19.230.210;

(d) If the licensee is a money transmitter, proof that the licensee continues to maintain an adequate bond as required by RCW 19.230.050; and

(e) A list of the locations where the licensee or an authorized delegate of the licensee engages in or provides money services to persons in Washington state.

(3) If a licensee does not file an annual report or pay its annual assessment by the annual assessment due date, the director or the director's designee shall send the licensee a notice of suspension and assess the licensee a late fee not to exceed twenty-five percent of the annual assessment as established in rule by the director. The licensee's annual report and payment of both the annual assessment and the late fee must arrive in the department's offices by 5:00 p.m. on the thirtieth day after the assessment due date or any extension of time granted by the director, unless that date is not a business day, in which case the licensee's annual report and payment of both the annual assessment and the late fee must arrive in the department's offices by 5:00 p.m. on the next occurring business day. If the licensee's annual report and payment of both the annual assessment and late fee do not arrive by such date,

the expiration of the licensee's license is effective at 5:00 p.m. on the thirtieth day after the assessment due date, unless that date is not a business day, in which case the expiration of the licensee's license is effective at 5:00 p.m. on the next occurring business day. The director, or the director's designee, may reinstate the license if, within twenty days after its effective date, the licensee:

(a) Files the annual report and pays both the annual assessment and the late fee; and

(b) Did not engage in or provide money services during the period its license was expired. [2017 c 30 § 9; 2013 c 106 § 4; 2010 c 73 § 6; 2003 c 287 § 13.]

19.230.130 Authority to conduct examinations and investigations.

(1) For the purpose of discovering violations of this chapter or rules adopted under this chapter, discovering unsafe and unsound practices, or securing information lawfully required under this chapter, the director may at any time, either personally or by designee, investigate or examine the business and, wherever located, the books, accounts, records, papers, documents, files, and other information used in the business of every licensee or its authorized delegates, and of every person who is engaged in the business of providing money services, whether the person acts or claims to act under or without the authority of this chapter. For these purposes, the director or designated representative shall have free access to the offices and places of business, books, accounts, papers, documents, other information, records, files, safes, and vaults of all such persons. The director or the director's designee may require the attendance of and examine under oath all persons whose testimony may be required about the business or the subject matter of any investigation, examination, or hearing and may require such person to produce books, accounts, papers, documents, records, files, and any other information the director or designated person declares is relevant to the inquiry. The director may require the production of original books, accounts, papers, documents, records, files, and other information; may require that such original books, accounts, papers, documents, records, files, and other information be copied; or may make copies himself or herself or by designee of such original books, accounts, papers, documents, records, files, or other information. The director or designated person may issue a directive, subpoena, or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, documents, records, files, or other information.

(2) The licensee, applicant, or person subject to licensing under this chapter shall pay the cost of examinations and investigations as specified in RCW 19.230.320 or rules adopted under this chapter.

(3) Information obtained during an examination or investigation under this chapter may be disclosed only as provided in RCW 19.230.190. [2017 c 30 § 10; 2003 c 287 § 15.]

19.230.140 Examinations—Joint and concurrent examinations.

(1) The director may: Conduct an on-site examination, participate in a joint or concurrent examination with other state or federal agencies, or investigate the books, accounts, records, papers, documents, files, and other information used in the business of every licensee or its authorized

delegates in conjunction with representatives of other state agencies or agencies of another state or of the federal government. The director may accept an examination report or an investigation report of an agency of this state or of another state or of the federal government.

(2) A joint or concurrent examination or investigation, or an acceptance of an examination or investigation report, does not preclude the director from conducting an examination or investigation under this chapter. A joint report or a report accepted under this section is an official report of the director for all purposes. [2017 c 30 § 11; 2003 c 287 § 16.]

19.230.150 Reports. (1) A licensee shall file with the director within thirty days any material changes in information provided in a licensee's application as prescribed in rule by the director. If this information indicates that the licensee is no longer in compliance with this chapter, the director may take any action authorized under this chapter to ensure that the licensee operates in compliance with this chapter.

(2) A licensee shall report all licensee branch locations and all authorized delegates to the nationwide licensing system within thirty days of the contractual agreement with the licensee to provide money services in Washington. Accurate records must be maintained within the licensing system as prescribed in rule.

(3) A licensee shall file a report with the director within one business day after the licensee has reason to know of the occurrence of any of the following events:

(a) The filing of a petition by or against the licensee, or any authorized delegate of the licensee, under the United States Bankruptcy Code (11 U.S.C. Sec. 101-110) for bankruptcy or reorganization;

(b) The filing of a petition by or against the licensee, or any authorized delegate of the licensee, for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(c) The commencement of a proceeding to revoke, suspend, restrict, or condition its license, or otherwise discipline or sanction the licensee, in a state or country in which the licensee engages in business or is licensed;

(d) The cancellation or other impairment of the licensee's bond;

(e) A charge or conviction of the licensee or of an executive officer, responsible individual, board director of the licensee, or person in control of the licensee, for a felony; or

(f) A charge or conviction of an authorized delegate for a felony. [2017 c 30 § 12; 2013 c 106 § 6; 2003 c 287 § 17.]

19.230.152 Reports—Nationwide licensing system. Each licensee shall submit reports of condition through a nationwide licensing system which must be in the form and must contain the information as the director may require. [2017 c 30 § 13; 2014 c 36 § 4.]

19.230.180 Money laundering reports. Every licensee and its authorized delegates shall file all reports required by federal currency reporting, recordkeeping, and suspicious transaction reporting requirements with the appropriate federal agency as set forth in 31 U.S.C. Sec. 5311, 31 C.F.R. Part 1022, and other federal and state laws pertaining to money

laundering. Every licensee and its authorized delegates shall maintain copies of these reports in its records in compliance with RCW 19.230.170. [2017 c 30 § 14; 2010 c 73 § 8; 2003 c 287 § 20.]

19.230.190 Confidentiality. (1) Except as otherwise provided in subsection (2) of this section, all information or reports obtained by the director from an applicant, licensee, or authorized delegate and all information contained in, or related to, examination, investigation, operating, or condition reports prepared by, on behalf of, or for the use of the director, or financial statements, balance sheets, or authorized delegate information, are confidential and are not subject to disclosure under chapter 42.56 RCW.

(2) The director may disclose information not otherwise subject to disclosure under subsection (1) of this section to representatives of state or federal agencies who agree in writing to maintain the confidentiality of the information; or if the director finds that the release is reasonably necessary for the protection of the public and in the interests of justice.

(3) This section does not prohibit the director from disclosing to the public a list of persons licensed or reported with the department as authorized delegates under this chapter or the aggregated financial data concerning those licensees. [2017 c 30 § 15; 2005 c 274 § 237; 2003 c 287 § 21.]

19.230.200 Maintenance of permissible investments. (1)(a) A money transmitter licensee must maintain, at all times, permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the amount of the licensee's average daily transmission liability. Average daily transmission liability means the sum of the daily amounts of a licensee's outstanding money transmissions, as computed each day of the month divided by the number of days in the month.

(b) A licensee transmitting virtual currencies must hold like-kind virtual currencies of the same volume as that held by the licensee but which is obligated to consumers in lieu of the permissible investments required in (a) of this subsection.

(c) A licensee transmitting both money and virtual currency must maintain applicable levels and types of permissible investments as described in (a) and (b) of this subsection.

(2) The director, with respect to any money transmitter licensee, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money, time deposits, savings deposits, demand deposits, and certificates of deposit issued by a federally insured financial institution. The director may prescribe in rule, or by order allow, other types of investments that the director determines to have a safety substantially equivalent to other permissible investments. [2017 c 30 § 16; 2013 c 106 § 7; 2010 c 73 § 9; 2003 c 287 § 22.]

19.230.210 Types of permissible investments. (1) Except to the extent otherwise limited by the director under RCW 19.230.200, the following investments are permissible for a money transmitter licensee under RCW 19.230.200:

(a) Cash on hand. Time deposits, savings deposits, demand deposits, certificates of deposit, or senior debt obligations of an insured depository institution as defined in section 3 of the federal Deposit Insurance Act (12 U.S.C. Sec.

1813) or as defined under the federal Credit Union Act (12 U.S.C. Sec. 1781);

(b) Banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the federal reserve system and is eligible for purchase by a federal reserve bank;

(c) An investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;

(d) An investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a state or a governmental subdivision, agency, or instrumentality thereof;

(e) Receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts which are not past due or doubtful of collection, if the aggregate amount of receivables under this subsection (1)(e) does not exceed thirty percent of the total permissible investments of a licensee and the licensee does not hold, at one time, receivables under this subsection (1)(e) in any one person aggregating more than ten percent of the licensee's total permissible investments; and

(f) A share or a certificate issued by an open-end management investment company that is registered with the United States securities and exchange commission under the Investment Companies Act of 1940 (15 U.S.C. Sec. 80(a)(1) through (64), and whose portfolio is restricted by the management company's investment policy to investments specified in (a) through (d) of this subsection.

(2) The following investments are permissible under RCW 19.230.200, but only to the extent specified as follows:

(a) An interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments under this subsection (2)(a) does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not, at one time, hold investments under this subsection (2)(a) in any one person aggregating more than ten percent of the licensee's total permissible investments;

(b) A share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the United States securities and exchange commission under the Investment Companies Act of 1940 (15 U.S.C. Sec. 80(a)(1) through (64), and whose portfolio is restricted by the management company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if the aggregate of investments under this subsection (2)(b) does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not, at one time, hold investments under this subsection (2)(b) in any one person aggregating more than ten percent of the licensee's total permissible investments;

(c) A demand-borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange, if the aggregate of the amount of principal and interest outstanding under

demand-borrowing agreements under this subsection (2)(c) does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not, at one time, hold principal and interest outstanding under demand-borrowing agreements under this subsection (2)(c) with any one person aggregating more than ten percent of the licensee's total permissible investments; and

(d) Any other investment the director designates, to the extent specified in rule by the director.

(3) The aggregate of investments under subsection (2) of this section may not exceed fifty percent of the total permissible investments of a licensee.

(4) A licensee may not use any portion of a restricted asset as a permissible investment. Restricted assets include, but are not limited to, surety bonds or any other assets pledged to other persons or entities. The director may establish by rule other restricted assets. [2017 c 30 § 17; 2010 c 73 § 10; 2003 c 287 § 23.]

19.230.250 Unlicensed persons. (1) If the director has reason to believe that a person has violated or is violating RCW 19.230.030 or 19.230.080, the director or the director's designee may conduct an examination or investigation as authorized under RCW 19.230.130.

(2) If as a result of such investigation or examination, the director finds that a person has violated RCW 19.230.030 or 19.230.080, the director may issue a temporary cease and desist order as authorized under RCW 19.230.260.

(3) If as a result of such an investigation or examination, the director finds that a person has violated RCW 19.230.030 or 19.230.080, the director may issue an order to prohibit the person from continuing to engage in providing money services, to compel the person to pay restitution to damaged parties, to impose civil money penalties on the person, which may include the costs and expenses to investigate and prosecute violations of this chapter, and to prohibit from participation in the affairs of any licensee or authorized delegate, or both, any executive officer, person in control, or employee of the person.

(4) The director may petition the superior court for the issuance of a temporary restraining order under the rules of civil procedure. [2017 c 30 § 18; 2003 c 287 § 27.]

19.230.290 Civil penalties. The director may assess a civil penalty against a licensee, responsible individual, authorized delegate, or other person that violates this chapter or a rule adopted or an order issued under this chapter in an amount not to exceed one hundred dollars per violation per day for each day the violation is outstanding, plus this state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorneys' fees. [2017 c 30 § 19; 2003 c 287 § 31.]

19.230.320 Fees. (1) The director shall establish fees by rule sufficient to cover the costs of administering this chapter. The director may establish different fees for each type of license authorized under this chapter. These fees may include:

(a) An annual assessment specified in rule by the director paid by each licensee on or before the annual assessment due date;

(b) A late fee for late payment of the annual assessment as specified in rule by the director;

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

(d) A nonrefundable application fee to cover the costs of processing license applications made to the director under this chapter;

(e) An initial license fee to cover the period from the date of licensure to the end of the calendar year in which the license is initially granted; and

(f) A transaction fee or set of transaction fees to cover the administrative costs associated with processing changes in control, changes of address, and other administrative changes as specified in rule by the director.

(2) The director shall ensure that when an examination or investigation, or any part of the examination or investigation, of any licensee applicant or person subject to licensing under this chapter, requires travel and services outside this state by the director or designee, the licensee applicant or person subject to licensing under this chapter that is the subject of the examination or investigation shall pay the actual travel expenses incurred by the director or designee conducting the examination or investigation.

(3) All moneys, fees, and penalties collected under this chapter shall be deposited into the financial services regulation account.

(4) The director or designee may waive all or a portion of the fees and assessments under this chapter. [2017 c 30 § 20; 2010 c 73 § 11; 2003 c 287 § 34.]

19.230.330 Money transmitter delivery, receipts, and refunds.

(1)(a) Every money transmitter licensee and its authorized delegates shall transmit the monetary equivalent of all money or equivalent value received from a customer for transmission, net of any fees, or issue instructions committing the money or its monetary equivalent, to the person designated by the customer within ten business days after receiving the money or equivalent value, unless otherwise ordered by the customer or when the transmission is for the payment of goods or services or unless the licensee or its authorized delegate has reason to believe that a crime has occurred, is occurring, or may occur as a result of transmitting the money. For purposes of this subsection, money is considered to have been transmitted when it is available to the person designated by the customer and a reasonable effort has been made to inform this designated person that the money is available, whether or not the designated person has taken possession of the money. As used in this subsection, "monetary equivalent," when used in connection with a money transmission in which the customer provides the licensee or its authorized delegate with the money of one government, and the designated recipient is to receive the money of another government, means the amount of money, in the currency of the government that the designated recipient is to receive, as converted at the retail exchange rate offered by the licensee or its authorized delegate to the customer in connection with the transaction.

(b) A money transmitter licensee that accepts money or its equivalent from consumers purchasing goods or services from third-party merchants and transmits the money or its

equivalent to those merchants selling the goods or services to the consumer must:

(i) Transmit the money or its equivalent to the merchant within the time frame agreed upon in the merchant's agreement with the money transmitter licensee; and

(ii) Conspicuously disclose to the merchant in the agreement the money transmitter licensee's authority to place a hold or delay in transmittal of consumer money or its equivalent for more than ten business days and the general circumstances under which the merchant may be subject to a hold or delay.

(2)(a) Every money transmitter licensee and its authorized delegates shall provide a receipt to the customer that clearly states the amount of money presented for transmission and the total of any fees charged by the licensee. If the rate of exchange for a money transmission to be paid in the currency of another country is fixed by the licensee for that transaction at the time the money transmission is initiated, then the receipt provided to the customer shall disclose the rate of exchange for that transaction, and the duration, if any, for the payment to be made at the fixed rate of exchange so specified. If the rate of exchange for a money transmission to be paid in the currency of another country is not fixed at the time the money transmission is sent, the receipt provided to the customer shall disclose that the rate of exchange for that transaction will be set at the time the recipient of the money transmission picks up the funds in the foreign country. The receipt shall also contain the licensee name, address, and phone number. As used in this section, "fees" does not include revenue that a licensee or its authorized delegate generates, in connection with a money transmission, in the conversion of the money of one government into the money of another government.

(b) Licensees acting as payment processors not excluded from this chapter do not have to comply with (a) of this subsection if they have no control over receipts issued by merchants or other parties having interactions with the consumer.

(3) Every money transmitter licensee and its authorized delegates shall refund to the customer all moneys received for transmittal within ten days of receipt of a written request for a refund unless any of the following occurs:

(a) The moneys have been transmitted and delivered to the person designated by the customer prior to receipt of the written request for a refund;

(b) Instructions have been given committing an equivalent amount of money to the person designated by the customer prior to receipt of a written request for a refund;

(c) The licensee or its authorized delegate has reason to believe that a crime has occurred, is occurring, or may potentially occur as a result of transmitting the money as requested by the customer or refunding the money as requested by the customer; or

(d) The licensee is otherwise barred by law from making a refund. [2017 c 30 § 22; 2014 c 206 § 1; 2010 c 73 § 12; 2003 c 287 § 35.]

19.230.370 Virtual currency licensees—Disclosures.

(1) Virtual currency licensees must provide to any person seeking to use the licensee's products or services the disclosures required by subsection (2) of this section.

(2) As applicable, virtual currency licensees must make the following disclosures:

(a) A schedule of all fees and charges the licensee may assess on a transaction, how the fees and charges will be calculated if not set in advance and disclosed, and the timing of the fees and charges.

(b) Whether the product or service provided is insured or guaranteed by an agency of the United States, such as the federal deposit insurance corporation or the securities investor protection corporation or by private insurance against theft or loss, including cybertheft or theft by other means.

(c) A notice that the transfer of virtual currency or digital units is irrevocable and any exception to the irrevocability of transfer.

(d) A notice describing the licensee's liability for unauthorized, mistaken, or accidental transfers and, describing the user's responsibility for providing notice of such mistake to the licensee and of general error-resolution rights applicable to any transaction.

(3) Licensees must provide any additional disclosures the director may require as set forth in rule.

(4) Disclosures required by this section must be made separately from any other information provided by the licensee and in a clear and conspicuous manner. [2017 c 30 § 21.]

Chapter 19.285 RCW ENERGY INDEPENDENCE ACT

Sections

19.285.030	Definitions.
19.285.040	Energy conservation and renewable energy targets.
19.285.080	Rule making.

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

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for qualifying utilities under its jurisdiction that are not investor-owned utilities; or (b) an independent auditor selected by a qualifying utility that is not under the jurisdiction of the state auditor and is not an investor-owned utility.

(3)(a) "Biomass energy" includes: (i) Organic by-products of pulping and the wood manufacturing process; (ii) animal manure; (iii) solid organic fuels from wood; (iv) forest or field residues; (v) untreated wooden demolition or construction debris; (vi) food waste and food processing residuals; (vii) liquors derived from algae; (viii) dedicated energy crops; and (ix) yard waste.

(b) "Biomass energy" does not include: (i) Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (ii) wood from old growth forests; or (iii) municipal solid waste.

(4) "Coal transition power" has the same meaning as defined in RCW 80.80.010.

(5) "Commission" means the Washington state utilities and transportation commission.

(6) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

(7) "Cost-effective" has the same meaning as defined in RCW 80.52.030.

(8) "Council" means the Washington state apprenticeship and training council within the department of labor and industries.

(9) "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(10) "Department" means the department of commerce or its successor.

(11) "Distributed generation" means an eligible renewable resource where the generation facility or any integrated cluster of such facilities has a generating capacity of not more than five megawatts.

(12) "Eligible renewable resource" means:

(a) Electricity from a generation facility powered by a renewable resource other than freshwater that commences operation after March 31, 1999, where: (i) The facility is located in the Pacific Northwest; or (ii) the electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services;

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the Pacific Northwest where the additional generation does not result in new water diversions or impoundments;

(c) Hydroelectric generation from a project completed after March 31, 1999, where the generation facility is located in irrigation pipes, irrigation canals, water pipes whose primary purpose is for conveyance of water for municipal use, and wastewater pipes located in Washington where the generation does not result in new water diversions or impoundments;

(d) Qualified biomass energy;

(e) For a qualifying utility that serves customers in other states, electricity from a generation facility powered by a renewable resource other than freshwater that commences operation after March 31, 1999, where: (i) The facility is located within a state in which the qualifying utility serves retail electrical customers; and (ii) the qualifying utility owns the facility in whole or in part or has a long-term contract with the facility of at least twelve months or more; or

(f)(i) Incremental electricity produced as a result of a capital investment completed after January 1, 2010, that increases, relative to a baseline level of generation prior to the capital investment, the amount of electricity generated in a facility that generates qualified biomass energy as defined under subsection (18)(c)(ii) of this section and that commenced operation before March 31, 1999.

(ii) Beginning January 1, 2007, the facility must demonstrate its baseline level of generation over a three-year period prior to the capital investment in order to calculate the amount of incremental electricity produced.

(iii) The facility must demonstrate that the incremental electricity resulted from the capital investment, which does not include expenditures on operation and maintenance in the normal course of business, through direct or calculated measurement.

(13) "Investor-owned utility" has the same meaning as defined in RCW 19.29A.010.

(14) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers.

(15)(a) "Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.

(b) "Nonpower attributes" does not include any aspects, claims, characteristics, and benefits associated with the on-site capture and destruction of methane or other greenhouse gases at a facility through a digester system, landfill gas collection system, or other mechanism, which may be separately marketable as greenhouse gas emission reduction credits, offsets, or similar tradable commodities. However, these separate avoided emissions may not result in or otherwise have the effect of attributing greenhouse gas emissions to the electricity.

(16) "Pacific Northwest" has the same meaning as defined for the Bonneville power administration in section 3 of the Pacific Northwest electric power planning and conservation act (94 Stat. 2698; 16 U.S.C. Sec. 839a).

(17) "Public facility" has the same meaning as defined in RCW 39.35C.010.

(18) "Qualified biomass energy" means electricity produced from a biomass energy facility that: (a) Commenced operation before March 31, 1999; (b) contributes to the qualifying utility's load; and (c) is owned either by: (i) A qualifying utility; or (ii) an industrial facility that is directly interconnected with electricity facilities that are owned by a qualifying utility and capable of carrying electricity at transmission voltage.

(19) "Qualifying utility" means an electric utility, as the term "electric utility" is defined in RCW 19.29A.010, that serves more than twenty-five thousand customers in the state of Washington. The number of customers served may be based on data reported by a utility in form 861, "annual electric utility report," filed with the energy information administration, United States department of energy.

(20) "Renewable energy credit" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by freshwater. The certificate includes all of the non-power attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.

(21) "Renewable resource" means: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006; or (i) biomass energy.

(22) "Rule" means rules adopted by an agency or other entity of Washington state government to carry out the intent and purposes of this chapter.

(23) "Year" means the twelve-month period commencing January 1st and ending December 31st. [2017 c 315 § 1; 2014 c 45 § 1. Prior: 2013 c 158 § 1; 2013 c 99 § 1; 2013 c 61 § 1; prior: 2012 c 22 § 2; 2009 c 565 § 20; 2007 c 1 § 3 (Initiative Measure No. 937, approved November 7, 2006).]

Findings—Intent—2012 c 22: "(1) The legislature finds that: (a) Pulp and paper mills can be used to reduce harmful pollution and produce electricity and thermal energy that enables pulp and paper facilities to be highly energy efficient; (b) biomass facilities and pulp and paper mills are typically located in communities that are disproportionately affected by economic downturns; (c) mill closures have occurred throughout the state for more than a decade and the remaining ones have become all the more dependent on selling wood residuals, which are used for electricity generation, in order to sustain their economic viability; (d) employment at pulp and paper mills in the state has also declined significantly, most recently in Grays Harbor and Snohomish counties; (e) wood derived biomass is a renewable fuel for generating electricity and considered carbon-neutral under the laws of the state of Washington; and (f) using food processing residues, food waste, and yard waste to generate renewable electricity can benefit rural economies, decrease the amount of solid waste that requires disposal, and reduce greenhouse gas emissions that result from organic decay.

(2) The legislature declares that, by promoting the generation of renewable energy from biomass, particularly in economically distressed communities, it intends to ensure greater economic stability for the communities that have suffered heavy job losses and chronic unemployment.

(3) The legislature further declares that: (a) The owners of qualified biomass energy facilities that must comply with the renewable energy standards under the energy independence act of 2006, either as a matter of law or contractual obligation, should be permitted to use qualified biomass energy credits to meet their obligations; and (b) electricity that is generated by a biomass energy facility that entered commercial operation after March 31, 1999, from the combustion of organic by-products of pulping and the wood manufacturing process should be treated as an eligible renewable resource." [2012 c 22 § 1.]

19.285.040 Energy conservation and renewable energy targets.

(1) Each qualifying utility shall pursue all available conservation that is cost-effective, reliable, and feasible.

(a) By January 1, 2010, using methodologies consistent with those used by the Pacific Northwest electric power and conservation planning council in the most recently published regional power plan as it existed on June 12, 2014, or a subsequent date as may be provided by the department or the commission by rule, each qualifying utility shall identify its achievable cost-effective conservation potential through 2019. Nothing in the rule adopted under this subsection precludes a qualifying utility from using its utility specific conservation measures, values, and assumptions in identifying its achievable cost-effective conservation potential. At least every two years thereafter, the qualifying utility shall review and update this assessment for the subsequent ten-year period.

(b) Beginning January 2010, each qualifying utility shall establish and make publicly available a biennial acquisition target for cost-effective conservation consistent with its identification of achievable opportunities in (a) of this subsection, and meet that target during the subsequent two-year period. At a minimum, each biennial target must be no lower than the qualifying utility's pro rata share for that two-year period of its cost-effective conservation potential for the subsequent ten-year period.

(c)(i) Except as provided in (c)(ii) and (iii) of this subsection, beginning on January 1, 2014, cost-effective conservation achieved by a qualifying utility in excess of its biennial acquisition target may be used to help meet the immediately subsequent two biennial acquisition targets, such that no more than twenty percent of any biennial target may be met with excess conservation savings.

(ii) Beginning January 1, 2014, a qualifying utility may use single large facility conservation savings in excess of its biennial target to meet up to an additional five percent of the immediately subsequent two biennial acquisition targets, such that no more than twenty-five percent of any biennial target may be met with excess conservation savings allowed under all of the provisions of this section combined. For the purposes of this subsection (1)(c)(ii), "single large facility conservation savings" means cost-effective conservation savings achieved in a single biennial period at the premises of a single customer of a qualifying utility whose annual electricity consumption prior to the conservation savings exceeded five average megawatts.

(iii) Beginning January 1, 2012, and until December 31, 2017, a qualifying utility with an industrial facility located in a county with a population between ninety-five thousand and one hundred fifteen thousand that is directly interconnected with electricity facilities that are capable of carrying electricity at transmission voltage may use cost-effective conservation from that industrial facility in excess of its biennial acquisition target to help meet the immediately subsequent two biennial acquisition targets, such that no more than twenty-five percent of any biennial target may be met with excess conservation savings allowed under all of the provisions of this section combined.

(d) In meeting its conservation targets, a qualifying utility may count high-efficiency cogeneration owned and used by a retail electric customer to meet its own needs. High-efficiency cogeneration is the sequential production of electricity and useful thermal energy from a common fuel source, where, under normal operating conditions, the facility has a useful thermal energy output of no less than thirty-three percent of the total energy output. The reduction in load due to high-efficiency cogeneration shall be: (i) Calculated as the ratio of the fuel chargeable to power heat rate of the cogeneration facility compared to the heat rate on a new and clean basis of a best-commercially available technology combined-cycle natural gas-fired combustion turbine; and (ii) counted towards meeting the biennial conservation target in the same manner as other conservation savings.

(e) The commission may determine if a conservation program implemented by an investor-owned utility is cost-effective based on the commission's policies and practice.

(f) The commission may rely on its standard practice for review and approval of investor-owned utility conservation targets.

(2)(a) Except as provided in (j) of this subsection, each qualifying utility shall use eligible renewable resources or acquire equivalent renewable energy credits, or any combination of them, to meet the following annual targets:

(i) At least three percent of its load by January 1, 2012, and each year thereafter through December 31, 2015;

(ii) At least nine percent of its load by January 1, 2016, and each year thereafter through December 31, 2019; and

(iii) At least fifteen percent of its load by January 1, 2020, and each year thereafter.

(b) A qualifying utility may count distributed generation at double the facility's electrical output if the utility: (i) Owns or has contracted for the distributed generation and the associated renewable energy credits; or (ii) has contracted to purchase the associated renewable energy credits.

(c) In meeting the annual targets in (a) of this subsection, a qualifying utility shall calculate its annual load based on the average of the utility's load for the previous two years.

(d) A qualifying utility shall be considered in compliance with an annual target in (a) of this subsection if: (i) The utility's weather-adjusted load for the previous three years on average did not increase over that time period; (ii) after December 7, 2006, the utility did not commence or renew ownership or incremental purchases of electricity from resources other than coal transition power or renewable resources other than on a daily spot price basis and the electricity is not offset by equivalent renewable energy credits; and (iii) the utility invested at least one percent of its total annual retail revenue requirement that year on eligible renewable resources, renewable energy credits, or a combination of both.

(e) The requirements of this section may be met for any given year with renewable energy credits produced during that year, the preceding year, or the subsequent year. Each renewable energy credit may be used only once to meet the requirements of this section.

(f) In complying with the targets established in (a) of this subsection, a qualifying utility may not count:

(i) Eligible renewable resources or distributed generation where the associated renewable energy credits are owned by a separate entity; or

(ii) Eligible renewable resources or renewable energy credits obtained for and used in an optional pricing program such as the program established in RCW 19.29A.090.

(g) Where fossil and combustible renewable resources are cofired in one generating unit located in the Pacific Northwest where the cofiring commenced after March 31, 1999, the unit shall be considered to produce eligible renewable resources in direct proportion to the percentage of the total heat value represented by the heat value of the renewable resources.

(h)(i) A qualifying utility that acquires an eligible renewable resource or renewable energy credit may count that acquisition at one and two-tenths times its base value:

(A) Where the eligible renewable resource comes from a facility that commenced operation after December 31, 2005; and

(B) Where the developer of the facility used apprenticeship programs approved by the council during facility construction.

(ii) The council shall establish minimum levels of labor hours to be met through apprenticeship programs to qualify for this extra credit.

(i) A qualifying utility shall be considered in compliance with an annual target in (a) of this subsection if events beyond the reasonable control of the utility that could not have been reasonably anticipated or ameliorated prevented it

from meeting the renewable energy target. Such events include weather-related damage, mechanical failure, strikes, lockouts, and actions of a governmental authority that adversely affect the generation, transmission, or distribution of an eligible renewable resource under contract to a qualifying utility.

(j)(i) Beginning January 1, 2016, only a qualifying utility that owns or is directly interconnected to a qualified biomass energy facility may use qualified biomass energy to meet its compliance obligation under this subsection.

(ii) A qualifying utility may no longer use electricity and associated renewable energy credits from a qualified biomass energy facility if the associated industrial pulping or wood manufacturing facility ceases operation other than for purposes of maintenance or upgrade.

(k) An industrial facility that hosts a qualified biomass energy facility may only transfer or sell renewable energy credits associated with qualified biomass energy generated at its facility to the qualifying utility with which it is directly interconnected with facilities owned by such a qualifying utility and that are capable of carrying electricity at transmission voltage. The qualifying utility may only use an amount of renewable energy credits associated with qualified biomass energy that are equivalent to the proportionate amount of its annual targets under (a)(ii) and (iii) of this subsection that was created by the load of the industrial facility. A qualifying utility that owns a qualified biomass energy facility may not transfer or sell renewable energy credits associated with qualified biomass energy to another person, entity, or qualifying utility.

(3) Utilities that become qualifying utilities after December 31, 2006, shall meet the requirements in this section on a time frame comparable in length to that provided for qualifying utilities as of December 7, 2006. [2017 c 315 § 2; 2014 c 26 § 1; 2013 c 158 § 2; 2012 c 22 § 3; 2007 c 1 § 4 (Initiative Measure No. 937, approved November 7, 2006).]

Findings—Intent—2012 c 22: See note following RCW 19.285.030.

19.285.080 Rule making. (1) The commission may adopt rules to ensure the proper implementation and enforcement of this chapter as it applies to investor-owned utilities.

(2) The department shall adopt rules concerning only process, timelines, and documentation to ensure the proper implementation of this chapter as it applies to qualifying utilities that are not investor-owned utilities. Those rules include, but are not limited to, rules associated with a qualifying utility's development of conservation targets under RCW 19.285.040(1); a qualifying utility's decision to pursue alternative compliance in RCW 19.285.040(2) (d) or (i) or 19.285.050(1); the format and content of reports required in RCW 19.285.070; and the development of a methodology for calculating baseline levels of generation under RCW 19.285.030(12)(f). Nothing in this subsection may be construed to restrict the rate-making authority of the commission or a qualifying utility as otherwise provided by law.

(3) The commission and department may coordinate in developing rules related to process, timelines, and documentation that are necessary for implementation of this chapter.

(4) Pursuant to the administrative procedure act, chapter 34.05 RCW, rules needed for the implementation of this chapter must be adopted by December 31, 2007. These rules

may be revised as needed to carry out the intent and purposes of this chapter. [2017 c 315 § 3; 2007 c 1 § 8 (Initiative Measure No. 937, approved November 7, 2006).]

Chapter 19.375 RCW BIOMETRIC IDENTIFIERS

Sections

19.375.010	Definitions.
19.375.020	Enrollment, disclosure, and retention of biometric identifiers.
19.375.030	Application of consumer protection act.
19.375.040	Exclusions.
19.375.900	Finding—Intent—2017 c 299.

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

(1) "Biometric identifier" means data generated by automatic measurements of an individual's biological characteristics, such as a fingerprint, voiceprint, eye retinas, irises, or other unique biological patterns or characteristics that is used to identify a specific individual. "Biometric identifier" does not include a physical or digital photograph, video or audio recording or data generated therefrom, or information collected, used, or stored for health care treatment, payment, or operations under the federal health insurance portability and accountability act of 1996.

(2) "Biometric system" means an automated identification system capable of capturing, processing, and storing a biometric identifier, comparing the biometric identifier to one or more references, and matching the biometric identifier to a specific individual.

(3) "Capture" means the process of collecting a biometric identifier from an individual.

(4) "Commercial purpose" means a purpose in furtherance of the sale or disclosure to a third party of a biometric identifier for the purpose of marketing of goods or services when such goods or services are unrelated to the initial transaction in which a person first gains possession of an individual's biometric identifier. "Commercial purpose" does not include a security or law enforcement purpose.

(5) "Enroll" means to capture a biometric identifier of an individual, convert it into a reference template that cannot be reconstructed into the original output image, and store it in a database that matches the biometric identifier to a specific individual.

(6) "Law enforcement officer" means a law enforcement officer as defined in RCW 9.41.010 or a federal peace officer as defined in RCW 10.93.020.

(7) "Person" means an individual, partnership, corporation, limited liability company, organization, association, or any other legal or commercial entity, but does not include a government agency.

(8) "Security purpose" means the purpose of preventing shoplifting, fraud, or any other misappropriation or theft of a thing of value, including tangible and intangible goods, services, and other purposes in furtherance of protecting the security or integrity of software, accounts, applications, online services, or any person. [2017 c 299 § 3.]

19.375.020 Enrollment, disclosure, and retention of biometric identifiers. (1) A person may not enroll a biomet-

ric identifier in a database for a commercial purpose, without first providing notice, obtaining consent, or providing a mechanism to prevent the subsequent use of a biometric identifier for a commercial purpose.

(2) Notice is a disclosure, that is not considered affirmative consent, that is given through a procedure reasonably designed to be readily available to affected individuals. The exact notice and type of consent required to achieve compliance with subsection (1) of this section is context-dependent.

(3) Unless consent has been obtained from the individual, a person who has enrolled an individual's biometric identifier may not sell, lease, or otherwise disclose the biometric identifier to another person for a commercial purpose unless the disclosure:

(a) Is consistent with subsections (1), (2), and (4) of this section;

(b) Is necessary to provide a product or service subscribed to, requested, or expressly authorized by the individual;

(c) Is necessary to effect, administer, enforce, or complete a financial transaction that the individual requested, initiated, or authorized, and the third party to whom the biometric identifier is disclosed maintains confidentiality of the biometric identifier and does not further disclose the biometric identifier except as otherwise permitted under this subsection (3);

(d) Is required or expressly authorized by a federal or state statute, or court order;

(e) Is made to a third party who contractually promises that the biometric identifier will not be further disclosed and will not be enrolled in a database for a commercial purpose inconsistent with the notice and consent described in this subsection (3) and subsections (1) and (2) of this section; or

(f) Is made to prepare for litigation or to respond to or participate in judicial process.

(4) A person who knowingly possesses a biometric identifier of an individual that has been enrolled for a commercial purpose:

(a) Must take reasonable care to guard against unauthorized access to and acquisition of biometric identifiers that are in the possession or under the control of the person; and

(b) May retain the biometric identifier no longer than is reasonably necessary to:

(i) Comply with a court order, statute, or public records retention schedule specified under federal, state, or local law;

(ii) Protect against or prevent actual or potential fraud, criminal activity, claims, security threats, or liability; and

(iii) Provide the services for which the biometric identifier was enrolled.

(5) A person who enrolls a biometric identifier of an individual for a commercial purpose or obtains a biometric identifier of an individual from a third party for a commercial purpose pursuant to this section may not use or disclose it in a manner that is materially inconsistent with the terms under which the biometric identifier was originally provided without obtaining consent for the new terms of use or disclosure.

(6) The limitations on disclosure and retention of biometric identifiers provided in this section do not apply to disclosure or retention of biometric identifiers that have been unenrolled.

(7) Nothing in this section requires an entity to provide notice and obtain consent to collect, capture, or enroll a biometric identifier and store it in a biometric system, or otherwise, in furtherance of a security purpose. [2017 c 299 § 2.]

19.375.030 Application of consumer protection act.

(1) The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(2) This chapter may be enforced solely by the attorney general under the consumer protection act, chapter 19.86 RCW. [2017 c 299 § 4.]

19.375.040 Exclusions. (1) Nothing in this chapter applies in any manner to a financial institution or an affiliate of a financial institution that is subject to Title V of the federal Gramm-Leach-Bliley act of 1999 and the rules promulgated thereunder.

(2) Nothing in this chapter applies to activities subject to Title V of the federal health insurance privacy and portability act of 1996 and the rules promulgated thereunder.

(3) Nothing in this chapter expands or limits the authority of a law enforcement officer acting within the scope of his or her authority including, but not limited to, the authority of a state law enforcement officer in executing lawful searches and seizures. [2017 c 299 § 5.]

19.375.900 Finding—Intent—2017 c 299. The legislature finds that citizens of Washington are increasingly asked to disclose sensitive biological information that uniquely identifies them for commerce, security, and convenience. The collection and marketing of biometric information about individuals, without consent or knowledge of the individual whose data is collected, is of increasing concern. The legislature intends to require a business that collects and can attribute biometric data to a specific uniquely identified individual to disclose how it uses that biometric data, and provide notice to and obtain consent from an individual before enrolling or changing the use of that individual's biometric identifiers in a database. [2017 c 299 § 1.]

Title 21

SECURITIES AND INVESTMENTS

Chapters

21.20 Securities act of washington.

Chapter 21.20 RCW

SECURITIES ACT OF WASHINGTON

Sections

21.20.880	Small securities offerings—Exemptions—Annual reports—Disqualification provisions—Rules.
21.20.883	Repealed.
21.20.886	Repealed.

21.20.880 Small securities offerings—Exemptions—Annual reports—Disqualification provisions—Rules. (1) Any offer or sale of a security is exempt from RCW 21.20.040 through 21.20.300 and 21.20.327, except as expressly provided, if:

(a) The issuer first files the offering with the director and the director declares the offering exempt;

(b) The offering is conducted in accordance with an applicable exemption from registration under the securities act of 1933;

(c) The issuer is an entity doing business in the state of Washington;

(d) The issuer files with the director an escrow agreement providing that all offering proceeds will be released to the issuer only when the aggregate capital raised from all investors equals or exceeds the minimum target offering, as determined by the director;

(e) The aggregate purchase price of all securities sold by an issuer pursuant to the exemption provided by this section does not exceed one million dollars during any twelve-month period;

(f) The aggregate amount sold to any investor, other than an "accredited investor" as that term is defined under the securities act of 1933, by one or more issuers during the twelve-month period preceding the date of the sale does not exceed:

(i) The greater of two thousand dollars or five percent of the annual income or net worth of the investor, as applicable, if either the annual income or the net worth of the investor is less than one hundred thousand dollars; or

(ii) Ten percent of the annual income or net worth of the investor, as applicable, up to one hundred thousand dollars, if either the annual income or net worth of the investor is one hundred thousand dollars or more;

(g) The investor acknowledges by manual or electronic signature the following statement conspicuously presented at the time of sale on a page separate from other information relating to the offering: "I acknowledge that I am investing in a high-risk, speculative business venture, that I may lose all of my investment, and that I can afford the loss of my investment";

(h) The issuer reasonably believes that all purchasers are purchasing for investment and not for sale in connection with a distribution of the security; and

(i) The issuer and investor provide any other information reasonably requested by the director.

(2) Attempted compliance with the exemption provided by this section does not act as an exclusive election. The issuer may claim any other applicable exemption.

(3) For as long as securities issued under the exemption provided by this section are outstanding, the issuer shall provide an annual report to the issuer's shareholders and the director no later than one hundred twenty days after the end of the fiscal year covered by the report. An issuer may provide the report to its shareholders by posting a copy of the report on the issuer's web site. The report must contain the following information:

(a) Executive officer and director compensation, including specifically the cash compensation earned by the executive officers and directors since the previous report and on an annual basis, and any bonuses or other compensation, includ-

ing stock options or other rights to receive equity securities of the issuer or any affiliate of the issuer, received by them; and

(b) A brief analysis by management of the issuer of the business operations and financial condition of the issuer.

(4) Securities issued under the exemption provided by this section may not be transferred by the purchaser during a one-year period beginning on the date of purchase, unless the securities are transferred:

(a) To the issuer of the securities;

(b) To an accredited investor;

(c) As part of a registered offering; or

(d) To a member of the family of the purchaser or the equivalent, or in connection with the death or divorce or other similar circumstances, in the discretion of the director.

(5) The director shall adopt disqualification provisions under which this exemption shall not be available to any person or its predecessors, affiliates, officers, directors, underwriters, or other related persons. The provisions shall be substantially similar to the disqualification provisions adopted by the securities and exchange commission pursuant to the requirements of section 401(b)(2) of the Jobs act of 2012 or, if none, as adopted in Rule 506 of Regulation D. Notwithstanding the foregoing, this exemption shall become available on June 12, 2014.

(6) Any type of equity or convertible debt security may be offered under the exemption provided under this section.

(7) Subject to RCW 21.20.450, the director may adopt, amend, or repeal rules to implement this section, including the establishment of filing and transaction fees sufficient to cover the costs of administering this section. [2017 c 113 § 1; 2014 c 144 § 3.]

Short title—2014 c 144: "This act may be known and cited as the Washington jobs act of 2014." [2014 c 144 § 1.]

Findings—Intent—2014 c 144: "The legislature finds that start-up companies play a critical role in creating new jobs and revenues. Crowdfunding, or raising money through small contributions from a large number of investors, allows smaller enterprises to access the capital they need to get new businesses off the ground. The legislature further finds that the costs of state securities registration often outweigh the benefits to Washington start-ups seeking to make small securities offerings and that the use of crowdfunding for business financing in Washington is significantly restricted by state securities laws. Helping new businesses access equity crowdfunding within certain boundaries will democratize venture capital and facilitate investment by Washington residents in Washington start-ups while protecting consumers and investors. For these reasons, the legislature intends to provide Washington businesses and investors the opportunity to benefit from equity crowdfunding." [2014 c 144 § 2.]

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

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

Title 23

CORPORATIONS AND ASSOCIATIONS (PROFIT) (Business Corporation Act: See Title 23B RCW)

Chapters

23.95 Uniform business organizations code.

Chapter 23.95 RCW

UNIFORM BUSINESS ORGANIZATIONS CODE

Sections

23.95.235	Certificate of existence or registration—Definitions.
23.95.255	Initial or annual report for secretary of state.
23.95.530	Withdrawal of registration of registered foreign entity.

23.95.235 Certificate of existence or registration—

Definitions. (1) On request of any person, the secretary of state shall issue a certificate of existence for a domestic entity or a certificate of registration for a registered foreign entity.

(2) A certificate under subsection (1) of this section must state:

(a) The domestic entity's name or the registered foreign entity's name used in this state;

(b) In the case of a domestic entity:

(i) That its public organic record has been filed and has taken effect;

(ii) The date the public organic record became effective;

(iii) The period of the entity's duration if the records of the secretary of state reflect that the entity's period of duration is less than perpetual; and

(iv) That the records of the secretary of state do not reflect that the entity has been dissolved;

(c) In the case of a registered foreign entity:

(i) That it is registered to do business in this state;

(ii) The date the foreign entity registered to do business in this state; and

(iii) That the records of the secretary of state do not reflect that the foreign entity's registration to do business in the state has been terminated;

(d) That all fees, interest, and penalties owed to this state by the domestic or foreign entity and collected through the secretary of state have been paid, if:

(i) Payment is reflected in the records of the secretary of state; and

(ii) Nonpayment affects the existence or registration of the domestic or foreign entity;

(e) That the most recent annual report required by RCW 23.95.255 has been delivered to the secretary of state for filing;

(f) That a proceeding is not pending under RCW 23.95.610 as to a domestic entity or under RCW 23.95.550 as to a registered foreign entity; and

(g) Other facts reflected in the records of the secretary of state pertaining to the domestic or foreign entity which the person requesting the certificate reasonably requests.

(3) Subject to any qualification stated in the certificate, a certificate issued by the secretary of state under subsection (1) of this section may be relied upon as conclusive evidence of the facts stated in the certificate, and that as of the date of its issuance: (a) In the case of a domestic entity, it is in existence and duly formed or incorporated, as applicable; and (b) in the case of a foreign entity, it is registered and authorized to do business in this state.

(4) The terms "doing business" and "transacting business," and their variants such as "do business" and "transact business," are used interchangeably, and each has the same meaning as the other when used in this title and in Titles 23B, 24, and 25 RCW. [2017 c 31 § 1; 2015 c 176 § 1208.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.255 Initial or annual report for secretary of

state. (1) A domestic entity other than a limited liability partnership or nonprofit corporation shall, within one hundred twenty days of the date on which its public organic record became effective, deliver to the secretary of state for filing an initial report that states the information required under subsection (2) of this section.

(2) A domestic entity or registered foreign entity shall deliver to the secretary of state for filing an annual report that states:

(a) The name of the entity and its jurisdiction of formation;

(b) The name and street and mailing addresses of the entity's registered agent in this state;

(c) The street and mailing addresses of the entity's principal office;

(d) In the case of a registered foreign entity, the street and mailing address of the entity's principal office in the state or country under the laws of which it is incorporated;

(e) The names of the entity's governors;

(f) A brief description of the nature of the entity's business; and

(g) The entity's unified business identifier number.

(3) Information in an initial or annual report must be current as of the date the report is executed by the entity.

(4) Annual reports must be delivered to the secretary of state on a date determined by the secretary of state and at such additional times as the entity elects.

(5) If an initial or annual report does not contain the information required by this section, the secretary of state promptly shall notify the reporting entity in a record and return the report for correction.

(6) If an initial or annual report contains the name or address of a registered agent that differs from the information shown in the records of the secretary of state immediately before the annual report becomes effective, the differing information in the initial or annual report is considered a statement of change under RCW 23.95.430.

(7) The secretary of state shall send to each domestic entity and registered foreign entity, not less than thirty or more than ninety days prior to the expiration date of the entity's annual renewal, a notice that the entity's annual report must be filed as required by this chapter and that any applicable annual renewal fee must be paid, and stating that if the entity fails to file its annual report or pay the annual renewal fee it will be administratively dissolved. The notice may be sent by postal or email as elected by the entity, addressed to its registered agent within the state, or to an electronic address designated by the entity in a record retained by the secretary of state. Failure of the secretary of state to provide any such notice does not relieve a domestic entity or registered foreign entity from its obligations to file the annual report required by this chapter or to pay any applicable annual renewal fee. The option to receive the notice provided under this section by email may be selected only when the secretary of state makes the option available. [2017 c 31 § 2; 2015 c 176 § 1212.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23.95.530 Withdrawal of registration of registered foreign entity. (1) A registered foreign entity may withdraw its registration by delivering a statement of withdrawal to the secretary of state for filing. The statement of withdrawal must be executed by the entity and state:

(a) The name of the entity and its jurisdiction of formation;

(b) That the entity is not doing business in this state and that it withdraws its registration to do business in this state;

(c) That the entity revokes the authority of its registered agent to accept service on its behalf in this state; and

(d) An address to which service of process may be made under subsection (3) of this section.

(2) For foreign corporations, the statement of withdrawal must be accompanied by a copy of a revenue clearance certificate issued pursuant to RCW 82.32.260.

(3) After the withdrawal of the registration of an entity, service of process in any action or proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made pursuant to RCW 23.95.450. [2017 c 31 § 3; 2015 c 176 § 1507.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Title 23B

WASHINGTON BUSINESS CORPORATION ACT

Chapters

23B.01	General provisions.
23B.02	Incorporation.
23B.07	Shareholders.
23B.11	Merger and share exchange.
23B.12	Sale of assets.
23B.13	Dissenters' rights.
23B.19	Significant business transactions.
23B.30	Defective corporate actions.

Chapter 23B.01 RCW GENERAL PROVISIONS

Sections

23B.01.400	Definitions.
23B.01.570	Penalty for nonpayment of annual corporate license fees and failure to file a substantially complete annual report—Payment of delinquent fees—Rules.

23B.01.400 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" means so prepared that a reasonable person against whom the record is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(4) "Controlling interest" means ownership of an entity's outstanding shares or interests in such number as to entitle the

holder at the time to elect a majority of the entity's directors or other governors without regard to voting power which may thereafter exist upon a default, failure, or other contingency.

(5) "Corporate action" means any resolution, act, policy, contract, transaction, plan, adoption or amendment of articles of incorporation or bylaws, or other matter approved by or submitted for approval to a corporation's incorporators, board of directors or a committee thereof, or shareholders.

(6) "Corporation" or "domestic corporation" means a corporation for profit, including a social purpose corporation, which is not a foreign corporation, incorporated under or subject to the provisions of this title.

(7) "Deliver" includes (a) mailing, (b) for purposes of delivering a demand, consent, notice, or waiver to the corporation or one of its officers, directors, or shareholders, transmission by facsimile equipment, and (c) for purposes of delivering a demand, consent, notice, or waiver to the corporation or one of its officers, directors, or shareholders under RCW 23B.01.410 or chapter 23B.07, 23B.08, 23B.11, 23B.13, 23B.14, or 23B.16 RCW delivery by electronic transmission.

(8) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect to any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a distribution in partial or complete liquidation, or upon voluntary or involuntary dissolution; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(9) "Effective date of notice" has the meaning provided in RCW 23B.01.410.

(10) "Electronic transmission" means an electronic communication (a) not directly involving the physical transfer of a record in a tangible medium and (b) that may be retained, retrieved, and reviewed by the sender and the recipient thereof, and that may be directly reproduced in a tangible medium by such a sender and recipient.

(11) "Electronically transmitted" means the initiation of an electronic transmission.

(12) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

(13) "Entity" includes a corporation and foreign corporation, not-for-profit corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, two or more persons having a joint or common economic interest, the state, United States, and a foreign governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(14) "Execute," "executes," or "executed" means (a) signed with respect to a written record or (b) electronically transmitted along with sufficient information to determine the sender's identity with respect to an electronic transmission, or (c) with respect to a record to be filed with the secretary of state, in compliance with the standards for filing with the office of the secretary of state as prescribed by the secretary of state.

(15) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(16) "Foreign limited partnership" means a partnership formed under laws other than of this state and having as partners one or more general partners and one or more limited partners.

(17) "General social purpose" means the general social purpose for which a social purpose corporation is organized as set forth in the articles of incorporation of the corporation in accordance with RCW 23B.25.040(1)(c).

(18) "Governmental subdivision" includes authority, county, district, and municipality.

(19) "Governor" has the meaning given that term in RCW 23.95.105.

(20) "Includes" denotes a partial definition.

(21) "Individual" includes the estate of an incompetent or deceased individual.

(22) "Limited partnership" or "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(23) "Means" denotes an exhaustive definition.

(24) "Notice" has the meaning provided in RCW 23B.01.410.

(25) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(26) "Principal office" means the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

(27) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(28) "Public company" means a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 or 15 of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute.

(29) "Qualified director" means (a) with respect to a director's conflicting interest transaction as defined in RCW 23B.08.700, any director who does not have either (i) a conflicting interest respecting the transaction, or (ii) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction; (b) with respect to RCW 23B.08.735, a qualified director under (a) of this subsection if the business opportunity were a director's conflicting interest transaction; and (c) with respect to RCW 23B.02.020(5)(k), a director who is not a director (i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply, or (ii) who has a familial, financial, professional, or employment relationship with another officer to whom the limitation or elimination would apply, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the limitation or elimination.

(30) "Record" means information inscribed on a tangible medium or contained in an electronic transmission.

(31) "Record date" means the date established under chapter 23B.07 RCW on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(32) "Registered office" means the address of the corporation's registered agent.

(33) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under RCW 23B.08.400(3) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(34) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(35) "Shares" means the units into which the proprietary interests in a corporation are divided.

(36) "Social purpose" includes any general social purpose and any specific social purpose.

(37) "Social purpose corporation" means a corporation that has elected to be governed as a social purpose corporation under chapter 23B.25 RCW.

(38) "Specific social purpose" means the specific social purpose or purposes for which a social purpose corporation is organized as set forth in the articles of incorporation of the corporation in accordance with RCW 23B.25.040(2)(a).

(39) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

(40) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(41) "Subsidiary" means an entity in which the corporation has a controlling interest.

(42) "Tangible medium" means a writing, copy of a writing, or facsimile, or a physical reproduction, each on paper or on other tangible material.

(43) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

(44) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this title are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this title to vote generally on the matter are for that purpose a single voting group.

(45) "Writing" does not include an electronic transmission.

(46) "Written" means embodied in a tangible medium. [2017 c 28 § 12. Prior: 2015 c 176 § 2148; 2015 c 20 § 1; 2012 c 215 § 17; 2009 c 189 § 1; prior: 2002 c 297 § 9; 2002 c 296 § 1; 2000 c 168 § 1; 1996 c 155 § 4; 1995 c 47 § 1; prior: 1991 c 269 § 35; 1991 c 72 § 28; 1989 c 165 § 14.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

23B.01.570 Penalty for nonpayment of annual corporate license fees and failure to file a substantially com-

plete annual report—Payment of delinquent fees—Rules. In the event any domestic corporation fails to file a full and complete initial report under RCW 23.95.255, or in the event any corporation, foreign or domestic, does business in this state without having paid its annual corporate license fee and without having filed a substantially complete annual report under RCW 23.95.255 when either is due, there shall become due and owing the state of Washington a penalty as established by rule by the secretary under RCW 23.95.260.

A corporation organized under this title may at any time prior to its dissolution as provided in Article 6 of chapter 23.95 RCW, and a foreign corporation registered to do business in this state may at any time prior to the termination of its registration as provided in RCW 23.95.550, pay to the state of Washington its current annual license fee, provided it also pays an amount equal to all previously unpaid annual license fees plus the penalty established by rule by the secretary under RCW 23.95.260. [2017 c 31 § 4; 2015 c 176 § 2111; 1994 c 287 § 6; 1991 c 72 § 30; 1989 c 165 § 23.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Chapter 23B.02 RCW INCORPORATION

Sections

23B.02.080 Forum selection.

23B.02.080 Forum selection. (1) The articles of incorporation or bylaws may contain provisions that require any or all internal corporate proceedings to be commenced and maintained exclusively in any specified court or courts of this state and, if so specified, in any additional courts in this state or in any other jurisdictions with which the corporation has a reasonable relationship.

(2) A provision permitted under subsection (1) of this section:

(a) May not confer jurisdiction on any court, over any person, or of any proceeding; and

(b) May not (i) prohibit commencing or maintaining an internal corporate proceeding in the courts of this state or (ii) require claims asserted in an internal corporate proceeding to be determined by arbitration.

(3) If the court or courts of this state specified in a provision permitted under subsection (1) of this section do not have jurisdiction, but any other court or courts specified in the provision do have jurisdiction, then the internal corporate proceeding may be commenced and maintained:

(a) In any court of this state that has jurisdiction; or

(b) In any other court specified in the provision that has jurisdiction.

(4) If no court specified in a provision permitted under subsection (1) of this section has jurisdiction, then the internal corporate proceeding may be commenced and maintained in any court that has jurisdiction.

(5) For purposes of this section, "internal corporate proceeding" means (a) any proceeding asserting a claim based on a violation of a duty under the laws of this state by a current or former director, officer, or shareholder in such capacity, (b) any proceeding commenced or maintained in the right of the corporation, (c) any proceeding asserting a claim arising

pursuant to any provision of the act or the corporation's articles of incorporation or bylaws, or (d) any proceeding asserting a claim concerning the internal affairs of the corporation that is not included in (a) through (c) of this subsection. [2017 c 28 § 9.]

Chapter 23B.07 RCW SHAREHOLDERS

Sections

23B.07.050 Notice of meeting.

23B.07.300 Voting trusts.

23B.07.320 Agreements among shareholders—Acquisition of shares after agreement.

23B.07.050 Notice of meeting. (1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting. Such notice shall be given no fewer than ten nor more than sixty days before the meeting date, except that notice of a shareholders' meeting to act on an amendment to the articles of incorporation, a plan of merger or share exchange, a proposed disposition of property and assets pursuant to RCW 23B.12.020, or the dissolution of the corporation shall be given no fewer than twenty nor more than sixty days before the meeting date. Unless this title or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless this title or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(4) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under RCW 23B.07.070, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date. [2017 c 28 § 13; 1989 c 165 § 64.]

23B.07.300 Voting trusts. (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all voting trust beneficial owners, together with the number and class of shares each voting trust beneficial owner transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name.

(3) Limits, if any, on the duration of a voting trust are to be as set forth in the voting trust agreement. A voting trust that became effective when this section limited the term of a

voting trust to ten years will remain governed by the provisions of this section then in effect relating to the duration of voting trusts, unless the voting trust agreement is amended to provide otherwise by unanimous agreement of the parties to that agreement. [2017 c 28 § 15; 1989 c 165 § 77.]

23B.07.320 Agreements among shareholders—Acquisition of shares after agreement. (1) An agreement among the shareholders of a corporation that is not contrary to public policy and that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this title in that it:

(a) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) Governs the approval or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in RCW 23B.06.400;

(c) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

(d) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(f) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation;

(g) Provides a process by which a deadlock among directors or shareholders may be resolved;

(h) Requires dissolution of the corporation at the request of one or more shareholders or upon the occurrence of a specified event or contingency; or

(i) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation, or among any of them.

(2) An agreement authorized by this section shall be:

(a) Set forth in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation; and

(b) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by RCW 23B.06.260(2). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Unless the agreement provides otherwise, any person who acquires outstanding or newly issued shares in the

corporation after an agreement authorized by this section has been effected, whether by purchase, gift, operation of law, or otherwise, is deemed to have assented to the agreement and to be a party to the agreement. A purchaser of shares who is aggrieved because he or she at the time of purchase did not have actual or constructive knowledge of the existence of the agreement may either: (a) Bring an action to rescind the purchase within the earlier of ninety days after discovery of the existence of the agreement or two years after the purchase of the shares; or (b) continue to hold the shares subject to the agreement but with a right of action for any damages resulting from nondisclosure of the existence of the agreement. A purchaser shall be deemed to have constructive knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares.

(4) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

(8) Limits, if any, on the duration of an agreement governed by this section are to be as set forth in the agreement. An agreement governed by this section that became effective when this section limited the term of such an agreement to ten years unless the agreement provided otherwise will remain governed by the provisions of this section then in effect relating to the duration of agreements among shareholders. [2017 c 28 § 16; 2009 c 189 § 22; 1995 c 47 § 6; 1993 c 290 § 4.]

Chapter 23B.11 RCW MERGER AND SHARE EXCHANGE

Sections

23B.11.040 Merger of or into subsidiary.

23B.11.040 Merger of or into subsidiary. (1) A parent corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary corporation may (a) merge the subsidiary into itself without approval of the share-

holders of the parent or subsidiary, or (b) merge itself into the subsidiary without approval of the shareholders of the subsidiary. A merger of a parent corporation into its subsidiary otherwise will be governed by the provisions of chapter 23B.11 RCW applicable to mergers generally.

(2) The board of directors of the parent shall approve a plan of merger that sets forth:

(a) The names of the parent and subsidiary; and

(b) The manner and basis of converting the shares of the subsidiary or parent corporation, as applicable, into shares, obligations, or other securities of the surviving corporation or any other corporation or into cash or other property in whole or part.

(3) Within ten days after the corporate action becomes effective, the surviving corporation shall deliver a notice to each other shareholder of the subsidiary, which notice must include a copy of the plan of merger.

(4) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation, except for amendments enumerated in RCW 23B.10.020. [2017 c 28 § 17; 2009 c 189 § 39; 2002 c 297 § 34; 1989 c 165 § 134.]

Chapter 23B.12 RCW SALE OF ASSETS

Sections

- 23B.12.010 Sale of property and assets in usual and regular course of business or for benefit of creditors.
23B.12.020 Sale of property and assets other than in the usual and regular course of business.

23B.12.010 Sale of property and assets in usual and regular course of business or for benefit of creditors. (1) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

(a) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property and assets in the usual and regular course of its business; or

(b) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property and assets whether or not any of these actions are in the usual and regular course of its business.

(2) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (1) of this section is not required.

(3) A dedication of a corporation's property and assets to the repayment of its creditors may be effected by the board of directors through an assignment for the benefit of creditors in accordance with chapter 7.08 RCW or by obtaining the appointment of a general receiver in accordance with chapter 7.60 RCW, and the assumption of control over the corporation's property and assets by an assignee for the benefit of creditors or by a general receiver relieves the directors of any further duties with respect to the liquidation of the corporation's property and assets or the application of any property and assets or proceeds toward satisfaction of the claims of creditors. [2017 c 28 § 10; 2006 c 52 § 4; 1990 c 178 § 12; 1989 c 165 § 138.]

Additional notes found at www.leg.wa.gov

23B.12.020 Sale of property and assets other than in the usual and regular course of business. (1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property and assets, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors. Except as provided in subsection (8) of this section, a transaction described in this subsection requires approval of the corporation's shareholders.

(2) For a transaction to be approved by a corporation's shareholders:

(a) The board of directors must submit the proposed transaction to the shareholders for their approval;

(b) The board of directors must recommend the proposed transaction to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation or (ii) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders; and

(c) The shareholders entitled to vote must approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed transaction.

(4) If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting at which the proposed transaction is to be submitted for approval in accordance with RCW 23B.07.050. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property and assets of the corporation and contain or be accompanied by a description of the transaction.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the transaction must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the transaction, and of each other voting group entitled under the articles of incorporation to vote separately on the transaction, unless shareholder approval is not required under subsection (8) of this section. The articles of incorporation may require a greater or lesser vote than provided in this subsection, or a greater or lesser vote by any separate voting groups provided for in the articles of incorporation, so long as the required vote is not less than a majority of all the votes entitled to be cast on the transaction and of each other voting group entitled to vote separately on the transaction.

(6) After a sale, lease, exchange, or other disposition of property and assets has been approved as required by this section, the transaction may be abandoned, subject to any contractual rights, without further shareholder approval, in a manner determined by the board of directors.

(7) A transaction that constitutes a distribution is governed by RCW 23B.06.400 and not by this section.

(8) Unless the articles of incorporation otherwise require, approval by the shareholders of a parent corporation

is not required for the transfer of any or all of the parent corporation's property and assets to one or more subsidiary corporations or other entities all of the shares or interests of which are owned, directly or indirectly, by the parent corporation.

(9) The sale, lease, exchange, or other disposition of all, or substantially all, the assets of one or more subsidiaries of a corporation, if not in the usual and regular course of business as conducted by that subsidiary or those subsidiaries, is to be treated as a disposition by the parent corporation within the meaning of subsection (1) of this section if the subsidiary or subsidiaries constitute all, or substantially all, the assets of the parent corporation. [2017 c 28 § 11; 2011 c 328 § 7; 2009 c 189 § 40; 2003 c 35 § 8; 1989 c 165 § 139.]

Chapter 23B.13 RCW DISSENTERS' RIGHTS

Sections

23B.13.020 Right to dissent.

23B.13.020 Right to dissent. (1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) A plan of merger, which has become effective, to which the corporation is a party (i) if shareholder approval was required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, and the shareholder was entitled to vote on the merger, or (ii) if the corporation was a subsidiary and the plan of merger provided for the merger of the subsidiary with its parent under RCW 23B.11.040;

(b) A plan of share exchange, which has become effective, to which the corporation is a party as the corporation whose shares have been acquired, if the shareholder was entitled to vote on the plan;

(c) A sale, lease, exchange, or other disposition, which has become effective, of all, or substantially all, of the property and assets of the corporation other than in the usual and regular course of business, if the shareholder was entitled to vote on the sale, lease, exchange, or other disposition, including a disposition in dissolution, but not including a disposition pursuant to court order or a disposition for cash pursuant to a plan by which all or substantially all of the net proceeds of the disposition will be distributed to the shareholders within one year after the date of the disposition;

(d) An amendment of the articles of incorporation, whether or not the shareholder was entitled to vote on the amendment, if the amendment effects a redemption or cancellation of all of the shareholder's shares in exchange for cash or other consideration other than shares of the corporation;

(e) Any action described in RCW 23B.25.120;

(f) Any corporate action approved pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares; or

(g) A plan of entity conversion in the case of a conversion of a domestic corporation to a foreign corporation,

which has become effective, to which the domestic corporation is a party as the converting entity, if: (i) The shareholder was entitled to vote on the plan; and (ii) the shareholder does not receive shares in the surviving entity that have terms as favorable to the shareholder in all material respects and that represent at least the same percentage interest of the total voting rights of the outstanding shares of the surviving entity as the shares held by the shareholder before the conversion.

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, RCW 25.10.831 through 25.10.886, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

(3) The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any one of the following events:

(a) The proposed corporate action is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the corporate action; or

(c) The shareholder's demand for payment is withdrawn with the written consent of the corporation. [2017 c 28 § 14; 2014 c 83 § 15; 2013 c 97 § 1. Prior: 2009 c 189 § 41; 2009 c 188 § 1404; 2003 c 35 § 9; 1991 c 269 § 37; 1989 c 165 § 141.]

Effective date—2009 c 188: See note following RCW 23B.11.080.

Chapter 23B.19 RCW SIGNIFICANT BUSINESS TRANSACTIONS

Sections

23B.19.020 Definitions.

23B.19.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquiring person" means a person or group of persons, other than the target corporation or a subsidiary of the target corporation, who is the beneficial owner of voting shares entitled to cast votes comprising ten percent or more of the voting power of the target corporation; provided, however, that the term "acquiring person" does not include any person who (a) beneficially owned voting shares entitled to cast votes comprising ten percent or more of the voting power of the target corporation on March 23, 1988; (b) acquired its voting shares of the target corporation solely by gift, inheritance, or in a transaction in which no consideration is exchanged; (c) equals or exceeds the ten percent threshold as a result of action taken solely by the target corporation, such as redemption of shares, unless that person, by its own action, acquires additional voting shares of the target corporation; (d) beneficially owned voting shares entitled to cast votes comprising ten percent or more of the voting power of the target corporation prior to the time the target corporation had a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act; or (e) beneficially owned voting shares entitled to cast votes comprising ten percent or more of the voting

power of the target corporation prior to the time the target corporation amended its articles of incorporation to provide that the corporation shall be subject to the provisions of this chapter. An agent, bank, broker, nominee, or trustee for another person, if the other person is not an acquiring person, who acts in good faith and not for the purpose of circumventing this chapter, is not an acquiring person. For the purpose of determining whether a person is an acquiring person, the number of voting shares of the target corporation that are outstanding shall include voting shares beneficially owned by the person through application of subsection (4) of this section, but shall not include any other unissued voting shares of the target corporation which may be issuable pursuant to any agreement, arrangement, or understanding; or upon exercise of conversion rights, warrants, or options; or otherwise.

(2) "Affiliate" means a person who directly or indirectly controls, or is controlled by, or is under common control with, a person.

(3) "Announcement date," when used in reference to any significant business transaction, means the date of the first public announcement of the final, definitive proposal for such a significant business transaction.

(4) "Associate" means (a) a domestic or foreign corporation or organization of which a person is an officer, director, member, or partner or in which a person performs a similar function; (b) a direct or indirect beneficial owner of ten percent or more of any class of equity securities of a person; (c) a trust or estate in which a person has a beneficial interest or as to which a person serves as trustee or in a similar fiduciary capacity; and (d) the spouse or a parent or sibling of a person or a child, grandchild, sibling, parent, or spouse of any thereof, of a person or an individual having the same home as a person.

(5)(a)(i) "Beneficial owner" when used with respect to any shares means a person who individually or with or through any of its affiliates or associates:

(A) Has or shares:

(I) The power to vote, or to direct the voting of, the shares, directly or indirectly;

(II) The power to dispose, or to direct the disposition of, the shares, directly or indirectly;

(III) The right to acquire the shares, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding, whether or not in writing, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; or

(IV) The right to vote the shares pursuant to any agreement, arrangement, or understanding, whether or not in writing; or

(B) Has any agreement, arrangement, or understanding, whether or not in writing, for the purpose of acquiring, holding, voting, or disposing of the shares with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the shares.

(ii)(A) A person is not the beneficial owner of shares under (a)(i)(A)(III) of this subsection with respect to shares tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares are accepted for purchase or exchange.

(B) A person is not the beneficial owner of any shares under (a)(i)(A)(IV) of this subsection if the agreement,

arrangement, or understanding to vote the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the exchange act and is not then reportable on schedule 13D under the exchange act, or any comparable or successor report.

(C) A person is not the beneficial owner of any shares under (a)(i)(B) of this subsection if the agreement, arrangement, or understanding for the purpose of voting the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the exchange act and is not then reportable on schedule 13D under the exchange act, or any comparable or successor report.

(b) The terms "beneficial ownership," "beneficially own," and "beneficially owned" have meanings correlative to the meaning of "beneficial owner."

(6) "Common shares" means any shares other than preferred shares.

(7) "Consummation date," with respect to any significant business transaction, means the date of consummation of such a significant business transaction, or, in the case of a significant business transaction as to which a shareholder vote is taken, the later of the business day prior to the vote or twenty days prior to the date of consummation of such a significant business transaction.

(8) "Control," "controlling," "controlled by," and "under common control with" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. A person's beneficial ownership of voting shares entitled to cast votes comprising ten percent or more of the voting power of a domestic or foreign corporation shall create a rebuttable presumption that such person has control of such corporation. However, a person does not have control of a domestic or foreign corporation if the person holds voting shares, in good faith and not for the purpose of circumventing this chapter, as an agent, bank, broker, nominee, custodian, or trustee for one or more beneficial owners who do not individually or as a group have control of such corporation.

(9) "Domestic corporation" means an issuer of voting shares which is organized under chapter 23B.02 RCW or any predecessor provision.

(10) "Exchange act" means the federal securities exchange act of 1934, as amended.

(11) "Market value," in the case of property other than cash or shares, means the fair market value of the property on the date in question as determined by the board of directors of the target corporation in good faith.

(12) "Person" means an individual, domestic or foreign corporation, partnership, trust, unincorporated association, or other entity; an affiliate or associate of any such person; or any two or more persons acting as a partnership, syndicate, or other group for the purpose of acquiring, holding, or dispersing of securities of a domestic or foreign corporation.

(13) "Preferred shares" means any class or series of shares of a target corporation which under the bylaws or articles of incorporation of such a corporation is entitled to receive payment of dividends prior to any payment of divi-

depends on some other class or series of shares, or is entitled in the event of any voluntary liquidation, dissolution, or winding up of the target corporation to receive payment or distribution of a preferential amount before any payments or distributions are received by some other class or series of shares.

(14) "Share acquisition time" means the time at which a person first becomes an acquiring person of a target corporation.

(15) "Shares" means any:

(a) Shares or similar security, any certificate of interest, any participation in any profit sharing agreement, any voting trust certificate, or any certificate of deposit for shares; and

(b) Security convertible, with or without consideration, into shares, or any warrant, call, or other option or privilege of buying shares without being bound to do so, or any other security carrying any right to acquire, subscribe to, or purchase shares.

(16) "Significant business transaction" means:

(a) A merger, share exchange, or consolidation of a target corporation or a subsidiary of a target corporation with (i) an acquiring person, or (ii) any other domestic or foreign corporation which is, or after the merger, share exchange, or consolidation would be, an affiliate or associate of the acquiring person;

(b) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition or encumbrance, whether in one transaction or a series of transactions, to or with an acquiring person or an affiliate or associate of an acquiring person of assets of a target corporation or a subsidiary of a target corporation (i) having an aggregate market value equal to five percent or more of the aggregate market value of all the assets, determined on a consolidated basis, of the target corporation, (ii) having an aggregate market value equal to five percent or more of the aggregate market value of all the outstanding shares of the target corporation, or (iii) representing five percent or more of the earning power or net income, determined on a consolidated basis, of the target corporation;

(c) The termination, while the corporation has an acquiring person and as a result of the acquiring person's acquisition of ten percent or more of the shares of the corporation, of five percent or more of the employees of the target corporation or its subsidiaries employed in this state, whether at one time or over the five-year period following the share acquisition time. For the purposes of (c) of this subsection, a termination other than an employee's death or disability or bona fide voluntary retirement, transfer, resignation, termination for cause under applicable common law principles, or leave of absence shall be presumed to be a termination resulting from the acquiring person's acquisition of shares, which presumption is rebuttable. A bona fide voluntary transfer of employees between the target corporation and its subsidiaries or between its subsidiaries is not a termination for the purposes of (c) of this subsection;

(d) The issuance, transfer, or redemption by a target corporation or a subsidiary of a target corporation, whether in one transaction or a series of transactions, of shares or of options, warrants, or rights to acquire shares of a target corporation or a subsidiary of a target corporation to or beneficially owned by an acquiring person or an affiliate or associate of an acquiring person except pursuant to the exercise of warrants or rights to purchase shares offered, or a dividend,

distribution, or redemption paid or made pro rata to, all shareholders or holders of options, warrants, or rights to acquire shares of the target corporation, and except for involuntary redemptions permitted by the target corporation's charter or by the law of this state or the state of incorporation;

(e) The liquidation or dissolution of a target corporation proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person;

(f) A reclassification of securities, including, without limitation, any shares split, shares dividend, or other distribution of shares in respect of stock, or any reverse shares split, or recapitalization of a target corporation, or a merger or consolidation of a target corporation with a subsidiary of the target corporation, or any other transaction, whether or not with or into or otherwise involving an acquiring person, proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person, that has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of a class or series of voting shares or securities convertible into voting shares of a target corporation or a subsidiary of the target corporation that is directly or indirectly owned by an acquiring person or an affiliate or associate of an acquiring person, except as a result of immaterial changes due to fractional share adjustments; or

(g) A receipt by an acquiring person or an affiliate or associate of an acquiring person of the benefit, directly or indirectly, except proportionately as a shareholder of a target corporation, of loans, advances, guarantees, pledges, or other financial assistance or tax credits or other tax advantages provided by or through a target corporation.

(17) "Subsidiary" means a domestic or foreign corporation that has a majority of its outstanding voting shares owned, directly or indirectly, by another domestic or foreign corporation.

(18) "Tangible assets" means tangible real and personal property of all kinds. It shall also include leasehold interests in tangible real and personal property.

(19) "Target corporation" means:

(a) Every domestic corporation, if:

(i) The corporation has a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act; or

(ii) The corporation's articles of incorporation have been amended to provide that such a corporation shall be subject to the provisions of this chapter, if the corporation did not have a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act on the effective date of that amendment; and

(b) Every foreign corporation required to register to transact business in this state pursuant to chapter 23B.15 RCW and Article 5 of chapter 23.95 RCW, if:

(i) The corporation has a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act;

(ii) The corporation's principal executive office is located in the state;

(iii) The corporation has: (A) More than ten percent of its shareholders of record resident in the state; or (B) more than ten percent of its shares owned of record by state residents; or

(C) one thousand or more shareholders of record resident in the state;

(iv) A majority of the corporation's employees, together with those of its subsidiaries, are residents of the state or the corporation, together with its subsidiaries, employs more than one thousand residents of the state; and

(v) A majority of the corporation's tangible assets, together with those of its subsidiaries, measured by market value, are located in the state or the corporation, together with its subsidiaries, has more than fifty million dollars' worth of tangible assets located in the state.

For purposes of this subsection, the record date for determining the percentages and numbers of shareholders and shares shall be the last shareholder record date before the event requiring that the determination be made. A shareholder record date shall be determined pursuant to the comparable provision to RCW 23B.07.070 of the law of the state in which a foreign corporation is incorporated. If a shareholder record date has not been fixed by the board of directors within the preceding four months, the determination shall be made as of the end of the corporation's most recent fiscal quarter.

The residence of each shareholder is presumed to be the address appearing in the records of the corporation. Shares held of record by brokers or nominees shall be disregarded for purposes of calculating the percentages and numbers specified in this subsection. Shares of a corporation allocated to the account of an employee or former employee or beneficiaries of employees or former employees of a corporation and held in a plan that is qualified under section 401(a) of the federal internal revenue code of 1986, as amended, and is a defined contribution plan within the meaning of section 414(i) of the code shall be deemed, for the purposes of this subsection, to be held of record by the employee to whose account such shares are allocated.

A domestic or foreign corporation shall be deemed to be a target corporation if the domestic or foreign corporation's failure to satisfy the requirements of this subsection is caused by the action of, or is the result of a proposal by, an acquiring person or affiliate or associate of an acquiring person.

(20) "Voting power" means the total number of votes entitled to be cast by all of the outstanding voting shares of a corporation.

(21) "Voting shares" means shares of all classes of a corporation entitled to vote generally in the election of directors. [2017 c 28 § 18; 2016 c 216 § 1; 2015 c 176 § 2147; 1996 c 155 § 1; 1989 c 165 § 198.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Chapter 23B.30 RCW DEFECTIVE CORPORATE ACTIONS

Sections

23B.30.010	Definitions.
23B.30.020	Chapter not exclusive.
23B.30.030	Ratification.
23B.30.040	Ratification—Quorum—Voting.
23B.30.050	Ratification and validation—Notice.
23B.30.060	Ratification and validation—Effect.
23B.30.070	Filings—Articles of validation.
23B.30.080	Judicial proceedings to validate or challenge ratification.

23B.30.010 Definitions.

As used in this chapter:
(1) "Date of the defective corporate action" means the date the defective corporate action was purported to have been taken, or, if the exact date is unknown, the approximate date thereof.

(2) "Defective corporate action" means (a) any corporate action purportedly taken that is, and at the time such corporate action was purportedly taken would have been, within the power of the corporation, but is void or voidable due to a failure of authorization, and (b) an overissue.

(3) "Failure of authorization" means the failure to authorize, approve, or otherwise effect a corporate action in compliance with the provisions of this title, the articles of incorporation or bylaws of the corporation, a corporate resolution, or any plan or agreement to which the corporation is a party, if and to the extent such failure would render such corporate action void or voidable.

(4) "Overissue" means the purported issuance of:

(a) Shares of a class or series in excess of the number of shares of a class or series the corporation was authorized to issue in accordance with RCW 23B.06.010 at the time of such purported issuance; or

(b) Shares of any class or series that was not authorized for issuance by the articles of incorporation at the time of such purported issuance.

(5) "Putative shares" means the shares of any class or series of the corporation (including shares issuable upon exercise of rights, options, warrants, or other securities convertible into shares of the corporation, or interests with respect thereto) that were purportedly created or issued as a result of a defective corporate action, that:

(a) But for any failure of authorization would constitute valid shares; or

(b) Cannot be determined by the board of directors to be valid shares.

(6) "Valid shares" means the shares of any class or series of the corporation that have been duly authorized and validly issued in accordance with this title, including as a result of ratification or validation in accordance with this chapter.

(7)(a) "Validation effective time," with respect to any defective corporate action ratified or validated in accordance with this chapter, means the later of:

(i) The time at which the ratification of the defective corporate action is approved by shareholders, or if approval of shareholders is not required, the time at which the notice required by RCW 23B.30.050 becomes effective in accordance with RCW 23B.01.410; and

(ii) The time at which any articles of validation filed in accordance with RCW 23B.30.070 become effective.

(b) The validation effective time will not be affected by the commencement or pendency of any proceeding in accordance with RCW 23B.30.080(1)(b) or otherwise, unless otherwise ordered by the court. [2017 c 28 § 1.]

23B.30.020 Chapter not exclusive. (1) A defective corporate action is not void or voidable solely as a result of a failure of authorization if ratified in accordance with RCW 23B.30.030 or validated in accordance with RCW 23B.30.080.

(2) Ratification under RCW 23B.30.030 or validation under RCW 23B.30.080 is not the exclusive means of ratify-

ing or validating any defective corporate action, and the absence or failure of ratification or validation in accordance with this chapter does not, of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise, nor does it create a presumption that any such corporate action is or was a defective corporate action or void or voidable. [2017 c 28 § 2.]

23B.30.030 Ratification. (1) Except as otherwise required by subsection (2) of this section, to ratify a defective corporate action under this chapter, the board of directors must adopt a resolution stating:

(a) The defective corporate action to be ratified and, if the defective corporate action involved the purported issuance of putative shares, the number and class or series of putative shares purportedly issued;

(b) The date of the defective corporate action and, if the defective corporate action involved the purported issuance of putative shares, the date or dates on which the putative shares were purportedly issued;

(c) The nature of the failure of authorization with respect to the defective corporate action to be ratified; and

(d) That the ratification of the defective corporate action is approved.

(2) To ratify a defective corporate action under this chapter involving the election of the initial board of directors of the corporation under RCW 23B.02.050(1)(b), a majority of the persons who, at the time of the ratification, are exercising the powers of directors must adopt a resolution stating:

(a) The name of the person or persons who first purportedly approved corporate action as initial directors of the corporation;

(b) The earlier of the date on which that person or those persons first purportedly approved corporate action or purportedly were elected as initial directors; and

(c) That the ratification of the election of that person or those persons as the initial directors of the corporation is approved.

(3) If any provision of this title, the articles of incorporation or bylaws, any corporate resolution, or any plan or agreement to which the corporation is a party at the time the resolution required by subsection (1) of this section is adopted, would have required shareholder approval of the defective corporate action to be ratified, either on the date of the defective corporate action or at the time the resolution required by subsection (1) of this section is adopted, for the ratification of the defective corporate action to be approved:

(a) The board of directors must submit the ratification of the defective corporate action for approval by the shareholders in accordance with RCW 23B.30.040;

(b) The board of directors must recommend the ratification of the defective corporate action to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation or (ii) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders; and

(c) The shareholders entitled to vote must approve the ratification of the defective corporate action as provided in RCW 23B.30.040. [2017 c 28 § 3.]

23B.30.040 Ratification—Quorum—Voting. (1) The quorum and voting requirements applicable to the adoption by the board of directors of the resolution required by RCW 23B.30.030(1) are the quorum and voting requirements that would be applicable if the defective corporate action was being approved at the time the resolution required by RCW 23B.30.030(1) is adopted.

(2) Except as provided in subsection (3) of this section, the quorum and voting requirements applicable to the approval by shareholders of the ratification of the defective corporate action required by RCW 23B.30.030(3) are the quorum and voting requirements that would be applicable if the defective corporate action was being approved at the time the ratification of the defective corporate action is approved.

(3) The approval by shareholders of the ratification of a defective corporate action under this chapter involving the election of directors requires that the votes cast within a voting group favoring such ratification exceed the votes cast within the voting group opposing such ratification at a meeting at which a quorum is present.

(4) Putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders in accordance with RCW 23B.30.030(3) (and without giving effect to any ratification of a defective corporate action involving the purported issuance of putative shares that would become valid shares as a result of the approval of such matter) are neither entitled to vote nor to be counted for quorum purposes in any vote to approve the ratification of any defective corporate action.

(5) If the ratification of a defective corporate action involving the purported issuance of putative shares would result in an overissue, in addition to the approval required by RCW 23B.30.030, the board of directors and shareholders must approve an amendment to the articles of incorporation in accordance with chapter 23B.10 RCW to increase the number of shares of a class or series that the corporation is authorized to issue or to create a class or series of shares that the corporation is authorized to issue so there would be no overissue. [2017 c 28 § 4.]

23B.30.050 Ratification and validation—Notice. (1) If the ratification of a defective corporate action does not require approval of the shareholders under RCW 23B.30.030(3):

(a) The corporation shall notify, promptly after the adoption of the resolution described in RCW 23B.30.030 (1) or (2), each holder of valid shares and putative shares, whether or not entitled to vote, as of the date of the adoption of that resolution by the board of directors, that the ratification of a defective corporate action has been approved by the board of directors pursuant to RCW 23B.30.030. This notice must also be given to each person who was a holder of valid shares or putative shares, whether or not entitled to vote, as of the date of the defective corporate action, other than to those persons whose identities or addresses for notice cannot be determined from the records of the corporation.

(b) The notice specified in (a) of this subsection must contain or be accompanied by (i) a copy of the resolution adopted by the board of directors in accordance with RCW 23B.30.030 (1) or (2), or (ii) the information required by RCW 23B.30.030 (1) (a) through (d) or (2) (a) through (c), as

applicable. This notice must also include a statement that any action before a court to determine whether the ratification of the defective corporate action complied with the requirements imposed by this chapter must be brought within sixty days from the validation effective time.

(2) If the ratification of a defective corporate action requires approval of the shareholders under RCW 23B.30.030(3), and if the approval of the shareholders is to be given at a meeting:

(a) The corporation shall notify each holder of valid shares and putative shares, whether or not entitled to vote, as of the record date for the meeting, of the proposed meeting of shareholders at which the ratification is to be submitted for approval in accordance with RCW 23B.07.050. This notice must also be given to each person who was a holder of valid shares or putative shares, whether or not entitled to vote, as of the date of the defective corporate action, other than to those persons whose identities or addresses for notice cannot be determined from the records of the corporation; and

(b) The notice specified in (a) of this subsection must state that the purpose, or one of the purposes, of the meeting is to consider ratification of a defective corporate action and must contain or be accompanied by (i) a copy of the resolution adopted by the board of directors in accordance with RCW 23B.30.030(1), or (ii) the information required by RCW 23B.30.030(1) (a) through (d). This notice must also include a statement that any action before a court to determine whether the ratification of the defective corporate action complied with the requirements imposed by this chapter must be brought within sixty days from the validation effective time.

(3) If the ratification of a defective corporate action requires approval of the shareholders under RCW 23B.30.030(3), and if the approval of the shareholders is to be without a meeting or a vote in accordance with RCW 23B.07.040:

(a) The corporation or the person soliciting consents shall give the notice required under RCW 23B.07.040(3)(a) and the corporation shall give the notice required under RCW 23B.07.040(3)(b) to each holder of valid shares and putative shares, whether or not entitled to vote, as of the record date for the shareholder consent. These notices must also be given to each person who was a holder of valid shares or putative shares, whether or not entitled to vote, as of the date of the defective corporate action, other than to those persons whose identities or addresses for notice cannot be determined from the records of the corporation; and

(b) The notices specified in (a) of this subsection must describe the ratification of the defective corporate action being approved and must contain or be accompanied by (i) a copy of the resolution adopted by the board of directors in accordance with RCW 23B.30.030 (1) or (2), or (ii) the information required by RCW 23B.30.030 (1)(a) through (d) or (2)(a) through (c), as applicable. These notices must also include a statement that any action before a court to determine whether the ratification of the defective corporate action complied with the requirements imposed by this chapter must be brought within sixty days from the validation effective time.

(4) If a defective corporate action is validated in accordance with RCW 23B.30.080:

(a) The corporation shall notify, promptly after the validation, each holder of valid shares and putative shares, whether or not entitled to vote, as of the date of the validation, that the validation of a defective corporate action has taken place pursuant to RCW 23B.30.080. This notice must also be given to each person who was a holder of valid shares or putative shares, whether or not entitled to vote, as of the date of the defective corporate action, other than to those persons whose identities or addresses for notice cannot be determined from the records of the corporation.

(b) The notice specified in (a) of this subsection must contain or be accompanied by a copy of the information required by RCW 23B.30.080(2).

(5) Any notice required by this section may be given in any manner permitted by RCW 23B.01.410 and, for any corporation subject to the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934, as amended, may be given by filing or furnishing the notice with the United States securities and exchange commission. [2017 c 28 § 5.]

23B.30.060 Ratification and validation—Effect.

From and after the validation effective time:

(1) Each defective corporate action ratified in accordance with RCW 23B.30.030 or validated in accordance with RCW 23B.30.080:

(a) Is not void or voidable as a result of the failure of authorization identified (i) in the resolution adopted by the board of directors in accordance with RCW 23B.30.030 (1) or (2), or (ii) by the court in accordance with RCW 23B.30.080(2); and

(b) Is deemed to be a valid corporate action taken on the date of the defective corporate action;

(2) The issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the resolution adopted by the board of directors in accordance with RCW 23B.30.030(1) or by the court in accordance with RCW 23B.30.080(2) is not void or voidable as a result of the failure of authorization identified in that resolution or by that court, and each such putative share or fraction of a putative share is deemed to be an identical valid share or fraction of a valid share issued at the time it was purportedly issued; and

(3) Any corporate action taken subsequent to the date of the defective corporate action ratified or validated in accordance with this chapter in reliance on that defective corporate action having been validly taken, and any subsequent defective corporate action resulting directly or indirectly from that original defective corporate action, is deemed to be valid as of the time that corporate action was taken. [2017 c 28 § 6.]

23B.30.070 Filings—Articles of validation. (1) If a defective corporate action ratified or validated under this chapter would have required under any other section of this title a record to be filed with the secretary of state, then, whether or not a record was previously filed in respect of that defective corporate action and in lieu of filing the record otherwise required by this title, the corporation shall deliver to the secretary of state for filing articles of validation setting forth:

(a) The defective corporate action that was ratified or validated and, if the defective corporate action involved the purported issuance of putative shares, the number and class or series of putative shares purportedly issued;

(b) The date of the defective corporate action that was ratified or validated and, if the defective corporate action involved the purported issuance of putative shares, the date or dates on which the putative shares were purportedly issued;

(c) The nature of the failure of authorization with respect to the defective corporate action that was ratified or validated;

(d) A statement that the defective corporate action was (i) ratified in accordance with RCW 23B.30.030, including the date on which the board of directors ratified the defective corporate action and the date, if any, on which the shareholders approved the ratification of the defective corporate action, or (ii) validated in accordance with RCW 23B.30.080, including the date on which the court validated the defective corporate action; and

(e) The information required by subsection (2) of this section.

(2) The articles of validation must also contain the following information:

(a) If the corporation previously filed a record in respect of a defective corporate action that was ratified or validated and no changes to that record are required to give effect to the ratification or validation of the defective corporate action in accordance with RCW 23B.30.040(5), the corporation shall (i) describe the record, together with any articles of correction thereto, including its filing date, in the articles of validation, and (ii) attach a copy of the record, together with any articles of correction thereto, to the articles of validation;

(b) If the corporation previously filed a record in respect of a defective corporate action that was ratified or validated and any change to that record is required to give effect to the ratification or validation of the defective corporate action in accordance with RCW 23B.30.040(5), the corporation shall (i) describe the previously filed record, together with any articles of correction thereto, including its filing date, (ii) attach a copy of the record containing all of the information required to be included under the applicable section or sections of this title to give effect to the defective corporate action that was ratified or validated to the articles of validation, and (iii) state the date and time that the record is deemed to have become effective; or

(c) If the corporation did not previously file a record in respect of a defective corporate action that was ratified or validated and that defective corporate action would have required a filing under any other section of this title, the corporation shall (i) attach a copy of a record containing all of the information required to be included under the applicable section or sections of this title to give effect to the defective corporate action that was ratified or validated to the articles of validation, and (ii) state the date and time that the record is deemed to have become effective.

(3) Articles of validation that comply with this section supersede any other record in respect of a defective corporate action that was ratified in accordance with RCW 23B.30.030 or validated in accordance with RCW 23B.30.080. [2017 c 28 § 7.]

23B.30.080 Judicial proceedings to validate or challenge ratification. (1) Upon application by the corporation, any successor entity to the corporation, a director of the corporation, or any shareholder of the corporation, including any person who was a shareholder of the corporation as of the date of a defective corporate action, the superior courts may:

(a) Validate any defective corporate action that has not been ratified in accordance with RCW 23B.30.030; or

(b) Determine that any ratification of a defective corporate action under RCW 23B.30.030 is not valid or effective because it failed to comply with the procedural requirements imposed by this chapter.

(2) In connection with a proceeding under subsection (1)(a) of this section, the court shall identify the defective corporate action to be validated, including the information required under RCW 23B.30.030 (1)(a) through (c) or (2)(a) and (b), as applicable, and may make such findings or orders as it deems proper under the circumstances. In determining whether to validate a defective corporate action under subsection (1)(a) of this section, the court may consider the following:

(a) Whether the defective corporate action was originally approved or effectuated with the belief that the approval or effectuation was in compliance with the provisions of this title, the articles of incorporation or bylaws of the corporation, and any corporate resolution or plan or agreement of or to which the corporation is a party that would be relevant in determining whether there was a failure of authorization;

(b) Whether the corporation and board of directors has treated the defective corporate action as a valid action or transaction;

(c) Whether any person has acted in reliance on the public record that the defective corporate action was valid or would be harmed by the failure to validate the defective corporate action;

(d) Whether any person would be harmed by the validation of the defective corporate action, excluding any harm that would have resulted if the defective corporate action had been valid when approved or effectuated; and

(e) Any other factors or considerations that the court deems proper in the circumstances.

(3) The court shall stay any proceeding brought under subsection (1)(a) of this section during any ratification process under RCW 23B.30.030 involving the defective corporate action that is the subject of the proceeding until the earlier of:

(a) The validation effective time; and

(b)(i) If shareholder approval is not required for ratification, the date on which the board of directors votes, but fails to ratify, the defective corporate action, (ii) if shareholder approval is required for ratification in accordance with RCW 23B.30.040 and is to be given at a meeting, the date on which the shareholders vote, but fail to ratify, the defective corporate action, or (iii) if shareholder approval is required for ratification in accordance with RCW 23B.30.040 and is to be given without a meeting, sixty days after the date of execution indicated on the earliest dated shareholder consent approving the ratification that is delivered to the corporation, even though that shareholder consent may not have been delivered to the corporation on that date, if consents executed by a sufficient number of shareholders to approve the ratifi-

cation are not delivered to the corporation during that sixty-day period.

(4) Notwithstanding any other provision of this section or otherwise under applicable law, any proceeding asserting a claim under subsection (1)(b) of this section must be brought within sixty days after the validation effective time, except that this subsection will not apply to any person to whom notice of the ratification was required to have been given pursuant to RCW 23B.30.050, but to whom such notice was not given. Claims under subsection (1)(b) of this section are to be the exclusive basis for challenging the validity or effectiveness of a defective corporate action ratified under RCW 23B.30.030.

(5) Service of process on the corporation for any proceeding under this section may be made in any manner provided by statute of this state or by rule of the court for service on the corporation, and no other party need be joined in order for the court to adjudicate the matter. In a proceeding commenced by the corporation, the court may require notice of the proceeding to be provided to other persons specified by the court and permit such other persons to intervene in the proceeding.

(6) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on behalf of the beneficial owner. [2017 c 28 § 8.]

Title 25 PARTNERSHIPS

Chapters

25.05 Revised uniform partnership act.

Chapter 25.05 RCW REVISED UNIFORM PARTNERSHIP ACT

Sections

25.05.500 Formation—Registration—Application—Registered agent—Fee.

25.05.500 Formation—Registration—Application—Registered agent—Fee. (1) A partnership which is not a limited liability partnership on June 11, 1998, may become a limited liability partnership upon the approval of the terms and conditions upon which it becomes a limited liability partnership by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions, and by delivering to the secretary of state for filing the applications required by subsection (2) of this section. A partnership which is a limited liability partnership on June 11, 1998, continues as a limited liability partnership under this chapter.

(2)(a) To become and to continue as a limited liability partnership, a partnership must deliver to the secretary of state for filing an application stating the name of the partnership; the address of its principal office; the name and address of a registered agent for service of process in this state which the partnership will be required to continuously maintain in accordance with Article 4 of chapter 23.95 RCW; the number of partners; a brief statement of the business in which the

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partnership engages; any other matters that the partnership determines to include; and that the partnership thereby applies for status as a limited liability partnership.

(b) A registered agent for service of process under (a) of this subsection may be any person authorized under Article 4 of chapter 23.95 RCW to serve as registered agent.

(3) The application must be accompanied by a fee for each partnership as established by the secretary of state under RCW 23.95.260.

(4) The secretary of state must register as a limited liability partnership any partnership that submits a completed application with the required fee.

(5) A partnership registered under this section must pay an annual fee, in each year following the year in which its application is filed, on a date and in an amount specified by the secretary of state under RCW 23.95.260. The fee must be accompanied by an annual report pursuant to RCW 23.95.255(2).

(6) Registration is effective as specified in RCW 23.95.210, and remains effective until:

(a) It is voluntarily withdrawn by delivering to the secretary of state for filing a written withdrawal notice executed by a majority of the partners or by one or more partners or other persons authorized to execute a withdrawal notice; or

(b) Thirty days after receipt by the partnership of a notice from the secretary of state, which notice must be sent by first-class mail, postage prepaid, that the partnership has failed to make timely payment of the annual fee specified in subsection (5) of this section, unless the fee is paid within such a thirty-day period.

(7) The status of a partnership as a limited liability partnership, and the liability of the partners thereof, is not affected by: (a) Errors in the information stated in an application under subsection (2) of this section or a notice under subsection (6) of this section; or (b) changes after the filing of such an application or notice in the information stated in the application or notice. [2017 c 31 § 5; 2015 c 176 § 5108; 2010 1st sp.s. c 29 § 5; 2009 c 437 § 4; 1998 c 103 § 1101.]

Effective date—Contingent effective date—2015 c 176: See note following RCW 23.95.100.

Intent—2010 1st sp.s. c 29: See note following RCW 24.03.405.

Title 26 DOMESTIC RELATIONS

Chapters

26.04 Marriage.
26.09 Dissolution proceedings—Legal separation.
26.10 Nonparental actions for child custody.
26.18 Child support enforcement.
26.26 Uniform parentage act.
26.33 Adoption.
26.34 Interstate compact on placement of children.
26.44 Abuse of children.
26.50 Domestic violence prevention.

Chapter 26.04 RCW MARRIAGE

Sections

26.04.050 Who may solemnize.

26.04.050 Who may solemnize. The following named officers and persons, active or retired, are hereby authorized to solemnize marriages, to wit: Justices of the supreme court, judges of the court of appeals, judges of the superior courts, supreme court commissioners, court of appeals commissioners, superior court commissioners, judges of courts of limited jurisdiction as defined in RCW 3.02.010, judges of tribal courts from a federally recognized tribe, and any regularly licensed or ordained minister or any priest, imam, rabbi, or similar official of any religious organization. The solemnization of a marriage by a tribal court judge pursuant to authority under this section does not create tribal court jurisdiction and does not affect state court authority as otherwise provided by law to enter a judgment for purposes of any dissolution, legal separation, or other proceedings related to the marriage that is binding on the parties and entitled to full faith and credit. [2017 c 130 § 1; 2012 c 3 § 4 (Referendum Measure No. 74, approved November 6, 2012); 2007 c 29 § 1; 1987 c 291 § 1; 1984 c 258 § 95; 1983 c 186 § 1; 1971 c 81 § 69; 1913 c 35 § 1; 1890 p 98 § 1; 1883 p 43 § 1; Code 1881 § 2382; 1866 p 82 § 4; 1854 p 404 § 4; RRS § 8441.]

Notice—2012 c 3: See note following RCW 26.04.010.

Additional notes found at www.leg.wa.gov

Chapter 26.09 RCW

DISSOLUTION PROCEEDINGS—LEGAL SEPARATION

Sections

26.09.191	Restrictions in temporary or permanent parenting plans.
26.09.231	Residential time summary report.

26.09.191 Restrictions in temporary or permanent parenting plans. (1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW 26.50.010(3) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm or that results in a pregnancy.

(2)(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010(3) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm or that results in a pregnancy; or (iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 26.50.010(3) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm or that results in a pregnancy; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection.

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i)

through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

- (i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;
- (ii) RCW 9A.44.073;
- (iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;
- (iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;
- (v) RCW 9A.44.083;
- (vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;
- (vii) RCW 9A.44.100;
- (viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;
- (ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises residential time in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

- (i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;
- (ii) RCW 9A.44.073;
- (iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;
- (iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;
- (v) RCW 9A.44.083;
- (vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;
- (vii) RCW 9A.44.100;
- (viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;
- (ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.

(f) The presumption established in (d) of this subsection may be rebutted only after a written finding that the child was not conceived and subsequently born as a result of a sexual assault committed by the parent requesting residential time and that:

- (i) If the child was not the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or
- (ii) If the child was the victim of the sex offense committed by the parent requesting residential time, (A) contact

between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child.

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that the child was not conceived and subsequently born as a result of a sexual assault committed by the parent requesting residential time and that:

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have residential time with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with

the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised residential time has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of residential time between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised residential time has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or

chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of residential time between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. The limitations shall also be reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time. The limitations the court may impose include, but are not limited to: Supervised contact between the child and the parent or completion of relevant counseling or treatment. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence pursuant to RCW 26.26.760 to have committed sexual assault, as defined in RCW 26.26.760, against the child's parent, and that the child was born within three hundred twenty days of the sexual assault.

(iv) If the court limits residential time under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iv) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iv) of this subsection. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

(a) A parent's neglect or substantial nonperformance of parenting functions;

(b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;

(c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;

(d) The absence or substantial impairment of emotional ties between the parent and the child;

(e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;

(f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or

(g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(4) In cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.

(5) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

(6) In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure.

(7) For the purposes of this section:

(a) "A parent's child" means that parent's natural child, adopted child, or stepchild; and

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(b) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010. [2017 c 234 § 2; 2011 c 89 § 6; 2007 c 496 § 303; 2004 c 38 § 12; 1996 c 303 § 1; 1994 c 267 § 1. Prior: 1989 c 375 § 11; 1989 c 326 § 1; 1987 c 460 § 10.]

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Part headings not law—2007 c 496: See note following RCW 26.09.002.

Additional notes found at www.leg.wa.gov

26.09.231 Residential time summary report. The parties to dissolution matters shall file with the clerk of the court the residential time summary report. The summary report shall be on the form developed by the administrative office of the courts in consultation with the department of social and health services division of child support. The parties must complete the form and file the form with the court order. [2017 c 183 § 2; 2007 c 496 § 701.]

Part headings not law—2007 c 496: See note following RCW 26.09.002.

Chapter 26.10 RCW

NONPARENTAL ACTIONS FOR CHILD CUSTODY

Sections

26.10.135 Custody orders—Background information to be consulted. (*Effective July 1, 2018.*)

26.10.135 Custody orders—Background information to be consulted. (*Effective July 1, 2018.*) (1) Before granting any order regarding the custody of a child under this chapter, the court shall consult the judicial information system, if available, to determine the existence of any information and proceedings that are relevant to the placement of the child.

(2) Before entering a final order, the court shall:

(a) Direct the department of children, youth, and families to release information as provided under RCW 13.50.100; and

(b) Require the petitioner to provide the results of an examination of state and national criminal identification data provided by the Washington state patrol criminal identification system as described in chapter 43.43 RCW for the petitioner and adult members of the petitioner's household. [2017 3rd sp.s. c 6 § 333; 2003 c 105 § 1.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Chapter 26.18 RCW

CHILD SUPPORT ENFORCEMENT

Sections

26.18.230 Residential time summary report form.

26.18.230 Residential time summary report form. (1) The administrative office of the courts in consultation

with the department of social and health services, division of child support, shall develop a residential time summary report form to provide for the reporting of summary information in every case in which residential time with children is to be established or modified.

(2) The residential time summary report must include at a minimum: A breakdown of residential schedules with a reasonable degree of specificity regarding actual time with each parent, including enforcement practices, representation status of the parties, whether domestic violence, child abuse, chemical dependency, or mental health issues exist, and whether the matter was agreed or contested. [2017 c 183 § 3; 2007 c 496 § 702.]

Part headings not law—2007 c 496: See note following RCW 26.09.002.

Chapter 26.26 RCW UNIFORM PARENTAGE ACT

Sections

26.26.760 Sexual assault resulting in pregnancy—Parental rights and responsibilities.

26.26.760 Sexual assault resulting in pregnancy—Parental rights and responsibilities. (1) This section applies in cases when a person alleged or presumed to be a legal parent to a child is alleged to have committed a sexual assault that resulted in the victim of the assault becoming pregnant and subsequently giving birth to the child.

(2) For the purposes of this section, "sexual assault" means nonconsensual sexual penetration that results in pregnancy.

(3) For the purposes of this section, the fact that the person seeking parental rights or presumed to be a legal parent committed a sexual assault that resulted in the victim of the assault becoming pregnant and subsequently giving birth to the child may be proved by either:

(a) Evidence that the person seeking parental rights or presumed to be a legal parent was convicted of or pleaded guilty to a sexual assault under RCW 9A.44.040, 9A.44.050, 9A.44.060, or a comparable crime of sexual assault in any jurisdiction, against the child's parent, and that the child was born within three hundred twenty days after the sexual assault; or

(b) Clear, cogent, and convincing evidence that the person seeking parental rights or presumed to be a legal parent committed sexual assault, as defined in this section, against the child's parent, and that the child was born within three hundred twenty days after the sexual assault.

(4) An allegation that the child was born as the result of a sexual assault may be raised under this chapter:

- (a) In a petition to adjudicate parentage; or
- (b) In response to a petition to adjudicate parentage.

The pleading making the allegation must be filed in a petition or in a response to a petition in proceedings filed no later than four years after the birth of the child, except that (i) the pleading making the allegation that the child was born as a result of a sexual assault may be filed at any time in proceedings pursuant to RCW 26.26.525; or (ii) for a period of two years after July 23, 2017, a court may waive the time bar in cases in which a presumed, acknowledged, or adjudicated

parent was found in a criminal or separate civil proceeding to have committed a sexual assault against the parent alleging that the child was born as a result of the sexual assault.

(5) If there is an allegation that the child was born as a result of a sexual assault against the child's parent by the person seeking parentage or presumed to be the parent of the child, the court must conduct a fact-finding hearing on the allegation.

(a) The court may not enter any temporary orders providing residential time or decision making to the alleged perpetrator prior to the fact-finding hearing on the sexual assault allegation unless both of the following criteria are satisfied: (i) The alleged perpetrator is a presumed parent of the child; and (ii) the court specifically finds that it would be in the best interests of the child if such temporary orders are entered.

(b) Prior to the fact-finding hearing, the court may order genetic testing to determine whether the alleged perpetrator is biologically related to the child. If genetic testing reveals that the alleged perpetrator is not biologically related to the child, the fact-finding hearing must be stricken.

(c) Fourteen days prior to the fact-finding hearing, the party alleging that the child was born as a result of a sexual assault shall submit affidavits setting forth facts supporting the allegation and shall give notice, together with a copy of the affidavit, to other parties to the proceedings, who may file opposing affidavits. Opposing affidavits must be submitted and served to other parties to the proceeding five days prior to the fact-finding hearing.

(d) The court shall determine on the record whether affidavits and documents submitted for the fact-finding hearing should be sealed.

(6) If, after the fact-finding hearing or after a bench trial, the court finds that the person seeking parental rights or presumed to be a legal parent committed sexual assault, pursuant to the standards set forth in subsection (3)(a) or (b) of this section, against the child's parent, and that the child was born within three hundred twenty days of the sexual assault the court must:

(a) Enter an order holding that the person seeking parental rights or presumed to be a legal parent is not a parent of the child, if such an order is requested by the child's legal parent or guardian; or

(b) Enter an order consistent with the relief requested by the child's legal parent or guardian, provided that the court determines that the relief requested is in the best interests of the child.

(7) Absent the express written consent of the child's legal parent or guardian, a person who is found to have committed a sexual assault, as defined in this section, against the child's parent, and that the child was born within three hundred twenty days of the sexual assault has:

(a) No right to an allocation of parental rights, including residential time or decision-making responsibilities for the child;

(b) No right to inheritance from the child; and

(c) No right to notification of, or standing to object to, the adoption of the child.

(8) If the court enters an order under subsection (6) of this section that is inconsistent with the information on the child's birth certificate, the court shall also order the birth certificate be amended in a manner that is consistent with the

child's best interests and the wishes of the child's legal parent or guardian.

(9) If the court finds that the person seeking parentage or presumed to be the parent committed a sexual assault, as defined in this section, against the child's parent, and that the child was born within three hundred twenty days of the sexual assault, and the legal parent or guardian requests it, the court must order the person seeking parentage or presumed to be the parent to pay child support or birth-related costs or both.

(10) The legal parent or guardian may decline an order for child support or birth-related costs. If the legal parent or guardian declines an order for child support, and is either currently receiving public assistance or later applies for it for the child born as a result of the sexual assault, support enforcement agencies as defined in this chapter shall not file administrative or court proceedings to establish or collect child support, including medical support, from the person seeking parentage or presumed to be the parent who has been found to have committed a sexual assault, as defined in this section, against the child's parent, and that the child was born within three hundred twenty days of the sexual assault.

(11) If the court enters an order under subsection (10) of this section providing that no child support obligation may be established or collected from the person seeking parentage or presumed to be the parent who has been found to have committed a sexual assault, the court shall forward a copy of the order to the Washington state support registry.

(12) The court may order an award of attorneys' fees under this section on the same basis as attorneys' fees are awarded under RCW 26.09.140.

(13) Any party may move to close the fact-finding hearing and any related proceedings under this section to the public. If no party files such a motion, the court shall determine on its own initiative whether the fact-finding hearing and any related proceedings under this section should be closed to the public. Upon finding good cause for closing the proceeding, and if consistent with Article I, section 10 of the state Constitution, the court may: (a) Restrict admission to only those persons whom the court finds to have a direct interest in the case or in the work of the court, including witnesses deemed necessary to the disposition of the case; and (b) restrict persons who are admitted from disclosing any information obtained at the hearing that would identify the parties involved or the child. [2017 c 234 § 1.]

Chapter 26.33 RCW ADOPTION

Sections

26.33.020	Definitions. (<i>Effective July 1, 2018.</i>)
26.33.170	Consent to adoption—When not required.
26.33.345	Search for birth parent or adopted child—Limited release of information—Noncertified copies of original birth certificate—Contact preference form. (<i>Effective July 1, 2018.</i>)

26.33.020 Definitions. (*Effective July 1, 2018.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adoptee" means a person who is to be adopted or who has been adopted.

(2) "Adoptive parent" means the person or persons who seek to adopt or have adopted an adoptee.

(3) "Agency" means any public or private association, corporation, or individual licensed or certified by the department as a child-placing agency under chapter 74.15 RCW or as an adoption agency.

(4) "Alleged father" means a person whose parent-child relationship has not been terminated, who is not a presumed father under chapter 26.26 RCW, and who alleges himself or whom a party alleges to be the father of the child. It includes a person whose marriage to the mother was terminated more than three hundred days before the birth of the child or who was separated from the mother more than three hundred days before the birth of the child.

(5) "Birth parent" means the biological mother or biological or alleged father of a child, including a presumed father under chapter 26.26 RCW, whether or not any such person's parent-child relationship has been terminated by a court of competent jurisdiction. "Birth parent" does not include a biological mother or biological or alleged father, including a presumed father under chapter 26.26 RCW, if the parent-child relationship was terminated because of an act for which the person was found guilty under chapter 9A.42 or 9A.44 RCW.

(6) "Child" means a person under eighteen years of age.

(7) "Court" means the superior court.

(8) "Department" means the department of children, youth, and families.

(9) "Guardian ad litem" means a person, not related to a party to the action, appointed by the court to represent the best interests of a party who is under a legal disability.

(10) "Individual approved by the court" or "qualified salaried court employee" means a person who has a master's degree in social work or a related field and one year of experience in social work, or a bachelor's degree and two years of experience in social work, and includes a person not having such qualifications only if the court makes specific findings of fact that are entered of record establishing that the person has reasonably equivalent experience.

(11) "Legal guardian" means the department, an agency, or a person, other than a parent or stepparent, appointed by the court to promote the child's general welfare, with the authority and duty to make decisions affecting the child's development.

(12) "Nonidentifying information" includes, but is not limited to, the following information about the birth parents, adoptive parents, and adoptee:

(a) Age in years at the time of adoption;

(b) Heritage, including nationality, ethnic background, and race;

(c) Education, including number of years of school completed at the time of adoption, but not name or location of school;

(d) General physical appearance, including height, weight, color of hair, eyes, and skin, or other information of a similar nature;

(e) Religion;

(f) Occupation, but not specific titles or places of employment;

(g) Talents, hobbies, and special interests;

(h) Circumstances leading to the adoption;

(i) Medical and genetic history of birth parents;

- (j) First names;
- (k) Other children of birth parents by age, sex, and medical history;
- (l) Extended family of birth parents by age, sex, and medical history;
- (m) The fact of the death, and age and cause, if known;
- (n) Photographs;
- (o) Name of agency or individual that facilitated the adoption.

(13) "Parent" means the natural or adoptive mother or father of a child, including a presumed father under chapter 26.26 RCW. It does not include any person whose parent-child relationship has been terminated by a court of competent jurisdiction.

(14) "Relinquish or relinquishment" means the voluntary surrender of custody of a child to the department, an agency, or prospective adoptive parents. [2017 3rd sp.s. c 6 § 319; 1993 c 81 § 1; 1990 c 146 § 1; 1984 c 155 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

26.33.170 Consent to adoption—When not required.

(1) An agency's, the department's, or a legal guardian's consent to adoption may be dispensed with if the court determines by clear, cogent and convincing evidence that the proposed adoption is in the best interests of the adoptee.

(2) An alleged father's, birth parent's, or parent's consent to adoption shall be dispensed with if the court finds that the proposed adoption is in the best interests of the adoptee and:

(a) The alleged father, birth parent, or parent has been found guilty of rape under chapter 9A.44 RCW or incest under RCW 9A.64.020, where the adoptee was the victim of the rape or incest; or

(b) The alleged father, birth parent, or parent has been found guilty of rape under chapter 9A.44 RCW or incest under RCW 9A.64.020, or has been found by clear and convincing evidence to have committed a sexual assault, where the other parent of the adoptee was the victim of the rape, incest, or sexual assault and the adoptee was conceived as a result of the rape, incest, or sexual assault, unless the parent who is the victim indicates by affidavit or sworn testimony that consent to adoption by the person who committed the rape, incest, or sexual assault should occur.

(3) Nothing in this section shall be construed to eliminate the notice provisions of this chapter. [2017 c 234 § 3; 1999 c 173 § 1; 1988 c 203 § 1; 1984 c 155 § 17.]

Additional notes found at www.leg.wa.gov

26.33.345 Search for birth parent or adopted child—Limited release of information—Noncertified copies of original birth certificate—Contact preference form. (Effective July 1, 2018.) (1) The department, adoption agencies, and independent adoption facilitators shall release the name and location of the court where a relinquishment of parental rights or finalization of an adoption took place to an adult adoptee, a birth parent of an adult adoptee, an adoptive

parent, a birth or adoptive grandparent of an adult adoptee, or an adult sibling of an adult adoptee, or the legal guardian of any of these.

(2) The department of health shall make available a noncertified copy of the original birth certificate of a child to the child's birth parents upon request.

(3)(a) For adoptions finalized after October 1, 1993, the department of health shall provide a noncertified copy of the original birth certificate to an adoptee eighteen years of age or older upon request, unless the birth parent has filed an affidavit of nondisclosure before July 28, 2013, or a contact preference form that indicates he or she does not want the original birth certificate released: PROVIDED, That the affidavit of nondisclosure, the contact preference form, or both have not expired.

(b) For adoptions finalized on or before October 1, 1993, the department of health may not provide a noncertified copy of the original birth certificate to the adoptee until after June 30, 2014. After June 30, 2014, the department of health shall provide a noncertified copy of the original birth certificate to an adoptee eighteen years of age or older upon request, unless the birth parent has filed a contact preference form that indicates he or she does not want the original birth certificate released: PROVIDED, That the contact preference form has not expired.

(c) An affidavit of nondisclosure expires upon the death of the birth parent.

(4)(a) Regardless of whether a birth parent has filed an affidavit of nondisclosure or when the adoption was finalized, a birth parent may at any time complete a contact preference form stating his or her preference about personal contact with the adoptee, which, if available, must accompany an original birth certificate provided to an adoptee under subsection (3) of this section.

(b) The contact preference form must include the following options:

(i) I would like to be contacted. I give the department of health consent to provide the adoptee with a noncertified copy of his or her original birth certificate;

(ii) I would like to be contacted only through a confidential intermediary as described in RCW 26.33.343. I give the department of health consent to provide the adoptee with a noncertified copy of his or her original birth certificate;

(iii) I prefer not to be contacted and have completed the birth parent updated medical history form. I give the department of health consent to provide the adoptee with a noncertified copy of his or her original birth certificate; and

(iv) I prefer not to be contacted and have completed the birth parent updated medical history form. I do not want a noncertified copy of the original birth certificate released to the adoptee.

(c) If the birth parent indicates he or she prefers not to be contacted, personally identifying information on the contact preference form must be kept confidential and may not be released.

(d) Nothing in this section precludes a birth parent from subsequently filing another contact preference form to rescind the previous contact preference form and state a different preference.

(e) A contact preference form expires upon the death of the birth parent.

(5) If a birth parent files a contact preference form, the birth parent must also file an updated medical history form with the department of health. Upon request of the adoptee, the department of health must provide the adoptee with the updated medical history form filed by the adoptee's birth parent.

(6) Both a completed contact preference form and birth parent updated medical history form are confidential and must be placed in the adoptee's sealed file.

(7) If a birth parent files a contact preference form within six months after the first time an adoptee requests a copy of his or her original birth certificate as provided in subsection (3) of this section, the department of health must forward the contact preference form and the birth parent updated medical history form to the address of the adoptee.

(8) The department of health may charge a fee not to exceed twenty dollars for providing a noncertified copy of a birth certificate to an adoptee.

(9) The department of health must create the contact preference form and an updated medical history form. The contact preference form must provide a method to ensure personally identifying information can be kept confidential. The updated medical history form may not require the birth parent to disclose any identifying information about the birth parent.

(10) If the department of health does not provide an adoptee with a noncertified copy of the original birth certificate because a valid affidavit of nondisclosure or contact preference form has been filed, the adoptee may request, no more than once per year, that the department of health attempt to determine if the birth parent is deceased. Upon request of the adoptee, the department of health must make a reasonable effort to search public records that are accessible and already available to the department of health to determine if the birth parent is deceased. The department of health may charge the adoptee a reasonable fee to cover the cost of conducting a search. [2017 3rd sp.s. c 6 § 320; 2013 c 321 § 1; 1993 c 81 § 3; 1990 c 145 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Chapter 26.34 RCW

INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

Sections

- 26.34.030 "Appropriate public authorities" defined. (*Effective July 1, 2018.*)
- 26.34.040 "Appropriate authority of the receiving state" defined. (*Effective July 1, 2018.*)

26.34.030 "Appropriate public authorities" defined. (*Effective July 1, 2018.*) The "appropriate public authorities" as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this state, mean the department of children, youth, and families, and said agency shall receive and act with reference to notices required by said Article III. [2017 3rd sp.s. c 6 § 330; 1971 ex.s. c 168 § 3.]

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Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

26.34.040 "Appropriate authority of the receiving state" defined. (*Effective July 1, 2018.*) As used in paragraph (a) of Article V of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the department of children, youth, and families. [2017 3rd sp.s. c 6 § 331; 1971 ex.s. c 168 § 4.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Chapter 26.44 RCW ABUSE OF CHILDREN

Sections

- 26.44.020 Definitions. (*Effective July 1, 2018.*)
- 26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Investigations—Interviews of children—Records—Risk assessment process. (*Effective until July 1, 2018.*)
- 26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Investigations—Interviews of children—Records—Risk assessment process. (*Effective July 1, 2018.*)
- 26.44.040 Reports—Oral, written—Contents. (*Effective July 1, 2018.*)
- 26.44.050 Abuse or neglect of child—Duty of law enforcement agency or department of children, youth, and families—Taking child into custody without court order, when. (*Effective July 1, 2018.*)
- 26.44.063 Temporary restraining order or preliminary injunction—Enforcement—Notice of modification or termination of restraining order. (*Effective July 1, 2018.*)
- 26.44.100 Information about rights—Legislative purpose—Notification of investigation, report, and findings.
- 26.44.105 Information about rights—Oral and written information—Copies of dependency petition and any court order. (*Effective July 1, 2018.*)
- 26.44.140 Treatment for abusive person removed from home. (*Effective July 1, 2018.*)

26.44.020 Definitions. (*Effective July 1, 2018.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abuse or neglect" means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(2) "Child" or "children" means any person under the age of eighteen years of age.

(3) "Child protective services" means those services provided by the department designed to protect children from child abuse and neglect and safeguard such children from future abuse and neglect, and conduct investigations of child

abuse and neglect reports. Investigations may be conducted regardless of the location of the alleged abuse or neglect. Child protective services includes referral to services to ameliorate conditions that endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.

(4) "Child protective services section" means the child protective services section of the department.

(5) "Children's advocacy center" means a child-focused facility in good standing with the state chapter for children's advocacy centers and that coordinates a multidisciplinary process for the investigation, prosecution, and treatment of sexual and other types of child abuse. Children's advocacy centers provide a location for forensic interviews and coordinate access to services such as, but not limited to, medical evaluations, advocacy, therapy, and case review by multidisciplinary teams within the context of county protocols as defined in RCW 26.44.180 and 26.44.185.

(6) "Clergy" means any regularly licensed or ordained minister, priest, or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(7) "Court" means the superior court of the state of Washington, juvenile department.

(8) "Department" means the department of children, youth, and families.

(9) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child abuse or neglect, and family strengths and needs that is applied to a child abuse or neglect report. Family assessment does not include a determination as to whether child abuse or neglect occurred, but does determine the need for services to address the safety of the child and the risk of subsequent maltreatment.

(10) "Family assessment response" means a way of responding to certain reports of child abuse or neglect made under this chapter using a differential response approach to child protective services. The family assessment response shall focus on the safety of the child, the integrity and preservation of the family, and shall assess the status of the child and the family in terms of risk of abuse and neglect including the parent's or guardian's or other caretaker's capacity and willingness to protect the child and, if necessary, plan and arrange the provision of services to reduce the risk and otherwise support the family. No one is named as a perpetrator, and no investigative finding is entered in the record as a result of a family assessment.

(11) "Founded" means the determination following an investigation by the department that, based on available information, it is more likely than not that child abuse or neglect did occur.

(12) "Inconclusive" means the determination following an investigation by the department of social and health services, prior to October 1, 2008, that based on available infor-

mation a decision cannot be made that more likely than not, child abuse or neglect did or did not occur.

(13) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment, or care.

(14) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(15) "Malice" or "maliciously" means an intent, wish, or design to intimidate, annoy, or injure another person. Such malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

(16) "Negligent treatment or maltreatment" means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100. When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight. The fact that siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment. Poverty, homelessness, or exposure to domestic violence as defined in RCW 26.50.010 that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself.

(17) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(18) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery or to provide other health services. The term "practitioner" includes a duly accredited Christian Science practitioner. A person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner will not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(19) "Professional school personnel" include, but are not limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(20) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(21) "Screened-out report" means a report of alleged child abuse or neglect that the department has determined does not rise to the level of a credible report of abuse or neglect and is not referred for investigation.

(22) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.

(23) "Sexually aggressive youth" means a child who is defined in RCW 74.13.075(1)(b) as being a sexually aggressive youth.

(24) "Social service counselor" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(25) "Supervising agency" means an agency licensed by the state under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 that has entered into a performance-based contract with the department to provide child welfare services.

(26) "Unfounded" means the determination following an investigation by the department that available information indicates that, more likely than not, child abuse or neglect did not occur, or that there is insufficient evidence for the department to determine whether the alleged child abuse did or did not occur. [2017 3rd sp.s. c 6 § 321; 2012 c 259 § 1. Prior: 2010 c 176 § 1; 2009 c 520 § 17; 2007 c 220 § 1; 2006 c 339 § 108; (2006 c 339 § 107 expired January 1, 2007); 2005 c 512 § 5; 2000 c 162 § 19; 1999 c 176 § 29; 1998 c 314 § 7; prior: 1997 c 386 § 45; 1997 c 386 § 24; 1997 c 282 § 4; 1997 c 132 § 2; 1996 c 178 § 10; prior: 1993 c 412 § 12; 1993 c 402 § 1; 1988 c 142 § 1; prior: 1987 c 524 § 9; 1987 c 206 § 2; 1984 c 97 § 2; 1982 c 129 § 6; 1981 c 164 § 1; 1977 ex.s. c 80 § 25; 1975 1st ex.s. c 217 § 2; 1969 ex.s. c 35 § 2; 1965 c 13 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—2012 c 259 §§ 1 and 3-10: "Sections 1 and 3 through 10 of this act take effect December 1, 2013." [2012 c 259 § 15.]

Effective date—2007 c 220 §§ 1-3: "Sections 1 through 3 of this act take effect October 1, 2008." [2007 c 220 § 10.]

Implementation—2007 c 220 §§ 1-3: "The secretary of the department of social and health services may take the necessary steps to ensure that sections 1 through 3 of this act are implemented on their effective date." [2007 c 220 § 11.]

Intent—Part headings not law—2006 c 339: See notes following RCW 74.34.020.

Finding—Intent—Effective date—Short title—2005 c 512: See notes following RCW 26.44.100.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Findings—1997 c 132: "The legislature finds that housing is frequently influenced by the economic situation faced by the family. This may include siblings sharing a bedroom. The legislature also finds that the family living situation due to economic circumstances in and of itself is not sufficient to justify a finding of child abuse, negligent treatment, or maltreatment." [1997 c 132 § 1.]

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

Additional notes found at www.leg.wa.gov

26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Investigations—Interviews of children—Records—Risk assess-

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ment process. (Effective until July 1, 2018.) (1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of early learning, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, state family and children's ombuds or any volunteer in the ombuds's office, or host home program has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) When any person, in his or her official supervisory capacity with a nonprofit or for-profit organization, has reasonable cause to believe that a child has suffered abuse or neglect caused by a person over whom he or she regularly exercises supervisory authority, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency, provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service. No one shall be required to report under this section when he or she obtains the information solely as a result of a privileged communication as provided in RCW 5.60.060.

Nothing in this subsection (1)(b) shall limit a person's duty to report under (a) of this subsection.

For the purposes of this subsection, the following definitions apply:

(i) "Official supervisory capacity" means a position, status, or role created, recognized, or designated by any nonprofit or for-profit organization, either for financial gain or without financial gain, whose scope includes, but is not limited to, overseeing, directing, or managing another person who is employed by, contracted by, or volunteers with the nonprofit or for-profit organization.

(ii) "Organization" includes a sole proprietor, partnership, corporation, limited liability company, trust, association, financial institution, governmental entity, other than the federal government, and any other individual or group engaged in a trade, occupation, enterprise, governmental function, charitable function, or similar activity in this state whether or not the entity is operated as a nonprofit or for-profit entity.

(iii) "Reasonable cause" means a person witnesses or receives a credible written or oral report alleging abuse, including sexual contact, or neglect of a child.

(iv) "Regularly exercises supervisory authority" means to act in his or her official supervisory capacity on an ongoing or continuing basis with regards to a particular person.

(v) "Sexual contact" has the same meaning as in RCW 9A.44.010.

(c) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment,

any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(d) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(e) The reporting requirement also applies to guardians ad litem, including court-appointed special advocates, appointed under Titles 11 and 13 RCW and this title, who in the course of their representation of children in these actions have reasonable cause to believe a child has been abused or neglected.

(f) The reporting requirement in (a) of this subsection also applies to administrative and academic or athletic department employees, including student employees, of institutions of higher education, as defined in RCW 28B.10.016, and of private institutions of higher education.

(g) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency, including military law enforcement, if appropriate. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving a report of alleged abuse or neglect, the department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required

under this subsection, the department shall only investigate cases in which:

(a) The department believes there is a serious threat of substantial harm to the child;

(b) The report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or

(c) The department has a prior founded report of abuse or neglect with regard to a member of the household that is within three years of receipt of the referral.

(11)(a) Upon receiving a report of alleged abuse or neglect, the department shall use one of the following discrete responses to reports of child abuse or neglect that are screened in and accepted for departmental response:

(i) Investigation; or

(ii) Family assessment.

(b) In making the response in (a) of this subsection the department shall:

(i) Use a method by which to assign cases to investigation or family assessment which are based on an array of factors that may include the presence of: Imminent danger, level of risk, number of previous child abuse or neglect reports, or other presenting case characteristics, such as the type of alleged maltreatment and the age of the alleged victim. Age of the alleged victim shall not be used as the sole criterion for determining case assignment;

(ii) Allow for a change in response assignment based on new information that alters risk or safety level;

(iii) Allow families assigned to family assessment to choose to receive an investigation rather than a family assessment;

(iv) Provide a full investigation if a family refuses the initial family assessment;

(v) Provide voluntary services to families based on the results of the initial family assessment. If a family refuses voluntary services, and the department cannot identify specific facts related to risk or safety that warrant assignment to investigation under this chapter, and there is not a history of reports of child abuse or neglect related to the family, then the department must close the family assessment response case. However, if at any time the department identifies risk or safety factors that warrant an investigation under this chapter, then the family assessment response case must be reassigned to investigation;

(vi) Conduct an investigation, and not a family assessment, in response to an allegation that, the department determines based on the intake assessment:

(A) Poses a risk of "imminent harm" consistent with the definition provided in RCW 13.34.050, which includes, but is not limited to, sexual abuse and sexual exploitation as defined in this chapter;

(B) Poses a serious threat of substantial harm to a child;

(C) Constitutes conduct involving a criminal offense that has, or is about to occur, in which the child is the victim;

(D) The child is an abandoned child as defined in RCW 13.34.030;

(E) The child is an adjudicated dependent child as defined in RCW 13.34.030, or the child is in a facility that is licensed, operated, or certified for care of children by the department under chapter 74.15 RCW, or by the department of early learning.

(c) The department may not be held civilly liable for the decision to respond to an allegation of child abuse or neglect by using the family assessment response under this section unless the state or its officers, agents, or employees acted with reckless disregard.

(12)(a) For reports of alleged abuse or neglect that are accepted for investigation by the department, the investigation shall be conducted within time frames established by the department in rule. In no case shall the investigation extend longer than ninety days from the date the report is received, unless the investigation is being conducted under a written protocol pursuant to RCW 26.44.180 and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary. At the completion of the investigation, the department shall make a finding that the report of child abuse or neglect is founded or unfounded.

(b) If a court in a civil or criminal proceeding, considering the same facts or circumstances as are contained in the report being investigated by the department, makes a judicial finding by a preponderance of the evidence or higher that the subject of the pending investigation has abused or neglected the child, the department shall adopt the finding in its investigation.

(13) For reports of alleged abuse or neglect that are responded to through family assessment response, the department shall:

(a) Provide the family with a written explanation of the procedure for assessment of the child and the family and its purposes;

(b) Collaborate with the family to identify family strengths, resources, and service needs, and develop a service plan with the goal of reducing risk of harm to the child and improving or restoring family well-being;

(c) Complete the family assessment response within forty-five days of receiving the report; however, upon parental agreement, the family assessment response period may be extended up to ninety days;

(d) Offer services to the family in a manner that makes it clear that acceptance of the services is voluntary;

(e) Implement the family assessment response in a consistent and cooperative manner;

(f) Have the parent or guardian agree to participate in services before services are initiated. The department shall inform the parents of their rights under family assessment response, all of their options, and the options the department has if the parents do not agree to participate in services.

(14)(a) In conducting an investigation or family assessment of alleged abuse or neglect, the department or law enforcement agency:

(i) May interview children. If the department determines that the response to the allegation will be family assessment response, the preferred practice is to request a parent's, guardian's, or custodian's permission to interview the child before conducting the child interview unless doing so would compromise the safety of the child or the integrity of the assessment. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. If the allegation is investigated, parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the

course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation; and

(ii) Shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(b) The Washington state school directors' association shall adopt a model policy addressing protocols when an interview, as authorized by this subsection, is conducted on school premises. In formulating its policy, the association shall consult with the department and the Washington association of sheriffs and police chiefs.

(15) If a report of alleged abuse or neglect is founded and constitutes the third founded report received by the department within the last twelve months involving the same child or family, the department shall promptly notify the office of the family and children's ombuds of the contents of the report. The department shall also notify the ombuds of the disposition of the report.

(16) In investigating and responding to allegations of child abuse and neglect, the department may conduct background checks as authorized by state and federal law.

(17)(a) The department shall maintain investigation records and conduct timely and periodic reviews of all founded cases of abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(b) In the family assessment response, the department shall not make a finding as to whether child abuse or neglect occurred. No one shall be named as a perpetrator and no investigative finding shall be entered in the department's child abuse or neglect database.

(18) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor.

(19) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

(20) Upon receiving a report of alleged abuse or neglect involving a child under the court's jurisdiction under chapter 13.34 RCW, the department shall promptly notify the child's guardian ad litem of the report's contents. The department shall also notify the guardian ad litem of the disposition of the report. For purposes of this subsection, "guardian ad litem" has the meaning provided in RCW 13.34.030.

(21) The department shall make efforts as soon as practicable to determine the military status of parents whose children are subject to abuse or neglect allegations. If the department determines that a parent or guardian is in the military, the department shall notify a department of defense family advocacy program that there is an allegation of abuse and neglect that is screened in and open for investigation that relates to that military parent or guardian.

(22) The department shall make available on its public web site a downloadable and printable poster that includes the reporting requirements included in this section. The poster must be no smaller than eight and one-half by eleven inches with all information on one side. The poster must be made available in both the English and Spanish languages. Organizations that include employees or volunteers subject to the reporting requirements of this section must clearly display this poster in a common area. At a minimum, this poster must include the following:

- (a) Who is required to report child abuse and neglect;
- (b) The standard of knowledge to justify a report;
- (c) The definition of reportable crimes;
- (d) Where to report suspected child abuse and neglect;

and

(e) What should be included in a report and the appropriate timing. [2017 3rd sp.s. c 20 § 24; 2017 c 118 § 1; 2016 c 166 § 4; 2015 1st sp.s. c 6 § 1. Prior: 2013 c 273 § 2; (2013 c 273 § 1 expired December 1, 2013); 2013 c 48 § 2; (2013 c 48 § 1 expired December 1, 2013); 2013 c 23 § 43; (2013 c 23 § 42 expired December 1, 2013); prior: 2012 c 259 § 3; 2012 c 55 § 1; 2009 c 480 § 1; 2008 c 211 § 5; (2008 c 211 § 4 expired October 1, 2008); prior: 2007 c 387 § 3; 2007 c 220 § 2; 2005 c 417 § 1; 2003 c 207 § 4; prior: 1999 c 267 § 20; 1999 c 176 § 30; 1998 c 328 § 5; 1997 c 386 § 25; 1996 c 278 § 2; 1995 c 311 § 17; prior: 1993 c 412 § 13; 1993 c 237 § 1; 1991 c 111 § 1; 1989 c 22 § 1; prior: 1988 c 142 § 2; 1988 c 39 § 1; prior: 1987 c 524 § 10; 1987 c 512 § 23; 1987 c 206 § 3; 1986 c 145 § 1; 1985 c 259 § 2; 1984 c 97 § 3; 1982 c 129 § 7; 1981 c 164 § 2; 1977 ex.s. c 80 § 26; 1975 1st ex.s. c 217 § 3; 1971 ex.s. c 167 § 1; 1969 ex.s. c 35 § 3; 1965 c 13 § 3.]

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

Report to legislature—2016 c 166: See note following RCW 74.15.020.

Effective date—2013 c 273 § 2: "Section 2 of this act takes effect December 1, 2013." [2013 c 273 § 4.]

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Effective date—2013 c 23 § 43: "Section 43 of this act takes effect December 1, 2013." [2013 c 23 § 639.]

Expiration date—2013 c 23 § 42: "Section 42 of this act expires December 1, 2013." [2013 c 23 § 638.]

Effective date—2012 c 259 §§ 1 and 3-10: See note following RCW 26.44.020.

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Effective date—Implementation—2007 c 220 §§ 1-3: See notes following RCW 26.44.020.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Finding—Intent—1996 c 278: "The legislature finds that including certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults, or people with developmental disabilities is an important step toward improving the protection of these vulnerable populations. The legislature intends, however, to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW 26.44.030(1)(a)." [1996 c 278 § 1.]

Legislative findings—1985 c 259: "The Washington state legislature finds and declares:

The children of the state of Washington are the state's greatest resource and the greatest source of wealth to the state of Washington. Children of all ages must be protected from child abuse. Governmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action, and child abusers must be held accountable to the people of the state for their actions.

The legislature recognizes the current heavy caseload of governmental authorities responsible for the prevention, treatment, and punishment of child abuse. The information obtained by child abuse reporting requirements, in addition to its use as a law enforcement tool, will be used to determine the need for additional funding to ensure that resources for appropriate governmental response to child abuse are available." [1985 c 259 § 1.]

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

Additional notes found at www.leg.wa.gov

26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Investigations—Interviews of children—Records—Risk assessment process. (Effective July 1, 2018.) (1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of children, youth, and families, licensed or certified child care providers or their employees, employee of the department of social and health services, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, state family and children's ombuds or any volunteer in the ombuds's office, or host home program has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) When any person, in his or her official supervisory capacity with a nonprofit or for-profit organization, has reasonable cause to believe that a child has suffered abuse or neglect caused by a person over whom he or she regularly exercises supervisory authority, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency, provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service. No one shall be required to report under this section when he or she obtains the infor-

mation solely as a result of a privileged communication as provided in RCW 5.60.060.

Nothing in this subsection (1)(b) shall limit a person's duty to report under (a) of this subsection.

For the purposes of this subsection, the following definitions apply:

(i) "Official supervisory capacity" means a position, status, or role created, recognized, or designated by any nonprofit or for-profit organization, either for financial gain or without financial gain, whose scope includes, but is not limited to, overseeing, directing, or managing another person who is employed by, contracted by, or volunteers with the nonprofit or for-profit organization.

(ii) "Organization" includes a sole proprietor, partnership, corporation, limited liability company, trust, association, financial institution, governmental entity, other than the federal government, and any other individual or group engaged in a trade, occupation, enterprise, governmental function, charitable function, or similar activity in this state whether or not the entity is operated as a nonprofit or for-profit entity.

(iii) "Reasonable cause" means a person witnesses or receives a credible written or oral report alleging abuse, including sexual contact, or neglect of a child.

(iv) "Regularly exercises supervisory authority" means to act in his or her official supervisory capacity on an ongoing or continuing basis with regards to a particular person.

(v) "Sexual contact" has the same meaning as in RCW 9A.44.010.

(c) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(d) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(e) The reporting requirement also applies to guardians ad litem, including court-appointed special advocates, appointed under Titles 11 and 13 RCW and this title, who in the course of their representation of children in these actions have reasonable cause to believe a child has been abused or neglected.

(f) The reporting requirement in (a) of this subsection also applies to administrative and academic or athletic department employees, including student employees, of insti-

tutions of higher education, as defined in RCW 28B.10.016, and of private institutions of higher education.

(g) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency, including military law enforcement, if appropriate. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services.

Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving a report of alleged abuse or neglect, the department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which:

(a) The department believes there is a serious threat of substantial harm to the child;

(b) The report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or

(c) The department has a prior founded report of abuse or neglect with regard to a member of the household that is within three years of receipt of the referral.

(11)(a) Upon receiving a report of alleged abuse or neglect, the department shall use one of the following discrete responses to reports of child abuse or neglect that are screened in and accepted for departmental response:

(i) Investigation; or

(ii) Family assessment.

(b) In making the response in (a) of this subsection the department shall:

(i) Use a method by which to assign cases to investigation or family assessment which are based on an array of factors that may include the presence of: Imminent danger, level of risk, number of previous child abuse or neglect reports, or other presenting case characteristics, such as the type of alleged maltreatment and the age of the alleged victim. Age of the alleged victim shall not be used as the sole criterion for determining case assignment;

(ii) Allow for a change in response assignment based on new information that alters risk or safety level;

(iii) Allow families assigned to family assessment to choose to receive an investigation rather than a family assessment;

(iv) Provide a full investigation if a family refuses the initial family assessment;

(v) Provide voluntary services to families based on the results of the initial family assessment. If a family refuses voluntary services, and the department cannot identify specific facts related to risk or safety that warrant assignment to investigation under this chapter, and there is not a history of reports of child abuse or neglect related to the family, then the department must close the family assessment response case. However, if at any time the department identifies risk or safety factors that warrant an investigation under this chapter, then the family assessment response case must be reassigned to investigation;

(vi) Conduct an investigation, and not a family assessment, in response to an allegation that, the department determines based on the intake assessment:

(A) Poses a risk of "imminent harm" consistent with the definition provided in RCW 13.34.050, which includes, but is not limited to, sexual abuse and sexual exploitation as defined in this chapter;

(B) Poses a serious threat of substantial harm to a child;

(C) Constitutes conduct involving a criminal offense that has, or is about to occur, in which the child is the victim;

(D) The child is an abandoned child as defined in RCW 13.34.030;

(E) The child is an adjudicated dependent child as defined in RCW 13.34.030, or the child is in a facility that is licensed, operated, or certified for care of children by the department under chapter 74.15 RCW.

(c) The department may not be held civilly liable for the decision to respond to an allegation of child abuse or neglect by using the family assessment response under this section unless the state or its officers, agents, or employees acted with reckless disregard.

(12)(a) For reports of alleged abuse or neglect that are accepted for investigation by the department, the investigation shall be conducted within time frames established by the department in rule. In no case shall the investigation extend longer than ninety days from the date the report is received, unless the investigation is being conducted under a written protocol pursuant to RCW 26.44.180 and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary. At the completion of the investigation, the department shall make a finding that the report of child abuse or neglect is founded or unfounded.

(b) If a court in a civil or criminal proceeding, considering the same facts or circumstances as are contained in the report being investigated by the department, makes a judicial finding by a preponderance of the evidence or higher that the subject of the pending investigation has abused or neglected the child, the department shall adopt the finding in its investigation.

(13) For reports of alleged abuse or neglect that are responded to through family assessment response, the department shall:

(a) Provide the family with a written explanation of the procedure for assessment of the child and the family and its purposes;

(b) Collaborate with the family to identify family strengths, resources, and service needs, and develop a service plan with the goal of reducing risk of harm to the child and improving or restoring family well-being;

(c) Complete the family assessment response within forty-five days of receiving the report; however, upon parental agreement, the family assessment response period may be extended up to ninety days;

(d) Offer services to the family in a manner that makes it clear that acceptance of the services is voluntary;

(e) Implement the family assessment response in a consistent and cooperative manner;

(f) Have the parent or guardian agree to participate in services before services are initiated. The department shall inform the parents of their rights under family assessment response, all of their options, and the options the department has if the parents do not agree to participate in services.

(14)(a) In conducting an investigation or family assessment of alleged abuse or neglect, the department or law enforcement agency:

(i) May interview children. If the department determines that the response to the allegation will be family assessment response, the preferred practice is to request a parent's, guardian's, or custodian's permission to interview the child before conducting the child interview unless doing so would compromise the safety of the child or the integrity of the assessment. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. If the allegation is investigated, parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation; and

(ii) Shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(b) The Washington state school directors' association shall adopt a model policy addressing protocols when an interview, as authorized by this subsection, is conducted on school premises. In formulating its policy, the association shall consult with the department and the Washington association of sheriffs and police chiefs.

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founded cases of abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

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(19) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

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(21) The department shall make efforts as soon as practicable to determine the military status of parents whose children are subject to abuse or neglect allegations. If the department determines that a parent or guardian is in the military, the department shall notify a department of defense family advocacy program that there is an allegation of abuse and neglect that is screened in and open for investigation that relates to that military parent or guardian.

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(e) What should be included in a report and the appropriate timing. [2017 3rd sp.s. c 20 § 24; 2017 3rd sp.s. c 6 § 322; 2017 c 118 § 1; 2016 c 166 § 4; 2015 1st sp.s. c 6 § 1. Prior: 2013 c 273 § 2; (2013 c 273 § 1 expired December 1, 2013); 2013 c 48 § 2; (2013 c 48 § 1 expired December 1, 2013); 2013 c 23 § 43; (2013 c 23 § 42 expired December 1, 2013); prior: 2012 c 259 § 3; 2012 c 55 § 1; 2009 c 480 § 1; 2008 c 211 § 5; (2008 c 211 § 4 expired October 1, 2008); prior: 2007 c 387 § 3; 2007 c 220 § 2; 2005 c 417 § 1; 2003 c 207 § 4; prior: 1999 c 267 § 20; 1999 c 176 § 30; 1998 c 328 § 5; 1997 c 386 § 25; 1996 c 278 § 2; 1995 c 311 § 17; prior: 1993 c 412 § 13; 1993 c 237 § 1; 1991 c 111 § 1; 1989 c 22 § 1; prior: 1988 c 142 § 2; 1988 c 39 § 1; prior: 1987 c 524 § 10; 1987 c 512 § 23; 1987 c 206 § 3; 1986 c 145 § 1; 1985 c 259 § 2; 1984 c 97 § 3; 1982 c 129 § 7; 1981 c 164 § 2; 1977 ex.s.

c 80 § 26; 1975 1st ex.s. c 217 § 3; 1971 ex.s. c 167 § 1; 1969 ex.s. c 35 § 3; 1965 c 13 § 3.]

Reviser's note: This section was amended by 2017 3rd sp.s. c 6 § 322 and by 2017 3rd sp.s. c 20 § 24, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Report to legislature—2016 c 166: See note following RCW 74.15.020.

Effective date—2013 c 273 § 2: "Section 2 of this act takes effect December 1, 2013." [2013 c 273 § 4.]

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Effective date—2012 c 259 §§ 1 and 3-10: See note following RCW 26.44.020.

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Effective date—Implementation—2007 c 220 §§ 1-3: See notes following RCW 26.44.020.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

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Finding—Intent—1996 c 278: "The legislature finds that including certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults, or people with developmental disabilities is an important step toward improving the protection of these vulnerable populations. The legislature intends, however, to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW 26.44.030(1)(a)." [1996 c 278 § 1.]

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The children of the state of Washington are the state's greatest resource and the greatest source of wealth to the state of Washington. Children of all ages must be protected from child abuse. Governmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action, and child abusers must be held accountable to the people of the state for their actions.

The legislature recognizes the current heavy caseload of governmental authorities responsible for the prevention, treatment, and punishment of child abuse. The information obtained by child abuse reporting requirements, in addition to its use as a law enforcement tool, will be used to deter-

mine the need for additional funding to ensure that resources for appropriate governmental response to child abuse are available." [1985 c 259 § 1.]

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

Additional notes found at www.leg.wa.gov

26.44.040 Reports—Oral, written—Contents. (Effective July 1, 2018.) An immediate oral report must be made by telephone or otherwise to the proper law enforcement agency or the department and, upon request, must be followed by a report in writing. Such reports must contain the following information, if known:

- (1) The name, address, and age of the child;
- (2) The name and address of the child's parents, stepparents, guardians, or other persons having custody of the child;
- (3) The nature and extent of the alleged injury or injuries;
- (4) The nature and extent of the alleged neglect;
- (5) The nature and extent of the alleged sexual abuse;
- (6) Any evidence of previous injuries, including their nature and extent; and
- (7) Any other information that may be helpful in establishing the cause of the child's death, injury, or injuries and the identity of the alleged perpetrator or perpetrators. [2017 3rd sp.s. c 6 § 323; 1999 c 176 § 32; 1997 c 386 § 27; 1993 c 412 § 14; 1987 c 206 § 4; 1984 c 97 § 4; 1977 ex.s. c 80 § 27; 1975 1st ex.s. c 217 § 4; 1971 ex.s. c 167 § 2; 1969 ex.s. c 35 § 4; 1965 c 13 § 4.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

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

Additional notes found at www.leg.wa.gov

26.44.050 Abuse or neglect of child—Duty of law enforcement agency or department of children, youth, and families—Taking child into custody without court order, when. (Effective July 1, 2018.) Except as provided in RCW 26.44.030(11), upon the receipt of a report concerning the possible occurrence of abuse or neglect, the law enforcement agency or the department must investigate and provide the protective services section with a report in accordance with chapter 74.13 RCW, and where necessary to refer such report to the court.

A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe that the child is abused or neglected and that the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050. The law enforcement agency or the department investigating such a report is hereby authorized to photograph such a child for the purpose of providing documentary evidence of the physical condition of the child. [2017 3rd sp.s. c 6 § 324; 2012 c 259 § 5; 1999 c 176 § 33. Prior: 1987 c 450 § 7; 1987 c 206 § 5; 1984 c 97 § 5; 1981 c 164 § 3; 1977 ex.s. c 291 § 51; 1977 ex.s. c 80 § 28; 1975 1st

ex.s. c 217 § 5; 1971 ex.s. c 302 § 15; 1969 ex.s. c 35 § 5; 1965 c 13 § 5.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—2012 c 259 §§ 1 and 3-10: See note following RCW 26.44.020.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

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

Additional notes found at www.leg.wa.gov

26.44.063 Temporary restraining order or preliminary injunction—Enforcement—Notice of modification or termination of restraining order. (Effective July 1, 2018.) (1) It is the intent of the legislature to minimize trauma to a child involved in an allegation of sexual or physical abuse. The legislature declares that removing the child from the home or the care of a parent, guardian, or legal custodian often has the effect of further traumatizing the child. It is, therefore, the legislature's intent that the alleged abuser, rather than the child, shall be removed or restrained from the child's residence and that this should be done at the earliest possible point of intervention in accordance with RCW 10.31.100, chapter 13.34 RCW, this section, and RCW 26.44.130.

(2) In any judicial proceeding in which it is alleged that a child has been subjected to sexual or physical abuse, if the court finds reasonable grounds to believe that an incident of sexual or physical abuse has occurred, the court may, on its own motion, or the motion of the guardian ad litem or other parties, issue a temporary restraining order or preliminary injunction restraining or enjoining the person accused of committing the abuse from:

- (a) Molesting or disturbing the peace of the alleged victim;
- (b) Entering the family home of the alleged victim except as specifically authorized by the court;
- (c) Having any contact with the alleged victim, except as specifically authorized by the court;
- (d) Knowingly coming within, or knowingly remaining within, a specified distance of a specified location.

(3) If the caretaker is willing, and does comply with the duties prescribed in subsection (8) of this section, uncertainty by the caretaker that the alleged abuser has in fact abused the alleged victim shall not, alone, be a basis to remove the alleged victim from the caretaker, nor shall it be considered neglect.

(4) In issuing a temporary restraining order or preliminary injunction, the court may impose any additional restrictions that the court in its discretion determines are necessary to protect the child from further abuse or emotional trauma pending final resolution of the abuse allegations.

(5) The court shall issue a temporary restraining order prohibiting a person from entering the family home if the court finds that the order would eliminate the need for an out-of-home placement to protect the child's right to nurturance, health, and safety and is sufficient to protect the child from further sexual or physical abuse or coercion.

(6) The court may issue a temporary restraining order without requiring notice to the party to be restrained or other parties only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.

(7) A temporary restraining order or preliminary injunction:

(a) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding; and

(b) May be revoked or modified.

(8) The person having physical custody of the child shall have an affirmative duty to assist in the enforcement of the restraining order including but not limited to a duty to notify the court as soon as practicable of any violation of the order, a duty to request the assistance of law enforcement officers to enforce the order, and a duty to notify the department of any violation of the order as soon as practicable if the department is a party to the action. Failure by the custodial party to discharge these affirmative duties shall be subject to contempt proceedings.

(9) Willful violation of a court order entered under this section is a misdemeanor. A written order shall contain the court's directive and shall bear the legend: "Violation of this order with actual notice of its terms is a criminal offense under chapter 26.44 RCW, is also subject to contempt proceedings, and will subject a violator to arrest."

(10) If a restraining order issued under this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system. [2017 3rd sp.s. c 6 § 325; 2008 c 267 § 4; 2000 c 119 § 12; 1993 c 412 § 15; 1988 c 190 § 3; 1985 c 35 § 1.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Ex parte temporary order for protection: RCW 26.50.070.

Orders for protection in cases of domestic violence: RCW 26.50.030.

Orders prohibiting contact: RCW 10.99.040.

Temporary restraining order: RCW 26.09.060.

Additional notes found at www.leg.wa.gov

26.44.100 Information about rights—Legislative purpose—Notification of investigation, report, and findings. (1) The legislature finds parents and children often are not aware of their due process rights when agencies are investigating allegations of child abuse and neglect. The legislature reaffirms that all citizens, including parents, shall be afforded due process, that protection of children remains the priority of the legislature, and that this protection includes protecting the family unit from unnecessary disruption. To facilitate this goal, the legislature wishes to ensure that parents and children be advised in writing and orally, if feasible, of their basic rights and other specific information as set forth in this chapter, provided that nothing contained in this chapter shall cause any delay in protective custody action.

(1) The legislature finds parents and children often are not aware of their due process rights when agencies are investigating allegations of child abuse and neglect. The legislature reaffirms that all citizens, including parents, shall be afforded due process, that protection of children remains the priority of the legislature, and that this protection includes protecting the family unit from unnecessary disruption. To facilitate this goal, the legislature wishes to ensure that parents and children be advised in writing and orally, if feasible, of their basic rights and other specific information as set forth in this chapter, provided that nothing contained in this chapter shall cause any delay in protective custody action.

(2) The department shall notify the parent, guardian, or legal custodian of a child of any allegations of child abuse or neglect made against such person at the initial point of contact with such person, in a manner consistent with the laws maintaining the confidentiality of the persons making the complaints or allegations. Investigations of child abuse and neglect should be conducted in a manner that will not jeopardize the safety or protection of the child or the integrity of the investigation process.

Whenever the department completes an investigation of a child abuse or neglect report under this chapter, the department shall notify the subject of the report of the department's investigative findings. The notice shall also advise the subject of the report that:

(a) A written response to the report may be provided to the department and that such response will be filed in the record following receipt by the department;

(b) Information in the department's record may be considered in subsequent investigations or proceedings related to child protection or child custody;

(c) Founded reports of child abuse and neglect may be considered in determining whether the person is disqualified from being licensed to provide child care, employed by a licensed child care agency, or authorized by the department to care for children; and

(d) A subject named in a founded report of child abuse or neglect has the right to seek review of the finding as provided in this chapter.

(3) The founded finding notification required by this section shall be made by certified mail, return receipt requested, to the person's last known address.

(4) The unfounded finding notification required by this section must be made by regular mail to the person's last known address or by email.

(5) The duty of notification created by this section is subject to the ability of the department to ascertain the location of the person to be notified. The department shall exercise reasonable, good-faith efforts to ascertain the location of persons entitled to notification under this section.

(6) The department shall provide training to all department personnel who conduct investigations under this section that shall include, but is not limited to, training regarding the legal duties of the department from the initial time of contact during investigation through treatment in order to protect children and families. [2017 c 269 § 2; 2005 c 512 § 1; 1998 c 314 § 8; 1997 c 282 § 2; 1993 c 412 § 17; 1985 c 183 § 1.]

Finding—Intent—2005 c 512: "The legislature finds that whenever possible, children should remain in the home of their parents. It is only when the safety of the child is in jeopardy that the child should be removed from the home.

It is the intent of the legislature that the department of social and health services be permitted to intervene in cases of chronic neglect where the health, welfare, or safety of the child is at risk. One incident of neglect may not rise to the level requiring state intervention; however, a pattern of neglect has been shown to cause damage to the health and well-being of the child subject to the neglect.

It is the intent of the legislature that, when chronic neglect has been found to exist in a family, the legal system reinforce the need for the parent's early engagement in services that will decrease the likelihood of future neglect. However, if the parents fail to comply with the offered necessary and available services, the state has the authority to intervene to protect the children who are at risk. If a parent fails to engage in available substance abuse or mental health services necessary to maintain the safety of a child or a parent fails to correct substance abuse deficiencies that jeopardize the

safety of a child, the state has the authority to intervene to protect a child." [2005 c 512 § 2.]

Additional notes found at www.leg.wa.gov

26.44.105 Information about rights—Oral and written information—Copies of dependency petition and any court order. (Effective July 1, 2018.) Whenever a dependency petition is filed by the department, it shall advise the parents, and any child over the age of twelve who is subject to the dependency action, of their respective rights under RCW 13.34.090. The parents and the child shall be provided a copy of the dependency petition and a copy of any court orders which have been issued. This advice of rights under RCW 13.34.090 shall be in writing. The department case-worker shall also make reasonable efforts to advise the parent and child of these same rights orally. [2017 3rd sp.s. c 6 § 326; 1985 c 183 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

26.44.140 Treatment for abusive person removed from home. (Effective July 1, 2018.) The court shall require that an individual who, while acting in a parental role, has physically or sexually abused a child and has been removed from the home pursuant to a court order issued in a proceeding under chapter 13.34 RCW, prior to being permitted to reside in the home where the child resides, complete the treatment and education requirements necessary to protect the child from future abuse. The court may require the individual to continue treatment as a condition for remaining in the home where the child resides. Unless a parent, custodian, or guardian has been convicted of the crime for the acts of abuse determined in a fact-finding hearing under chapter 13.34 RCW, such person shall not be required to admit guilt in order to begin to fulfill any necessary treatment and education requirements under this section.

The department or supervising agency shall be responsible for advising the court as to appropriate treatment and education requirements, providing referrals to the individual, monitoring and assessing the individual's progress, informing the court of such progress, and providing recommendations to the court.

The person removed from the home shall pay for these services unless the person is otherwise eligible to receive financial assistance in paying for such services. Nothing in this section shall be construed to create in any person an entitlement to services or financial assistance in paying for services. [2017 3rd sp.s. c 6 § 327; 1997 c 344 § 1; 1991 c 301 § 15; 1990 c 3 § 1301.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Finding—1991 c 301: See note following RCW 10.99.020.

Additional notes found at www.leg.wa.gov

Chapter 26.50 RCW DOMESTIC VIOLENCE PREVENTION

Sections

26.50.110	Violation of order—Penalties.
26.50.150	Domestic violence perpetrator programs. (<i>Effective July 1, 2018.</i>)
26.50.160	Judicial information system—Database. (<i>Effective July 1, 2018.</i>)
26.50.800	Repealed.

26.50.110 Violation of order—Penalties. (1)(a) Whenever an order is granted under this chapter, chapter 7.92, 7.90, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, any temporary order for protection granted under chapter 7.40 RCW pursuant to chapter 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:

(i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;

(ii) A provision excluding the person from a residence, workplace, school, or day care;

(iii) A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location;

(iv) A provision prohibiting interfering with the protected party's efforts to remove a pet owned, possessed, leased, kept, or held by the petitioner, respondent, or a minor child residing with either the petitioner or the respondent; or

(v) A provision of a foreign protection order specifically indicating that a violation will be a crime.

(b) Upon conviction, and in addition to any other penalties provided by law, the court:

(i) May require that the respondent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services, and the terms under which the monitoring shall be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(ii) Shall impose a fine of fifteen dollars, in addition to any penalty or fine imposed, for a violation of a domestic violence protection order issued under this chapter. Revenue from the fifteen dollar fine must be remitted monthly to the state treasury for deposit in the domestic violence prevention account.

(2) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter, chapter 7.92, 7.90, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, any temporary order for protection granted under chapter 7.40 RCW pursuant to chapter 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, if the person restrained knows of the order. Presence of the order in the law enforcement computer-based

criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) A violation of an order issued under this chapter, chapter 7.92, 7.90, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, shall also constitute contempt of court, and is subject to the penalties prescribed by law.

(4) Any assault that is a violation of an order issued under this chapter, chapter 7.92, 7.90, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of such an order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) A violation of a court order issued under this chapter, chapter 7.92, 7.90, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.90, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020. The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

(6) Upon the filing of an affidavit by the petitioner or any peace officer alleging that the respondent has violated an order granted under this chapter, chapter 7.92, 7.90, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, the court may issue an order to the respondent, requiring the respondent to appear and show cause within fourteen days why the respondent should not be found in contempt of court and punished accordingly. The hearing may be held in the court of any county or municipality in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation. [2017 c 230 § 9. Prior: 2015 c 275 § 15; 2015 c 248 § 1; 2013 c 84 § 31; prior: 2009 c 439 § 3; 2009 c 288 § 3; 2007 c 173 § 2; 2006 c 138 § 25; 2000 c 119 § 24; 1996 c 248 § 16; 1995 c 246 § 14; 1992 c 86 § 5; 1991 c 301 § 6; 1984 c 263 § 12.]

Finding—Intent—2009 c 439: See note following RCW 26.50.060.

Findings—2009 c 288: See note following RCW 9.94A.637.

Finding—Intent—2007 c 173: "The legislature finds this act necessary to restore and make clear its intent that a willful violation of a no-contact provision of a court order is a criminal offense and shall be enforced accordingly to preserve the integrity and intent of the domestic violence act. This act is not intended to broaden the scope of law enforcement power or effectuate any substantive change to any criminal provision in the Revised Code of Washington." [2007 c 173 § 1.]

Finding—1991 c 301: See note following RCW 10.99.020.

Violation of order protecting vulnerable adult: RCW 74.34.145.

Additional notes found at www.leg.wa.gov

26.50.150 Domestic violence perpetrator programs. (Effective July 1, 2018.) Any program that provides domestic violence treatment to perpetrators of domestic violence must be certified by the department of children, youth, and families and meet minimum standards for domestic violence

treatment purposes. The department of children, youth, and families shall adopt rules for standards of approval of domestic violence perpetrator programs. The treatment must meet the following minimum qualifications:

(1) All treatment must be based upon a full, complete clinical intake including but not limited to: Current and past violence history; a lethality risk assessment; history of treatment from past domestic violence perpetrator treatment programs; a complete diagnostic evaluation; a substance abuse assessment; criminal history; assessment of cultural issues, learning disabilities, literacy, and special language needs; and a treatment plan that adequately and appropriately addresses the treatment needs of the individual.

(2) To facilitate communication necessary for periodic safety checks and case monitoring, the program must require the perpetrator to sign the following releases:

(a) A release for the program to inform the victim and victim's community and legal advocates that the perpetrator is in treatment with the program, and to provide information, for safety purposes, to the victim and victim's community and legal advocates;

(b) A release to prior and current treatment agencies to provide information on the perpetrator to the program; and

(c) A release for the program to provide information on the perpetrator to relevant legal entities including: Lawyers, courts, parole, probation, child protective services, and child welfare services.

(3) Treatment must be for a minimum treatment period defined by the secretary of the department of children, youth, and families by rule. The weekly treatment sessions must be in a group unless there is a documented, clinical reason for another modality. Any other therapies, such as individual, marital, or family therapy, substance abuse evaluations or therapy, medication reviews, or psychiatric interviews, may be concomitant with the weekly group treatment sessions described in this section but not a substitute for it.

(4) The treatment must focus primarily on ending the violence, holding the perpetrator accountable for his or her violence, and changing his or her behavior. The treatment must be based on nonvictim-blaming strategies and philosophies and shall include education about the individual, family, and cultural dynamics of domestic violence. If the perpetrator or the victim has a minor child, treatment must specifically include education regarding the effects of domestic violence on children, such as the emotional impacts of domestic violence on children and the long-term consequences that exposure to incidents of domestic violence may have on children.

(5) Satisfactory completion of treatment must be contingent upon the perpetrator meeting specific criteria, defined by rule by the secretary of the department of children, youth, and families, and not just upon the end of a certain period of time or a certain number of sessions.

(6) The program must have policies and procedures for dealing with reoffenses and noncompliance.

(7) All evaluation and treatment services must be provided by, or under the supervision of, qualified personnel.

(8) The secretary of the department of children, youth, and families may adopt rules and establish fees as necessary to implement this section.

(9) The department of children, youth, and families may conduct on-site monitoring visits as part of its plan for certifying domestic violence perpetrator programs and monitoring implementation of the rules adopted by the secretary of the department of children, youth, and families to determine compliance with the minimum qualifications for domestic violence perpetrator programs. The applicant or certified domestic violence perpetrator program shall cooperate fully with the department of children, youth, and families in the monitoring visit and provide all program and management records requested by the department of children, youth, and families to determine the program's compliance with the minimum certification qualifications and rules adopted by the department of children, youth, and families. [2017 3rd sp.s. c 6 § 334; 2010 c 274 § 501; 1999 c 147 § 1; 1991 c 301 § 7.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Intent—2010 c 274: See note following RCW 10.31.100.

Finding—1991 c 301: See note following RCW 10.99.020.

26.50.160 Judicial information system—Database. (Effective July 1, 2018.) To prevent the issuance of competing protection orders in different courts and to give courts needed information for issuance of orders, the judicial information system shall be available in each district, municipal, and superior court by July 1, 1997, and shall include a database containing the following information:

(1) The names of the parties and the cause number for every order of protection issued under this title, every sexual assault protection order issued under chapter 7.90 RCW, every criminal no-contact order issued under chapters 9A.46 and 10.99 RCW, every antiharassment order issued under chapter 10.14 RCW, every dissolution action under chapter 26.09 RCW, every third-party custody action under chapter 26.10 RCW, every parentage action under chapter 26.26 RCW, every restraining order issued on behalf of an abused child or adult dependent person under chapter 26.44 RCW, every foreign protection order filed under chapter 26.52 RCW, and every order for protection of a vulnerable adult under chapter 74.34 RCW. When a guardian or the department of social and health services or department of children, youth, and families has petitioned for relief on behalf of an abused child, adult dependent person, or vulnerable adult, the name of the person on whose behalf relief was sought shall be included in the database as a party rather than the guardian or appropriate department;

(2) A criminal history of the parties; and

(3) Other relevant information necessary to assist courts in issuing orders under this chapter as determined by the judicial information system committee. [2017 3rd sp.s. c 6 § 335; 2006 c 138 § 26. Prior: 2000 c 119 § 25; 2000 c 51 § 1; 1995 c 246 § 18.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

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

Title 27

LIBRARIES, MUSEUMS, AND HISTORICAL ACTIVITIES

Chapters

- 27.12** Public libraries.
27.34 State historical societies—Historic preservation.

Chapter 27.12 RCW PUBLIC LIBRARIES

Sections

- 27.12.190 Library trustees—Appointment, election, removal, compensation.
 27.12.192 Library trustees—Seven member rural county library district boards.

27.12.190 Library trustees—Appointment, election, removal, compensation. The management and control of a library shall be vested in a board of either five or seven trustees as hereinafter in this section provided. In cities and towns five trustees shall be appointed by the mayor with the consent of the legislative body. In counties, rural county library districts, and island library districts, except as provided in RCW 27.12.192, five trustees shall be appointed by the board of county commissioners. In a regional library district a board of either five or seven trustees shall be appointed by the joint action of the legislative bodies concerned. In intercounty rural library districts a board of either five or seven trustees shall be appointed by the joint action of the boards of county commissioners of each of the counties included in a district. The first appointments for boards comprised of but five trustees shall be for terms of one, two, three, four, and five years respectively, and thereafter a trustee shall be appointed annually to serve for five years. The first appointments for boards comprised of seven trustees shall be for terms of one, two, three, four, five, six, and seven years respectively, and thereafter a trustee shall be appointed annually to serve for seven years. No person shall be appointed to any board of trustees for more than two consecutive terms. Vacancies shall be filled for unexpired terms as soon as possible in the manner in which members of the board are regularly chosen.

A library trustee shall not receive a salary or other compensation for services as trustee, but necessary expenses actually incurred shall be paid from the library funds.

A library trustee in the case of a city or town may be removed only by vote of the legislative body. A trustee of a county library, a rural county library district library, or an island library district library may be removed for just cause by the county commissioners after a public hearing upon a written complaint stating the ground for removal, which complaint, with a notice of the time and place of hearing, shall have been served upon the trustee at least fifteen days before the hearing. A trustee of an intercounty rural library district may be removed by the joint action of the board of county commissioners of the counties involved in the same manner as provided herein for the removal of a trustee of a county library. [2017 c 134 § 1; 1982 c 123 § 8; 1981 c 26 § 2; 1965

c 122 § 3; 1959 c 133 § 2; 1947 c 75 § 12; 1941 c 65 § 7; 1939 c 108 § 1; 1935 c 119 § 8; Rem. Supp. 1947 § 8226-8. Prior: 1915 c 12 § 2; 1909 c 116 § 4; 1901 c 166 § 4. Formerly RCW 27.12.190 and 27.12.200.]

27.12.192 Library trustees—Seven member rural county library district boards. In any county with an adopted home rule charter and one million or more residents, the board of trustees of a rural county library district will be made up of seven members who are appointed by the county executive and confirmed by the county legislative authority. Members shall be residents of either those cities or towns that, through annexation, have become part of the rural county library district or unincorporated areas of the county, and that represent the geographic diversity of the library district. The composition of an initial seven-member rural county library district board of trustees will comprise the existing five trustees, who will serve out their existing terms, and two new trustees, whose positions shall have initial terms of one and two years respectively. Thereafter a trustee shall be appointed to serve for five years to fill each expired term. No person may be appointed to any board of trustees for more than two consecutive terms. [2017 c 134 § 2.]

Chapter 27.34 RCW

STATE HISTORICAL SOCIETIES—HISTORIC PRESERVATION

Sections

- 27.34.395 Vancouver national historic reserve—Designated partner representative—Duties of Washington state historical society.
27.34.900 Historic Lord mansion.

27.34.395 Vancouver national historic reserve—Designated partner representative—Duties of Washington state historical society. The legislature affirms that the Washington state historical society is the state's designated partner representative for the Vancouver national historic reserve. Accordingly, the Washington state historical society shall:

- (1) Participate in the regularly scheduled coordination meetings of the Vancouver national historic reserve partners;
- (2) Participate in the development of management, education, and interpretive plans and policies associated with the Vancouver national historic reserve; and
- (3) Develop and submit to the office of financial management and the legislature operating and capital budget requests concurrent with the biennial cycle and oversee the management of all funds appropriated by the state for the Vancouver national historic reserve. [2017 c 117 § 1; 2007 c 138 § 3.]

Finding—Purpose—2007 c 138: See note following RCW 27.34.390.

27.34.900 Historic Lord mansion. The building and grounds designated as Block 2, Grainger's Addition to the City of Olympia, County of Thurston, acquired by the state under senate joint resolution No. 18, session of 1939, is hereby designated a part of the state capitol, to be known as the historic Lord mansion. [2017 c 117 § 2; 1993 c 101 § 13; 1981 c 253 § 3; 1941 c 44 § 3; Rem. Supp. 1941 § 8265-6. Formerly RCW 27.36.020.]

Findings—1993 c 101: See note following RCW 27.34.010.

Title 28A

COMMON SCHOOL PROVISIONS

Chapters

- 28A.150 General provisions.**
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Chapter 28A.150 RCW

GENERAL PROVISIONS

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28A.150.1981 Intent—2009 c 548. It is the intent of the legislature that specified policies and allocation formulas adopted under this chapter will constitute the legislature's definition of basic education under Article IX of the state Constitution once fully implemented. The legislature intends, however, to continue to review and revise the formulas and schedules and may make additional revisions, including revisions for technical purposes and consistency in the event of mathematical or other technical errors. [2017 3rd sp.s. c 13 § 413; 2009 c 548 § 2.]

Effective date—2017 3rd sp.s. c 13 §§ 401-413: See note following RCW 28A.150.200.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

28A.150.200 Program of basic education. (1) The program of basic education established under this chapter is deemed by the legislature to comply with the requirements of Article IX, section 1 of the state Constitution, which states that "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex," and is adopted pursuant to Article IX, section 2 of the state Constitution, which states that "The legislature shall provide for a general and uniform system of public schools."

(2) The legislature defines the program of basic education under this chapter as that which is necessary to provide the opportunity to develop the knowledge and skills necessary to meet the state-established high school graduation requirements that are intended to allow students to have the opportunity to graduate with a meaningful diploma that prepares them for postsecondary education, gainful employment, and citizenship. Basic education by necessity is an evolving program of instruction intended to reflect the changing educational opportunities that are needed to equip students for their role as productive citizens and includes the following:

(a) The instructional program of basic education the minimum components of which are described in RCW 28A.150.220;

(b) The program of education provided by chapter 28A.190 RCW for students in residential schools as defined by RCW 28A.190.020 and for juveniles in detention facilities as identified by RCW 28A.190.010;

(c) The program of education provided by chapter 28A.193 RCW for individuals under the age of eighteen who are incarcerated in adult correctional facilities;

(d) Transportation and transportation services to and from school for eligible students as provided under RCW 28A.160.150 through 28A.160.180; and

(e) Statewide salary allocations necessary to hire and retain qualified staff for the state's statutory program of basic education. [2017 3rd sp.s. c 13 § 401; 2009 c 548 § 101; 1990 c 33 § 104; 1977 ex.s. c 359 § 1. Formerly RCW 28A.58.750.]

Effective date—2017 3rd sp.s. c 13 §§ 401-413: "Sections 401 through 413 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect September 1, 2017." [2017 3rd sp.s. c 13 § 414.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2009 c 548 §§ 101-110 and 701-710: "Sections 101 through 110 and 701 through 710 of this act take effect September 1, 2011." [2009 c 548 § 804.]

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Additional notes found at www.leg.wa.gov

28A.150.203 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Basic education goal" means the student learning goals and the student knowledge and skills described under RCW 28A.150.210.

(2) "Certificated administrative staff" means all those persons who are chief executive officers, chief administrative officers, confidential employees, supervisors, principals, or assistant principals within the meaning of RCW 41.59.020(4).

(3) "Certificated employee" as used in this chapter and RCW 28A.195.010, 28A.405.100, 28A.405.210, 28A.405.240, 28A.405.250, 28A.405.300 through 28A.405.380, and chapter 41.59 RCW, means those persons who hold certificates as authorized by rule of the Washington professional educator standards board.

(4) "Certificated instructional staff" means those persons employed by a school district who are nonsupervisory certificated employees within the meaning of RCW 41.59.020(8), except for paraeducators.

(5) "Class size" means an instructional grouping of students where, on average, the ratio of students to teacher is the number specified.

(6) "Classified employee" means a person who is employed as a paraeducator and a person who does not hold a professional education certificate or is employed in a position that does not require such a certificate.

(7) "Classroom teacher" means a person who holds a professional education certificate and is employed in a position for which such certificate is required whose primary duty is the daily educational instruction of students. In exceptional cases, people of unusual competence but without certification may teach students so long as a certificated person exercises general supervision, but the hiring of such classified employees shall not occur during a labor dispute, and such classified employees shall not be hired to replace certificated employees during a labor dispute.

(8) "Instructional program of basic education" means the minimum program required to be provided by school districts and includes instructional hour requirements and other components under RCW 28A.150.220.

(9) "Program of basic education" means the overall program under RCW 28A.150.200 and deemed by the legislature to comply with the requirements of Article IX, section 1 of the state Constitution.

(10) "School day" means each day of the school year on which pupils enrolled in the common schools of a school district are engaged in academic and career and technical instruction planned by and under the direction of the school.

(11) "School year" includes the minimum number of school days required under RCW 28A.150.220 and begins on the first day of September and ends with the last day of August, except that any school district may elect to commence the annual school term in the month of August of any calendar year and in such case the operation of a school district for such period in August shall be credited by the superintendent of public instruction to the succeeding school year for the purpose of the allocation and distribution of state funds for the support of such school district.

(12) "Teacher planning period" means a period of a school day as determined by the administration and board of directors of the district that may be used by teachers for instruction-related activities including but not limited to preparing instructional materials; reviewing student performance; recording student data; consulting with other teachers, instructional assistants, mentors, instructional coaches, administrators, and parents; or participating in professional development. [2017 c 237 § 15; 2009 c 548 § 102.]

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

28A.150.220 Basic education—Minimum instructional requirements—Program accessibility—Rules. (1)

In order for students to have the opportunity to develop the basic education knowledge and skills under RCW 28A.150.210, school districts must provide instruction of sufficient quantity and quality and give students the opportunity to complete graduation requirements that are intended to prepare them for postsecondary education, gainful employment, and citizenship. The program established under this section shall be the minimum instructional program of basic education offered by school districts.

(2) Each school district shall make available to students the following minimum instructional offering each school year:

(a) For students enrolled in grades one through twelve, at least a district-wide annual average of one thousand hours, which shall be increased beginning in the 2015-16 school year to at least one thousand eighty instructional hours for students enrolled in grades nine through twelve and at least one thousand instructional hours for students in grades one through eight, all of which may be calculated by a school district using a district-wide annual average of instructional hours over grades one through twelve; and

(b) For students enrolled in kindergarten, at least four hundred fifty instructional hours, which shall be increased to at least one thousand instructional hours according to the implementation schedule under RCW 28A.150.315.

(3) The instructional program of basic education provided by each school district shall include:

(a) Instruction in the essential academic learning requirements under RCW 28A.655.070;

(b) Instruction that provides students the opportunity to complete twenty-four credits for high school graduation, beginning with the graduating class of 2019 or as otherwise provided in RCW 28A.230.090. Course distribution requirements may be established by the state board of education under RCW 28A.230.090;

(c) If the essential academic learning requirements include a requirement of languages other than English, the requirement may be met by students receiving instruction in one or more American Indian languages;

(d) Supplemental instruction and services for students who are not meeting academic standards through the learning assistance program under RCW 28A.165.005 through 28A.165.065;

(e) Supplemental instruction and services for eligible and enrolled students and exited students whose primary language is other than English through the transitional bilingual instruction program under RCW 28A.180.010 through 28A.180.080;

(f) The opportunity for an appropriate education at public expense as defined by RCW 28A.155.020 for all eligible students with disabilities as defined in RCW 28A.155.020; and

(g) Programs for highly capable students under RCW 28A.185.010 through 28A.185.030.

(4) Nothing contained in this section shall be construed to require individual students to attend school for any particular number of hours per day or to take any particular courses.

(5)(a) Each school district's kindergarten through twelfth grade basic educational program shall be accessible to all students who are five years of age, as provided by RCW 28A.225.160, and less than twenty-one years of age and shall consist of a minimum of one hundred eighty school days per school year in such grades as are conducted by a school district, and one hundred eighty half-days of instruction, or equivalent, in kindergarten, to be increased to a minimum of one hundred eighty school days per school year according to the implementation schedule under RCW 28A.150.315.

(b) Schools administering the Washington kindergarten inventory of developing skills may use up to three school days at the beginning of the school year to meet with parents and families as required in the parent involvement component of the inventory.

(c) In the case of students who are graduating from high school, a school district may schedule the last five school days of the one hundred eighty day school year for noninstructional purposes including, but not limited to, the observance of graduation and early release from school upon the request of a student. All such students may be claimed as a full-time equivalent student to the extent they could otherwise have been so claimed for the purposes of RCW 28A.150.250 and 28A.150.260. Any hours scheduled by a school district for noninstructional purposes during the last five school days for such students shall count toward the instructional hours requirement in subsection (2)(a) of this section.

(6) Subject to RCW 28A.150.276, nothing in this section precludes a school district from enriching the instructional program of basic education, such as offering additional instruction or providing additional services, programs, or activities that the school district determines to be appropriate for the education of the school district's students.

(7) The state board of education shall adopt rules to implement and ensure compliance with the program requirements imposed by this section, RCW 28A.150.250 and 28A.150.260, and such related supplemental program approval requirements as the state board may establish. [2017 3rd sp.s. c 13 § 506; 2014 c 217 § 201; 2013 2nd sp.s. c 9 § 2; 2013 c 323 § 2; 2011 1st sp.s. c 27 § 1; 2009 c 548 § 104; 1993 c 371 § 2; (1995 c 77 § 1 and 1993 c 371 § 1 expired September 1, 2000); 1992 c 141 § 503; 1990 c 33 § 105; 1982 c 158 § 1; 1979 ex.s. c 250 § 1; 1977 ex.s. c 359 § 3. Formerly RCW 28A.58.754.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Finding—Intent—2014 c 217: "The legislature recognizes that preparing students to be successful in postsecondary education, gainful employment, and citizenship requires increased rigor and achievement, including attaining a meaningful high school diploma with the opportunity to earn twenty-four credits. The legislature finds that an investment was made in the 2013-2015 omnibus appropriations act to implement an increase in instructional hours in the 2014-15 school year. School districts informed the legislature that the funding as provided in the 2013-2015 omnibus appropriations act would result in only a few minutes being added onto each class period and would not result in a meaningful increase in instruction that would have the positive impact on student learning that the legislature expects. The school districts suggested that it would be a better educational policy to use the funds to implement the requirement of twenty-four credits for high school graduation, which will result in a meaningful increase of instructional hours. Based on input from school districts across the state, the legislature recognizes the need to provide flexibility for school districts to implement the increase in instructional hours while still moving towards an increase in the high school graduation requirements. Therefore, the legislature intends to shift the focus and intent of the investments from compliance with the minimum instructional hours offering to assisting school districts to provide an opportunity for students to earn twenty-four credits for high school graduation and obtain a meaningful diploma, beginning with the graduating class of 2019, with the opportunity for school districts to request a waiver for up to two years." [2014 c 217 § 1.]

Intent—2013 2nd sp.s. c 9: "The legislature intends to fund a plan to carry out the reforms enacted in chapter 548, Laws of 2009, and chapter 236, Laws of 2010, and to make the statutory changes necessary to support this plan." [2013 2nd sp.s. c 9 § 1.]

Effective dates—2013 2nd sp.s. c 9: "(1) Sections 2 through 4 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect September 1, 2013.

(2) Section 7 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2013.

(3) Sections 5, 6, and 8 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [June 30, 2013]." [2013 2nd sp.s. c 9 § 9.]

Effective date—2011 1st sp.s. c 27 §§ 1-3: "Sections 1 through 3 of this act take effect September 1, 2011." [2011 1st sp.s. c 27 § 8.]

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Additional notes found at www.leg.wa.gov

28A.150.260 Allocation of state funding to support instructional program of basic education—Distribution formula—Per-pupil allocations reporting by the superintendent of public instruction and in legislative budget documents—Prototypical schools—Enhancements and adjustments—Review and approval—Enrollment calculation. The purpose of this section is to provide for the allocation of state funding that the legislature deems necessary to support school districts in offering the minimum instructional program of basic education under RCW 28A.150.220. The allocation shall be determined as follows:

(1) The governor shall and the superintendent of public instruction may recommend to the legislature a formula for the distribution of a basic education instructional allocation for each common school district.

(2)(a) The distribution formula under this section shall be for allocation purposes only. Except as may be required under subsections (4)(b) and (c) and (9) of this section, chapter 28A.155, 28A.165, 28A.180, or 28A.185 RCW, or federal laws and regulations, nothing in this section requires school districts to use basic education instructional funds to implement a particular instructional approach or service. Nothing in this section requires school districts to maintain a particular classroom teacher-to-student ratio or other staff-to-student ratio or to use allocated funds to pay for particular types or classifications of staff. Nothing in this section entitles an individual teacher to a particular teacher planning period.

(b) To promote transparency in state funding allocations, the superintendent of public instruction must report state per-pupil allocations for each school district for the general apportionment, special education, learning assistance, transitional bilingual, highly capable, and career and technical education programs. The superintendent must also report state general apportionment per-pupil allocations by grade for each school district. The superintendent must report this information in a user-friendly format on the main page of the office's web site and on school district apportionment reports. School districts must include a link to the superintendent's per-pupil allocations report on the main page of the school district's web site. In addition, the budget documents published by the legislature for the enacted omnibus operating appropriations act must report statewide average per-pupil allocations for general apportionment and the categorical programs listed in this subsection.

(3)(a) To the extent the technical details of the formula have been adopted by the legislature and except when specifically provided as a school district allocation, the distribution formula for the basic education instructional allocation shall be based on minimum staffing and nonstaff costs the legislature deems necessary to support instruction and operations in prototypical schools serving high, middle, and elementary school students as provided in this section. The use of prototypical schools for the distribution formula does not constitute legislative intent that schools should be operated or structured in a similar fashion as the prototypes. Prototypical schools illustrate the level of resources needed to operate a school of a particular size with particular types and grade levels of students using commonly understood terms and inputs, such as class size, hours of instruction, and various categories of school staff. It is the intent that the funding allocations to school districts be adjusted from the school prototypes based

on the actual number of annual average full-time equivalent students in each grade level at each school in the district and not based on the grade-level configuration of the school to the extent that data is available. The allocations shall be further adjusted from the school prototypes with minimum allocations for small schools and to reflect other factors identified in the omnibus appropriations act.

(b) For the purposes of this section, prototypical schools are defined as follows:

(i) A prototypical high school has six hundred average annual full-time equivalent students in grades nine through twelve;

(ii) A prototypical middle school has four hundred thirty-two average annual full-time equivalent students in grades seven and eight; and

(iii) A prototypical elementary school has four hundred average annual full-time equivalent students in grades kindergarten through six.

(4)(a)(i) The minimum allocation for each level of prototypical school shall be based on the number of full-time equivalent classroom teachers needed to provide instruction over the minimum required annual instructional hours under RCW 28A.150.220 and provide at least one teacher planning period per school day, and based on the following general education average class size of full-time equivalent students per teacher:

	General education average class size
Grades K-3	17.00
Grade 4	27.00
Grades 5-6	27.00
Grades 7-8	28.53
Grades 9-12	28.74

(ii) The minimum class size allocation for each prototypical high school shall also provide for enhanced funding for class size reduction for two laboratory science classes within grades nine through twelve per full-time equivalent high school student multiplied by a laboratory science course factor of 0.0833, based on the number of full-time equivalent classroom teachers needed to provide instruction over the

minimum required annual instructional hours in RCW 28A.150.220, and providing at least one teacher planning period per school day:

	Laboratory science average class size
Grades 9-12	19.98

(b)(i) Beginning September 1, 2018, funding for average K-3 class sizes in this subsection (4) may be provided only to the extent of, and proportionate to, the school district's demonstrated actual class size in grades K-3, up to the funded class sizes.

(ii) The office of the superintendent of public instruction shall develop rules to implement this subsection (4)(b).

(c)(i) The minimum allocation for each prototypical middle and high school shall also provide for full-time equivalent classroom teachers based on the following number of full-time equivalent students per teacher in career and technical education:

	Career and technical education average class size
Approved career and technical education offered at the middle school and high school level	23.00
Skill center programs meeting the standards established by the office of the superintendent of public instruction.	20.00

(ii) Funding allocated under this subsection (4)(c) is subject to RCW 28A.150.265.

(d) In addition, the omnibus appropriations act shall at a minimum specify:

(i) A high-poverty average class size in schools where more than fifty percent of the students are eligible for free and reduced-price meals; and

(ii) A specialty average class size for advanced placement and international baccalaureate courses.

(5) The minimum allocation for each level of prototypical school shall include allocations for the following types of staff in addition to classroom teachers:

	Elementary School	Middle School	High School
Principals, assistant principals, and other certificated building-level administrators	1.253	1.353	1.880
Teacher-librarians, a function that includes information literacy, technology, and media to support school library media programs	0.663	0.519	0.523
Health and social services:			
School nurses	0.076	0.060	0.096
Social workers	0.042	0.006	0.015
Psychologists	0.017	0.002	0.007
Guidance counselors, a function that includes parent outreach and graduation advising.	0.493	1.216	2.539
Teaching assistance, including any aspect of educational instructional services provided by classified employees.	0.936	0.700	0.652
Office support and other noninstructional aides	2.012	2.325	3.269
Custodians	1.657	1.942	2.965

	Elementary School	Middle School	High School
Classified staff providing student and staff safety	0.079	0.092	0.141
Parent involvement coordinators	0.0825	0.00	0.00

(6)(a) The minimum staffing allocation for each school district to provide district-wide support services shall be allocated per one thousand annual average full-time equivalent students in grades K-12 as follows:

	Staff per 1,000 K-12 students
Technology	0.628
Facilities, maintenance, and grounds	1.813
Warehouse, laborers, and mechanics	0.332

(b) The minimum allocation of staff units for each school district to support certificated and classified staffing of central administration shall be 5.30 percent of the staff units generated under subsections (4)(a) and (5) of this section and (a) of this subsection.

(7) The distribution formula shall include staffing allocations to school districts for career and technical education and skill center administrative and other school-level certificated staff, as specified in the omnibus appropriations act.

(8)(a) Except as provided in (b) of this subsection, the minimum allocation for each school district shall include allocations per annual average full-time equivalent student for the following materials, supplies, and operating costs as provided in the 2017-18 school year, after which the allocations shall be adjusted annually for inflation as specified in the omnibus appropriations act:

	Per annual average full-time equivalent student in grades K-12
Technology	\$130.76
Utilities and insurance	\$355.30
Curriculum and textbooks	\$140.39
Other supplies and library materials	\$298.05
Instructional professional development for certificated and classified staff	\$21.71
Facilities maintenance	\$176.01
Security and central office administration	\$121.94

(b) In addition to the amounts provided in (a) of this subsection, beginning in the 2014-15 school year, the omnibus appropriations act shall provide the following minimum allocation for each annual average full-time equivalent student in grades nine through twelve for the following materials, supplies, and operating costs, to be adjusted annually for inflation:

	Per annual average full-time equivalent student in grades 9-12
Technology	\$.36.35
Curriculum and textbooks	\$.39.02
Other supplies and library materials	\$.82.84
Instructional professional development for certificated and classified staff	\$.6.04

(9) In addition to the amounts provided in subsection (8) of this section and subject to RCW 28A.150.265, the omnibus appropriations act shall provide an amount based on full-time equivalent student enrollment in each of the following:

(a) Exploratory career and technical education courses for students in grades seven through twelve;

(b) Preparatory career and technical education courses for students in grades nine through twelve offered in a high school; and

(c) Preparatory career and technical education courses for students in grades eleven and twelve offered through a skill center.

(10) In addition to the allocations otherwise provided under this section, amounts shall be provided to support the following programs and services:

(a)(i) To provide supplemental instruction and services for students who are not meeting academic standards through the learning assistance program under RCW 28A.165.005 through 28A.165.065, allocations shall be based on the district percentage of students in grades K-12 who were eligible for free or reduced-price meals in the prior school year. The minimum allocation for the program shall provide for each level of prototypical school resources to provide, on a statewide average, 2.3975 hours per week in extra instruction with a class size of fifteen learning assistance program students per teacher.

(ii) In addition to funding allocated under (a)(i) of this subsection, to provide supplemental instruction and services for students who are not meeting academic standards in schools where at least fifty percent of students are eligible for free and reduced-price meals. The minimum allocation for this additional high poverty-based allocation must provide for each level of prototypical school resources to provide, on a statewide average, 1.1 hours per week in extra instruction with a class size of fifteen learning assistance program students per teacher, under RCW 28A.165.055, school districts must distribute the high poverty-based allocation to the schools that generated the funding allocation.

(b)(i) To provide supplemental instruction and services for students whose primary language is other than English, allocations shall be based on the head count number of students in each school who are eligible for and enrolled in the transitional bilingual instruction program under RCW 28A.180.010 through 28A.180.080. The minimum allocation for each level of prototypical school shall provide resources to provide, on a statewide average, 4.7780 hours per week in extra instruction for students in grades kindergarten through six and 6.7780 hours per week in extra instruction for students in grades seven through twelve, with fifteen transitional bilingual instruction program students per teacher. Notwithstanding other provisions of this subsection (10), the actual per-student allocation may be scaled to provide a larger allocation for students needing more intensive intervention and a commensurate reduced allocation for students needing less

intensive intervention, as detailed in the omnibus appropriations act.

(ii) To provide supplemental instruction and services for students who have exited the transitional bilingual program, allocations shall be based on the head count number of students in each school who have exited the transitional bilingual program within the previous two years based on their performance on the English proficiency assessment and are eligible for and enrolled in the transitional bilingual instruction program under RCW 28A.180.040(1)(g). The minimum allocation for each prototypical school shall provide resources to provide, on a statewide average, 3.0 hours per week in extra instruction with fifteen exited students per teacher.

(c) To provide additional allocations to support programs for highly capable students under RCW 28A.185.010 through 28A.185.030, allocations shall be based on 5.0 percent of each school district's full-time equivalent basic education enrollment. The minimum allocation for the programs shall provide resources to provide, on a statewide average, 2.1590 hours per week in extra instruction with fifteen highly capable program students per teacher.

(11) The allocations under subsections (4)(a), (5), (6), and (8) of this section shall be enhanced as provided under RCW 28A.150.390 on an excess cost basis to provide supplemental instructional resources for students with disabilities.

(12)(a) For the purposes of allocations for prototypical high schools and middle schools under subsections (4) and (10) of this section that are based on the percent of students in the school who are eligible for free and reduced-price meals, the actual percent of such students in a school shall be adjusted by a factor identified in the omnibus appropriations act to reflect underreporting of free and reduced-price meal eligibility among middle and high school students.

(b) Allocations or enhancements provided under subsections (4), (7), and (9) of this section for exploratory and preparatory career and technical education courses shall be provided only for courses approved by the office of the superintendent of public instruction under chapter 28A.700 RCW.

(13)(a) This formula for distribution of basic education funds shall be reviewed biennially by the superintendent and governor. The recommended formula shall be subject to approval, amendment or rejection by the legislature.

(b) In the event the legislature rejects the distribution formula recommended by the governor, without adopting a new distribution formula, the distribution formula for the previous school year shall remain in effect.

(c) The enrollment of any district shall be the annual average number of full-time equivalent students and part-time students as provided in RCW 28A.150.350, enrolled on the first school day of each month, including students who are in attendance pursuant to RCW 28A.335.160 and 28A.225.250 who do not reside within the servicing school district. The definition of full-time equivalent student shall be determined by rules of the superintendent of public instruction and shall be included as part of the superintendent's biennial budget request. The definition shall be based on the minimum instructional hour offerings required under RCW 28A.150.220. Any revision of the present definition shall not take effect until approved by the house ways and means committee and the senate ways and means committee.

(d) The office of financial management shall make a monthly review of the superintendent's reported full-time equivalent students in the common schools in conjunction with RCW 43.62.050. [2017 3rd sp.s. c 13 § 402; (2015 c 2 § 2 repealed by 2017 3rd sp.s. c 13 § 906); 2014 c 217 § 206; (2011 1st sp.s. c 34 § 9 expired July 1, 2013); 2011 1st sp.s. c 27 § 2; 2010 c 236 § 2; 2009 c 548 § 106; 2006 c 263 § 322; 1997 c 13 § 2; (1997 c 13 § 1 and 1995 c 77 § 2 expired September 1, 2000); 1995 c 77 § 3; 1992 c 141 § 507; 1992 c 141 § 303; 1991 c 116 § 10; 1990 c 33 § 108; 1987 1st ex.s. c 2 § 202; 1985 c 349 § 5; 1983 c 229 § 1; 1979 ex.s. c 250 § 3; 1979 c 151 § 12; 1977 ex.s. c 359 § 5; 1969 ex.s. c 244 § 14. Prior: 1969 ex.s. c 223 § 28A.41.140; 1969 ex.s. c 217 § 3; 1969 c 130 § 7; prior: 1965 ex.s. c 154 § 3. Formerly RCW 28A.41.140, 28.41.140.]

Effective date—2017 3rd sp.s. c 13 §§ 401-413: See note following RCW 28A.150.200.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2014 c 217 § 206: "Section 206 of this act takes effect September 1, 2014." [2014 c 217 § 209.]

Finding—Intent—2014 c 217: See note following RCW 28A.150.220.

Effective date—2011 1st sp.s. c 34 §§ 9 and 10: "Sections 9 and 10 of this act take effect September 1, 2011." [2011 1st sp.s. c 34 § 12.]

Expiration date—2011 1st sp.s. c 34 § 9: "Section 9 of this act expires July 1, 2013." [2011 1st sp.s. c 34 § 13.]

Finding—Intent—2011 1st sp.s. c 34: See note following RCW 28A.232.010.

Effective date—2011 1st sp.s. c 27 §§ 1-3: See note following RCW 28A.150.220.

Effective date—2010 c 236 §§ 2, 3, 4, 8, 10, 13, and 14: "Sections 2, 3, 4, 8, 10, 13, and 14 of this act take effect September 1, 2011." [2010 c 236 § 19.]

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Distribution of forest reserve funds—As affects basic education allocation: RCW 28A.520.020.

Program of basic education, RCW 28A.150.260 as part of: RCW 28A.150.200.

Staffing enrichments to the program of basic education: See RCW 28A.400.007.

Additional notes found at www.leg.wa.gov

28A.150.261 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.150.265 Career and technical education funding allocations. (1) To the extent that career and technical education funding allocations under RCW 28A.150.260 (4)(c) and (9) exceed general education funding allocations under RCW 28A.150.260, school districts may use the difference only for the career and technical education purposes, defined as follows:

- (a) Staff salaries and benefits for career and technical education program delivery;
- (b) Materials, supplies, and operating costs;
- (c) Smaller class sizes;
- (d) Work-based learning programs such as internships and preapprenticeship programs, including coordination tied to career and technical education coursework;
- (e) New high quality career and technical education and expanded learning program development in high-demand fields;
- (f) Certificated work-based learning coordinators and career guidance advisors;
- (g) School expenses associated with career and technical education community partnerships with a career discovery focus including research or evidence-based mentoring programs and expanded learning opportunities in school, before or after school, and during the summer, and career-focused education programs with private and public K-12 schools and colleges, community-based organizations and nonprofit organizations, industry partners, tribal governments, and workforce development entities;
- (h) Student fees for national and state industry-recognized certifications; and
- (i) Course equivalency development to integrate core learning standards into career and technical education courses.

(2) A school district's maximum allowable indirect cost charges for approved career and technical education programs funded by the state may not exceed the lower of five percent or the cap established in federal law for federal career and technical education funding provided to school districts, as the federal law existed on September 1, 2017. [2017 3rd sp.s. c 13 § 409.]

Effective date—2017 3rd sp.s. c 13 §§ 401-413: See note following RCW 28A.150.200.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

28A.150.276 Local revenues—Enrichment of program of basic education—"Local revenues" defined. (1)(a) Beginning September 1, 2019, school districts may use local revenues only for documented and demonstrated enrichment of the state's statutory program of basic education as authorized in subsection (2) of this section.

(b) Nothing in this section revises the definition of the program of basic education under RCW 28A.150.220 and 28A.150.260.

(c) For purposes of this section, "local revenues" means enrichment levies collected under RCW 84.52.053, transportation vehicle enrichment levies, local effort assistance funding received under chapter 28A.500 RCW, and other school district local revenues including, but not limited to, grants, donations, and state and federal payments in lieu of taxes, except that "local revenues" does not include other federal revenues, or local revenues that operate as an offset to the district's basic education allocation under RCW 28A.150.250.

(2)(a) Enrichment activities are permitted under this section if they provide supplementation beyond the state:

- (i) Minimum instructional offerings of RCW 28A.150.220 or 28A.150.260;
- (ii) Staffing ratios or program components of RCW 28A.150.260, including providing additional staff for class

size reduction beyond class sizes allocated in the prototypical school model and additional staff beyond the staffing ratios allocated in the prototypical school formula;

(iii) Program components of RCW 28A.150.200, 28A.150.220, or 28A.150.260; or

(iv) Program of professional learning as defined by RCW 28A.415.430 beyond that allocated pursuant to RCW 28A.150.415.

(b) Permitted enrichment activities consist of:

(i) Extracurricular activities, extended school days, or an extended school year;

(ii) Additional course offerings beyond the minimum instructional program established in the state's statutory program of basic education;

(iii) Activities associated with early learning programs;

(iv) Any additional salary costs attributable to the provision or administration of the enrichment activities allowed under this subsection; and

(v) Additional activities or enhancements that the office of the superintendent of public instruction determines to be a documented and demonstrated enrichment of the state's statutory program of basic education under (a) of this subsection and for which the superintendent approves proposed expenditures during the preballot approval process required by RCW 84.52.053 and 28A.505.240.

(3) In addition to the limitations of subsections (1) and (2) of this section and of RCW 28A.400.200, permitted enrichment activities are subject to the following conditions and limitations:

(a) If a school district spends local revenues for salary costs attributable to the administration of enrichment programs, the portion of administrator salaries attributable to that purpose may not exceed the proportion of the district's local revenues to its other revenues; and

(b) Supplemental contracts under RCW 28A.400.200 are subject to the limitations of this section.

(4) The superintendent of public instruction must adopt rules to implement this section. [2017 3rd sp.s. c 13 § 501.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

28A.150.315 All-day kindergarten programs—Funding—Identification of skills, knowledge, and characteristics—Assessments. (Effective July 1, 2018.) (1) Beginning with the 2007-08 school year, funding for voluntary all-day kindergarten programs shall be phased-in beginning with schools with the highest poverty levels, defined as those schools with the highest percentages of students qualifying for free and reduced-price lunch support in the prior school year. During the 2011-2013 biennium, funding shall continue to be phased-in each year until full statewide implementation of all-day kindergarten is achieved in the 2017-18 school year. Once a school receives funding for the all-day kindergarten program, that school shall remain eligible for funding in subsequent school years regardless of changes in the school's percentage of students eligible for free and reduced-price lunches as long as other program requirements are fulfilled. Additionally, schools receiving all-day kindergarten program support shall agree to the following conditions:

(a) Provide at least a one thousand-hour instructional program;

(b) Provide a curriculum that offers a rich, varied set of experiences that assist students in:

(i) Developing initial skills in the academic areas of reading, mathematics, and writing;

(ii) Developing a variety of communication skills;

(iii) Providing experiences in science, social studies, arts, health and physical education, and a world language other than English;

(iv) Acquiring large and small motor skills;

(v) Acquiring social and emotional skills including successful participation in learning activities as an individual and as part of a group; and

(vi) Learning through hands-on experiences;

(c) Establish learning environments that are developmentally appropriate and promote creativity;

(d) Demonstrate strong connections and communication with early learning community providers; and

(e) Participate in kindergarten program readiness activities with early learning providers and parents.

(2)(a) It is the intent of the legislature that administration of the Washington kindergarten inventory of developing skills as required in this subsection (2) and RCW 28A.655.080 replace administration of other assessments being required by school districts or that other assessments only be administered if they seek to obtain information not covered by the Washington kindergarten inventory of developing skills.

(b) In addition to the requirements in subsection (1) of this section and to the extent funds are available, beginning with the 2011-12 school year on a voluntary basis, schools must identify the skills, knowledge, and characteristics of kindergarten students at the beginning of the school year in order to support social-emotional, physical, and cognitive growth and development of individual children; support early learning provider and parent involvement; and inform instruction. Kindergarten teachers shall administer the Washington kindergarten inventory of developing skills, as directed by the superintendent of public instruction in consultation with the department of children, youth, and families and in collaboration with the nongovernmental private-public partnership designated in RCW 43.216.065, and report the results to the superintendent. The superintendent shall share the results with the secretary of the department of children, youth, and families.

(c) School districts shall provide an opportunity for parents and guardians to excuse their children from participation in the Washington kindergarten inventory of developing skills.

(3) Subject to funds appropriated for this purpose, the superintendent of public instruction shall designate one or more school districts to serve as resources and examples of best practices in designing and operating a high-quality all-day kindergarten program. Designated school districts shall serve as lighthouse programs and provide technical assistance to other school districts in the initial stages of implementing an all-day kindergarten program. Examples of topics addressed by the technical assistance include strategic planning, developing the instructional program and curriculum, working with early learning providers to identify students and communicate with parents, and developing kindergarten program readiness activities. [2017 3rd sp.s. c 6 § 215; 2012

c 51 § 1; 2011 c 340 § 1; 2010 c 236 § 4; 2009 c 548 § 107; 2007 c 400 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—2011 c 340 § 1: "Section 1 of this act takes effect September 1, 2011." [2011 c 340 § 3.]

Effective date—2010 c 236 §§ 2, 3, 4, 8, 10, 13, and 14: See note following RCW 28A.150.260.

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Captions not law—2007 c 400: See note following RCW 28A.150.210.

28A.150.390 Appropriations for special education

programs. (1) The superintendent of public instruction shall submit to each regular session of the legislature during an odd-numbered year a programmed budget request for special education programs for students with disabilities. Funding for programs operated by local school districts shall be on an excess cost basis from appropriations provided by the legislature for special education programs for students with disabilities and shall take account of state funds accruing through RCW 28A.150.260 (4)(a), (5), (6), and (8).

(2) The excess cost allocation to school districts shall be based on the following:

(a) A district's annual average headcount enrollment of students ages birth through four and those five year olds not yet enrolled in kindergarten who are eligible for and enrolled in special education, multiplied by the district's base allocation per full-time equivalent student, multiplied by 1.15; and

(b) A district's annual average full-time equivalent basic education enrollment, multiplied by the district's funded enrollment percent, multiplied by the district's base allocation per full-time equivalent student, multiplied by 0.9309.

(3) As used in this section:

(a) "Base allocation" means the total state allocation to all schools in the district generated by the distribution formula under RCW 28A.150.260 (4)(a), (5), (6), and (8), to be divided by the district's full-time equivalent enrollment.

(b) "Basic education enrollment" means enrollment of resident students including nonresident students enrolled under RCW 28A.225.225 and students from nonhigh districts enrolled under RCW 28A.225.210 and excluding students residing in another district enrolled as part of an interdistrict cooperative program under RCW 28A.225.250.

(c) "Enrollment percent" means the district's resident special education annual average enrollment, excluding students ages birth through four and those five year olds not yet enrolled in kindergarten, as a percent of the district's annual average full-time equivalent basic education enrollment.

(d) "Funded enrollment percent" means the lesser of the district's actual enrollment percent or thirteen and five-tenths percent. [2017 3rd sp.s. c 13 § 406; 2010 c 236 § 3; 2009 c 548 § 108; 1995 c 77 § 6; 1994 c 180 § 8; 1993 c 149 § 9; 1990 c 33 § 116; 1989 c 400 § 2; 1980 c 87 § 5; 1971 ex.s. c 66 § 11. Formerly RCW 28A.41.053.]

Effective date—2017 3rd sp.s. c 13 §§ 401-413: See note following RCW 28A.150.200.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2010 c 236 §§ 2, 3, 4, 8, 10, 13, and 14: See note following RCW 28A.150.260.

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Intent—1989 c 400: "The legislature finds that there is increasing demand for school districts' special education programs to include medical services necessary for handicapped children's participation and educational progress. In some cases, these services could qualify for federal funding under Title XIX of the social security act. The legislature intends to establish a process for school districts to obtain reimbursement for eligible services from medical assistance funds. In this way, state dollars for handicapped education can be leveraged to generate federal matching funds, thereby increasing the overall level of resources available for school districts' special education programs." [1989 c 400 § 1.]

Additional notes found at www.leg.wa.gov

28A.150.392 Special education funding—Safety net awards—Rules—Annual survey and report—Safety net oversight committee. (1)(a) To the extent necessary, funds shall be made available for safety net awards for districts with demonstrated needs for special education funding beyond the amounts provided through the special education funding formula under RCW 28A.150.390.

(b) If the federal safety net awards based on the federal eligibility threshold exceed the federal appropriation in any fiscal year, then the superintendent shall expend all available federal discretionary funds necessary to meet this need.

(2) Safety net funds shall be awarded by the state safety net oversight committee subject to the following conditions and limitations:

(a) The committee shall award additional funds for districts that can convincingly demonstrate that all legitimate expenditures for special education exceed all available revenues from state funding formulas.

(b) In the determination of need, the committee shall consider additional available revenues from federal sources.

(c) Differences in program costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards.

(d) In the determination of need, the committee shall require that districts demonstrate that they are maximizing their eligibility for all state revenues related to services for special education-eligible students and all federal revenues from federal impact aid, medicaid, and the individuals with disabilities education act-Part B and appropriate special projects. Awards associated with (e) and (f) of this subsection shall not exceed the total of a district's specific determination of need.

(e) The committee shall then consider the extraordinary high cost needs of one or more individual special education students. Differences in costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards.

(f) Using criteria developed by the committee, the committee shall then consider extraordinary costs associated with communities that draw a larger number of families with children in need of special education services, which may include

consideration of proximity to group homes, military bases, and regional hospitals. Safety net awards under this subsection (2)(f) shall be adjusted to reflect amounts awarded under (e) of this subsection.

(g) The maximum allowable indirect cost for calculating safety net eligibility may not exceed the federal restricted indirect cost rate for the district plus one percent.

(h) Safety net awards shall be adjusted based on the percent of potential medicaid eligible students billed as calculated by the superintendent of public instruction in accordance with chapter 318, Laws of 1999.

(i) Safety net awards must be adjusted for any audit findings or exceptions related to special education funding.

(3) The superintendent of public instruction shall adopt such rules and procedures as are necessary to administer the special education funding and safety net award process. By September 1, 2019, the superintendent shall review and revise the rules to achieve full and complete implementation of the requirements of this subsection and subsection (4) of this section. Before revising any standards, procedures, or rules, the superintendent shall consult with the office of financial management and the fiscal committees of the legislature. In adopting and revising the rules, the superintendent shall ensure the application process to access safety net funding is streamlined, timelines for submission are not in conflict, feedback to school districts is timely and provides sufficient information to allow school districts to understand how to correct any deficiencies in a safety net application, and that there is consistency between awards approved by school district and by application period. The office of the superintendent of public instruction shall also provide technical assistance to school districts in preparing and submitting special education safety net applications.

(4) On an annual basis, the superintendent shall survey districts regarding their satisfaction with the safety net process and consider feedback from districts to improve the safety net process. Each year by December 1st, the superintendent shall prepare and submit a report to the office of financial management and the appropriate policy and fiscal committees of the legislature that summarizes the survey results and those changes made to the safety net process as a result of the school district feedback.

(5) The safety net oversight committee appointed by the superintendent of public instruction shall consist of:

(a) One staff member from the office of the superintendent of public instruction;

(b) Staff of the office of the state auditor who shall be nonvoting members of the committee; and

(c) One or more representatives from school districts or educational service districts knowledgeable of special education programs and funding. [2017 3rd sp.s. c 13 § 407; 2009 c 548 § 109.]

Special education safety net study—2017 3rd sp.s. c 13: "(1) To ensure that the special education safety net process results in sufficient funding for school districts with demonstrated needs for funding in excess of state and federal funding otherwise provided, the superintendent of public instruction shall review the current safety net process. The superintendent must make recommendations on possible adjustments to improve the safety net process and to evaluate the appropriate funding level to meet the safety net's purpose.

(2) The superintendent of public instruction must consider and make recommendations on the following:

(a) Whether fiscal components in addition to or in place of the fiscal components of community impact and high need students should be considered by the safety net committee when making safety net awards, including:

(i) Should a school district be able to access the safety net when a school district's enrollment of students with disabilities exceeds the statutory limit of thirteen and five-tenths percent;

(ii) Should the definition and the limitation on the amount provided for high need students be adjusted; and

(iii) Should a district have access to the safety net when it has disproportionate concentrations of students with higher than statewide average costs, but the students do not meet the threshold for high need awards; and

(b) How the process can be improved, including how the superintendent can best provide technical assistance to school districts that file incomplete applications, and how the timeline can be changed to provide sufficient time for a district to resubmit an incomplete application.

(3) The superintendent of public instruction may consider other topics deemed relevant by the superintendent that achieve the goals of subsection (1) of this section.

(4) The superintendent of public instruction must submit the recommendations to the governor, and the legislative education and operating budget committees by November 1, 2018.

(5) This section expires August 1, 2019." [2017 3rd sp.s. c 13 § 408.]

Effective date—2017 3rd sp.s. c 13 §§ 401-413: See note following RCW 28A.150.200.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

28A.150.410 Basic education certificated instructional staff—Salary allocation methodology—Adjustments for regional differences—Review and rebasing of regionalization factors. (1) Through the 2017-18 school year, the legislature shall establish for each school year in the appropriations act a statewide salary allocation schedule, for allocation purposes only, to be used to distribute funds for basic education certificated instructional staff salaries under RCW 28A.150.260. For the purposes of this section, the staff allocations for classroom teachers, teacher-librarians, guidance counselors, and student health services staff under RCW 28A.150.260 are considered allocations for certificated instructional staff.

(2) Through the 2017-18 school year, salary allocations for state-funded basic education certificated instructional staff shall be calculated by the superintendent of public instruction by determining the district's average salary for certificated instructional staff, using the statewide salary allocation schedule and related documents, conditions, and limitations established by the omnibus appropriations act.

(3) Through the 2017-18 school year, no more than ninety college quarter-hour credits received by any employee after the baccalaureate degree may be used to determine compensation allocations under the state salary allocation schedule and LEAP documents referenced in the omnibus appropriations act, or any replacement schedules and documents, unless:

(a) The employee has a master's degree; or

(b) The credits were used in generating state salary allocations before January 1, 1992.

(4) Beginning in the 2007-08 school year and through the 2017-18 school year, the calculation of years of service for occupational therapists, physical therapists, speech-language pathologists, audiologists, nurses, social workers,

counselors, and psychologists regulated under Title 18 RCW may include experience in schools and other nonschool positions as occupational therapists, physical therapists, speech-language pathologists, audiologists, nurses, social workers, counselors, or psychologists. The calculation shall be that one year of service in a nonschool position counts as one year of service for purposes of this chapter, up to a limit of two years of nonschool service. Nonschool years of service included in calculations under this subsection shall not be applied to service credit totals for purposes of any retirement benefit under chapter 41.32, 41.35, or 41.40 RCW, or any other state retirement system benefits.

(5) By the 2019-20 school year, the minimum state allocation for salaries for certificated instructional staff in the basic education program must be increased beginning in the 2018-19 school year to provide a statewide average allocation of sixty-four thousand dollars adjusted for inflation from the 2017-18 school year.

(6) By the 2019-20 school year, the minimum state allocation for salaries for certificated administrative staff in the basic education program must be increased beginning in the 2018-19 school year to provide a statewide average allocation of ninety-five thousand dollars adjusted for inflation from the 2017-18 school year.

(7) By the 2019-20 school year, the minimum state allocation for salaries for classified staff in the basic education program must be increased beginning in the 2018-19 school year to provide a statewide average allocation of forty-five thousand nine hundred twelve dollars adjusted by inflation from the 2017-18 school year.

(8) To implement the new minimum salary allocations in subsections (5) through (7) of this section, the legislature must fund fifty percent of the increased salary allocation in the 2018-19 school year and the entire increased salary allocation in the 2019-20 school year. For school year 2018-19, a district's minimum state allocation for salaries is the greater of the district's 2017-18 state salary allocation, adjusted for inflation, or the district's allocation based on the state salary level specified in subsections (5) through (7) of this section, and as further specified in the omnibus appropriations act.

(9) Beginning with the 2018-19 school year, state allocations for salaries for certificated instructional staff, certificated administrative staff, and classified staff must be adjusted for regional differences in the cost of hiring staff. Adjustments for regional differences must be specified in the omnibus appropriations act for each school year through at least school year 2022-23. For school years 2018-19 through school year 2022-23, the school district regionalization factors are based on the median single-family residential value of each school district and proximate school district median single-family residential value as described in RCW 28A.150.412.

(10) Beginning with the 2023-24 school year and every six years thereafter, the minimum state salary allocations and school district regionalization factors for certificated instructional staff, certificated administration [administrative] staff, and classified staff must be reviewed and rebased, as provided under RCW 28A.150.412, to ensure that state salary allocations continue to align with staffing costs for the state's program of basic education. [2017 3rd sp.s. c 13 § 101; 2010 c 236 § 10; 2007 c 403 § 1; 2002 c 353 § 1; 1997 c 141 § 1;

1990 c 33 § 118; 1989 1st ex.s. c 16 § 1; 1987 3rd ex.s. c 1 § 4; 1987 1st ex.s. c 2 § 204. Formerly RCW 28A.41.112.]

Intent—2017 3rd sp.s. c 13: "The state must provide education funding that corresponds to the cost of providing all students with the opportunity to learn through the state's statutory program of basic education. In chapter 548, Laws of 2009 (Engrossed Substitute House Bill No. 2261) and chapter 236, Laws of 2010 (Substitute House Bill No. 2776), the state established a comprehensive plan for enhancing the state's program of basic education. With this act, the legislature intends to realize the promise of these reforms and to improve student outcomes by increasing state allocations for school staff salaries, by revising state and local education funding contributions, and by improving transparency and accountability of education funding." [2017 3rd sp.s. c 13 § 1.]

Effective date—2010 c 236 §§ 2, 3, 4, 8, 10, 13, and 14: See note following RCW 28A.150.260.

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Additional notes found at www.leg.wa.gov

28A.150.412 Basic education compensation allocations—Rebase and review—Revision of minimum allocations and regionalization factors—Regionalization factors—Definitions. (1) Beginning with the 2023 regular legislative session, and every six years thereafter, the legislature shall review and rebase state basic education compensation allocations compared to school district compensation data, regionalization factors, and other economic information. The legislature shall revise the minimum allocations and regionalization factors if necessary to ensure that state basic education allocations continue to provide market-rate salaries and that regionalization adjustments reflect actual economic differences between school districts.

(2)(a) For school districts with single-family residential values above the statewide median residential value, regionalization factors for school years 2018-19 through school year 2022-23 are as follows:

(i) For school districts in tercile 1, state salary allocations for school district employees are regionalized by six percent;

(ii) For school districts in tercile 2, state salary allocations for school district employees are regionalized by twelve percent; and

(iii) For school districts in tercile 3, state salary allocations for school district employees are regionalized by eighteen percent.

(b) Additional school district adjustments are identified in the omnibus appropriations act, and these adjustments are partially reduced or eliminated by the 2022-23 school year as follows:

(i) Adjustments that increase the regionalization factor to a value that is greater than the tercile 3 regionalization factor must be reduced by two percentage points each school year beginning with school year 2020-21, through 2022-23.

(ii) Adjustments that increase the regionalization factor to a value that is less than or equal to the tercile 3 regionalization factor must be reduced by one percentage point each school year beginning with school year 2020-21, through 2022-23.

(3) To aid the legislature in reviewing and rebasing regionalization factors, the department of revenue shall, by November 1, 2022, and by November 1st every six years thereafter, determine the median single-family residential value of each school district as well as the median value of proximate districts within fifteen miles of the boundary of the

school district for which the median residential value is being calculated.

(4) No district may receive less state funding for the minimum state salary allocation as compared to its prior school year salary allocation as a result of adjustments that reflect updated regionalized salaries.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Median residential value of each school district" means the median value of all single-family residential parcels included within a school district and any other school district that is proximate to the school district.

(b) "Proximate to the school district" means within fifteen miles of the boundary of the school district for which the median residential value is being calculated.

(c) "School district employees" means state-funded certificated instructional staff, certificated administrative staff, and classified staff.

(d) "School districts in tercile 1" means school districts with median single-family residential values in the first tercile of districts with single-family residential values above the statewide median residential value.

(e) "School districts in tercile 2" means school districts with median single-family residential values in the second tercile of districts with single-family residential values above the statewide median residential value.

(f) "School districts in tercile 3" means school districts with median single-family residential values in the third tercile of districts with single-family residential values above the statewide median residential value.

(g) "Statewide median residential value" means the median value of single-family residential parcels located within all school districts, reduced by five percent. [2017 3rd sp.s. c 13 § 104.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

28A.150.413 Finding—Local levy authority—Local effort assistance—Value—Restriction. (1) The legislature finds that while the state has the responsibility to provide for a general and uniform system of public schools, there is also a need for some diversity in the public school system. A successful system of public education must permit some variation among school districts outside the basic education provided for by the state to respond to and reflect the unique desires of local communities. The opportunity for local communities to invest in enriched education programs promotes support for local public schools. Further, the ability of local school districts to experiment with enriched programs can inform the legislature's long-term evolution of the definition of basic education. Therefore, local levy authority remains an important component of the overall finance system in support of the public schools even though it is outside the state's obligation for basic education and, after September 1, 2019, is restricted to enrichment purposes under RCW 28A.150.276.

(2) However, the value of permitting local levies must be balanced with the value of equity and fairness to students and to taxpayers, neither of whom should be unduly disadvantaged due to differences in the tax bases used to support local levies. Equity and fairness require both an equitable basis for supplemental funding outside basic education and a mechanism for property tax-poor school districts to fairly access

supplemental funding. As such, local effort assistance, while also outside the state's obligation for basic education, is another important component of school finance. [2017 3rd sp.s. c 13 § 208; 2009 c 548 § 301. Formerly RCW 28A.500.050.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

28A.150.414 Locally determined compensation plans for certificated instructional staff—Model salary grid—Stakeholder technical working group. (1) The superintendent of public instruction must convene and facilitate a stakeholder technical working group to develop a model salary grid for school district use in developing locally determined compensation plans for certificated instructional staff.

(2) The grid is intended to be used as a resource by school districts in determining local salaries in the collective bargaining process, and it is intended to provide guidance to districts in hiring staff based on the allocation methodology, regionalization adjustments, and compensation restrictions in chapter 13, Laws of 2017 3rd sp. sess. However, districts are not required to use this grid in bargaining or determining actual salaries.

(3) Membership of the technical working group convened by the superintendent of public instruction may include, but is not limited to, one school district administrator each from an urban and a rural district east of the crest of the Cascade mountains and from an urban and a rural district west of the crest of the Cascade mountains, a representative of an organization representing school district certificated instructional staff, and a representative of an educational service district.

(4) The superintendent of public instruction must provide the initial model grid to the governor and the appropriate policy and fiscal committees of the legislature for their review by December 1, 2017. The superintendent of public instruction must post the model grid on the web site for the office of the superintendent of public instruction.

(5) The superintendent of public instruction may reconvene the technical working group to update the model grid based on future legislative changes to methodologies for allocating and regionalizing salaries for certificated instructional staff. [2017 3rd sp.s. c 13 § 107.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

28A.150.415 Professional learning days—Funding.

(1) Beginning with the 2018-19 school year, the legislature shall begin phasing in funding for professional learning days for certificated instructional staff. At a minimum, the state must allocate funding for:

(a) One professional learning day in the 2018-19 school year;

(b) Two professional learning days in the 2019-20 school year; and

(c) Three professional learning days in the 2020-21 school year.

(2) Nothing in this section entitles an individual certificated instructional staff to any particular number of professional learning days.

(3) The professional learning days must meet the definitions and standards provided in RCW 28A.415.430, 28A.415.432, and 28A.415.434. [2017 3rd sp.s. c 13 § 105.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

28A.150.510 Transmittal of education records to department of children, youth, and families—Disclosure of educational records—Data-sharing agreements—Comprehensive needs requirement document—Report. (*Effective July 1, 2018.*)

(1) In order to effectively serve students who are dependent pursuant to chapter 13.34 RCW, education records shall be transmitted to the department of children, youth, and families within two school days after receiving the request from the department provided that the department certifies that it will not disclose to any other party the education records without prior written consent of the parent or student unless authorized to disclose the records under state law. The department of children, youth, and families is authorized to disclose education records it obtains pursuant to this section to a foster parent, guardian, or other entity authorized by the department to provide residential care to the student. The department is also authorized to disclose educational records it obtains pursuant to this section to those entities with which it has contracted, or with which it is formally collaborating, having responsibility for educational support services and educational outcomes of students who are dependent pursuant to chapter 13.34 RCW. The department is encouraged to put in place data-sharing agreements to assure accountability.

(2)(a) The K-12 data governance group established under RCW 28A.300.507 shall create a comprehensive needs requirement document detailing the specific information, technical capacity, and any federal and state statutory and regulatory changes needed by school districts, the office of the superintendent of public instruction, the department of children, youth, and families, or the higher education coordinating board or its successor, to enable the provision, on at least a quarterly basis, of:

(i) Current education records of students who are dependent pursuant to chapter 13.34 RCW to the department of children, youth, and families and, from the department, to those entities with which the department has contracted, or with which it is formally collaborating, having responsibility for educational support services and educational outcomes; and

(ii) The names and contact information of students who are dependent pursuant to chapter 13.34 RCW and are thirteen years or older to the higher education coordinating board or its successor and the private agency with which it has contracted to perform outreach for the passport to college promise program under chapter 28B.117 RCW or the college bound scholarship program under chapter 28B.118 RCW.

(b) In complying with (a) of this subsection, the K-12 data governance group shall consult with: Educational support service organizations, with which the department of children, youth, and families contracts or collaborates, having responsibility for educational support services and educational outcomes of dependent students; the passport to col-

lege advisory committee; the education support service organizations under contract to perform outreach for the passport to college promise program under chapter 28B.117 RCW; the department of children, youth, and families; the office of the attorney general; the higher education coordinating board or its successor; and the office of the administrator for the courts. [2017 3rd sp.s. c 6 § 336; 2012 c 163 § 9; 2008 c 297 § 5; 2000 c 88 § 1.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Findings—Effective date—2012 c 163: See notes following RCW 28B.117.010.

Short title—2012 c 163: See RCW 28B.117.902.

Chapter 28A.155 RCW SPECIAL EDUCATION

Sections

28A.155.065 Early intervention services—Accounting of expenditures.
(*Effective July 1, 2018.*)

28A.155.065 Early intervention services—Accounting of expenditures. (*Effective July 1, 2018.*) (1) Each school district shall provide or contract for early intervention services to all eligible children with disabilities from birth to three years of age. Eligibility shall be determined according to Part C of the federal individuals with disabilities education act or other applicable federal and state laws, and as specified in the Washington Administrative Code adopted by the state lead agency, which is the department of children, youth, and families. School districts shall provide or contract, or both, for early intervention services in partnership with local birth-to-three lead agencies and birth-to-three providers. Services provided under this section shall not supplant services or funding currently provided in the state for early intervention services to eligible children with disabilities from birth to three years of age. The state-designated birth-to-three lead agency shall be payor of last resort for birth-to-three early intervention services provided under this section.

(2)(a) By October 1, 2016, the office of the superintendent of public instruction shall provide the department of early learning, in its role as state lead agency, with a full accounting of the school district expenditures from the 2013-14 and 2014-15 school years, disaggregated by district, for birth-to-three early intervention services provided under this section.

(b) The reported expenditures must include, but are not limited to per student allocations, per student expenditures, the number of children served, detailed information on services provided by school districts and contracted for by school districts, coordination and transition services, and administrative costs.

(3) The services in this section are not part of the state's program of basic education pursuant to Article IX of the state Constitution. [2017 3rd sp.s. c 6 § 216; 2016 c 57 § 3; 2007 c 115 § 7; 2006 c 269 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

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Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Finding—2006 c 269: "The legislature finds an urgent and substantial need to enhance the development of all infants and toddlers with disabilities in Washington in order to minimize developmental delays and to maximize individual potential for learning and functioning." [2006 c 269 § 1.]

Chapter 28A.165 RCW LEARNING ASSISTANCE PROGRAM

Sections

28A.165.005 Purpose—Focus on reading literacy.

28A.165.015 Definitions.

28A.165.055 Funds—Appropriation and distribution.

28A.165.005 Purpose—Focus on reading literacy.

(1) This chapter is designed to: (a) Promote the use of data when developing programs to assist students who are not meeting academic standards and reduce disruptive behaviors in the classroom; and (b) guide school districts in providing the most effective and efficient practices when implementing supplemental instruction and services to assist students who are not meeting academic standards and reduce disruptive behaviors in the classroom.

(2) School districts implementing a learning assistance program shall focus first on addressing the needs of students in grades kindergarten through four who are deficient in reading or reading readiness skills to improve reading literacy. [2017 3rd sp.s. c 13 § 403; 2013 2nd sp.s. c 18 § 201; 2009 c 548 § 701; 2004 c 20 § 1.]

Effective date—2017 3rd sp.s. c 13 §§ 401-413: See note following RCW 28A.150.200.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

28A.165.015 Definitions. Unless the context clearly indicates otherwise the definitions in this section apply throughout this chapter.

(1) "Basic skills areas" means reading, writing, and mathematics as well as readiness associated with these skills.

(2) "Participating student" means a student in kindergarten through grade twelve who scores below standard for his or her grade level using multiple measures of performance, including on the statewide student assessments or other assessments and performance measurement tools administered by the school or district and who is identified by the district to receive services.

(3) "Statewide student assessments" means one or more of the assessments administered by school districts as required under RCW 28A.655.070.

(4) "Students who are not meeting academic standards" means students with the greatest academic deficits in basic skills as identified by statewide, school, or district assessments or other performance measurement tools. [2017 3rd sp.s. c 13 § 404; 2013 2nd sp.s. c 18 § 202; 2009 c 548 § 702; 2004 c 20 § 2.]

Effective date—2017 3rd sp.s. c 13 §§ 401-413: See note following RCW 28A.150.200.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

28A.165.055 Funds—Appropriation and distribution. (1) The funds for the learning assistance program shall be appropriated in accordance with RCW 28A.150.260 and the omnibus appropriations act. The distribution formula is for school district allocation purposes only, except as provided in RCW 28A.150.260(10)(a)(ii), but all funds appropriated for the learning assistance program must be expended for the purposes of RCW 28A.165.005 through 28A.165.065.

(2) A district's high poverty-based allocation is generated by its qualifying school buildings and must be expended by the district for those buildings. This funding must supplement and not supplant the district's expenditures under this chapter for those school buildings. [2017 3rd sp.s. c 13 § 405; 2013 2nd sp.s. c 18 § 205; 2009 c 548 § 703; 2008 c 321 § 10; 2005 c 489 § 1; 2004 c 20 § 6.]

Effective date—2017 3rd sp.s. c 13 §§ 401-413: See note following RCW 28A.150.200.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Findings—2008 c 321: See note following RCW 28A.655.061.

Chapter 28A.180 RCW

TRANSITIONAL BILINGUAL INSTRUCTION PROGRAM

Sections

28A.180.020 Annual report by superintendent of public instruction.

28A.180.120 Bilingual educator initiative—Pilot projects—Pipeline to college—Conditional loans—Report—Rules.

28A.180.020 Annual report by superintendent of public instruction. The superintendent of public instruction shall review annually the transitional bilingual instruction program and shall submit a report of such review to the legislature on or before February 1st of each year. [2017 c 123 § 1; 1984 c 124 § 8. Formerly RCW 28A.58.801.]

28A.180.120 Bilingual educator initiative—Pilot projects—Pipeline to college—Conditional loans—Report—Rules. In 2017, funds must be appropriated for the purposes in this section.

(1) The professional educator standards board, beginning in the 2017-2019 biennium, shall administer the bilingual educator initiative, which is a long-term program to

recruit, prepare, and mentor bilingual high school students to become future bilingual teachers and counselors.

(2) Subject to the availability of amounts appropriated for this specific purpose, pilot projects must be implemented in one or two school districts east of the crest of the Cascade mountains and one or two school districts west of the crest of the Cascade mountains, where immigrant students are shown to be rapidly increasing. Districts selected by the professional educator standards board must partner with at least one two-year and one four-year college in planning and implementing the program. The professional educator standards board shall provide oversight.

(3) Participating school districts must implement programs, including: (a) An outreach plan that exposes the program to middle school students and recruits them to enroll in the program when they begin their ninth grade of high school; (b) activities in ninth and tenth grades that help build student agency, such as self-confidence and awareness, while helping students to develop academic mind-sets needed for high school and college success; the value and benefits of teaching and counseling as careers; and introduction to leadership, civic engagement, and community service; (c) credit-bearing curricula in grades eleven and twelve that include mentoring, shadowing, best practices in teaching in a multicultural world, efficacy and practice of dual language instruction, social and emotional learning, enhanced leadership, civic engagement, and community service activities.

(4) There must be a pipeline to college using two-year and four-year college faculty and consisting of continuation services for program participants, such as advising, tutoring, mentoring, financial assistance, and leadership.

(5) High school and college teachers and counselors must be recruited and compensated to serve as mentors and trainers for participating students.

(6) After obtaining a high school diploma, students qualify to receive conditional loans to cover the full cost of college tuition, fees, and books. To qualify for funds, students must meet program requirements as developed by their local implementation team, which consists of staff from their school district and the partnering two-year and four-year college faculty.

(7) In order to avoid loan repayment, students must (a) earn their baccalaureate degree and certification needed to serve as a teacher or professional guidance counselor; and (b) teach or serve as a counselor in their educational service district region for at least five years. Students who do not meet the repayment terms in this subsection are subject to repaying all or part of the financial aid they receive for college unless students are recipients of funding provided through programs such as the state need grant program or the college bound scholarship program.

(8) Grantees must work with the professional educator standards board to draft the report required in section 6, chapter 236, Laws of 2017.

(9) The professional educator standards board may adopt rules to implement this section. [2017 c 236 § 4.]

Findings—Intent—2017 c 236: See note following RCW 28A.630.095.

Chapter 28A.185 RCW
HIGHLY CAPABLE STUDENTS

Sections

28A.185.020 Funding.

28A.185.020 Funding. (1) The legislature finds that, for highly capable students, access to accelerated learning and enhanced instruction is access to a basic education. There are multiple definitions of highly capable, from intellectual to academic to artistic. The research literature strongly supports using multiple criteria to identify highly capable students, and therefore, the legislature does not intend to prescribe a single method. Instead, the legislature intends to allocate funding based on 5.0 percent of each school district's population and authorize school districts to identify through the use of multiple, objective criteria those students most highly capable and eligible to receive accelerated learning and enhanced instruction in the program offered by the district. District practices for identifying the most highly capable students must prioritize equitable identification of low-income students. Access to accelerated learning and enhanced instruction through the program for highly capable students does not constitute an individual entitlement for any particular student.

(2) Supplementary funds provided by the state for the program for highly capable students under RCW 28A.150.260 shall be categorical funding to provide services to highly capable students as determined by a school district under RCW 28A.185.030. [2017 3rd sp.s. c 13 § 412; 2009 c 548 § 708; 1990 c 33 § 168; 1984 c 278 § 14. Formerly RCW 28A.16.050.]

Effective date—2017 3rd sp.s. c 13 §§ 401-413: See note following RCW 28A.150.200.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Additional notes found at www.leg.wa.gov

Chapter 28A.190 RCW
RESIDENTIAL EDUCATION PROGRAMS

Sections

- 28A.190.010 Educational program for juveniles in detention facilities. (*Effective July 1, 2019.*)
- 28A.190.020 Educational programs for residential school residents—"Residential school" defined. (*Effective July 1, 2019.*)
- 28A.190.040 Educational programs for residential school residents—Duties and authority of department of children, youth, and families and residential school superintendent. (*Effective July 1, 2019.*)
- 28A.190.050 Educational programs for residential school residents—Contracts between school district and department of children, youth, and families—Scope. (*Effective July 1, 2019.*)
- 28A.190.060 Educational programs for residential school residents—Department of social and health services and department of children, youth, and families to give notice when need for reduction of staff—Liability upon failure. (*Effective July 1, 2019.*)

28A.190.010 Educational program for juveniles in detention facilities. (*Effective July 1, 2019.*) A program of

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education shall be provided for by the department of social and health services or the department of children, youth, and families and the several school districts of the state for common school-age persons who have been admitted to facilities staffed and maintained or contracted pursuant to RCW 13.40.320 by the department of social and health services or the department of children, youth, and families for the education and treatment of juveniles who have been diverted or who have been found to have committed a juvenile offense. The division of duties, authority, and liabilities of the department of social and health services or the department of children, youth, and families and the several school districts of the state respecting the educational programs shall be the same in all respects as set forth in this chapter respecting programs of education for state residential school residents. For the purposes of this section, the term "residential school" or "schools" as used in this chapter shall be construed to mean a facility staffed and maintained by the department of social and health services or the department of children, youth, and families or a program established under RCW 13.40.320, for the education and treatment of juvenile offenders on probation or parole. Nothing in this section shall prohibit a school district from utilizing the services of an educational service district subject to RCW 28A.310.180. [2017 3rd sp.s. c 6 § 720; 2014 c 157 § 2; 1996 c 84 § 1; 1990 c 33 § 170; 1983 c 98 § 3. Formerly RCW 28A.58.765.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Juvenile facilities, educational programs: RCW 13.04.145.

28A.190.020 Educational programs for residential school residents—"Residential school" defined. (*Effective July 1, 2019.*) The term "residential school" as used in this chapter and RCW 72.01.200, 72.05.010, and 72.05.130 means Green Hill school, Naselle Youth Camp, Echo Glen, Lakeland Village, Rainier school, Yakima Valley school, Fircrest school, the Child Study and Treatment Center and Secondary School of western state hospital, and such other schools, camps, and centers as are now or hereafter established by the department of social and health services or the department of children, youth, and families for the diagnosis, confinement and rehabilitation of juveniles committed by the courts or for the care and treatment of persons who are exceptional in their needs by reason of mental and/or physical deficiency: PROVIDED, That the term shall not include the state schools for the deaf and blind or adult correctional institutions. [2017 3rd sp.s. c 6 § 721; 2014 c 157 § 3; 1990 c 33 § 171; 1979 ex.s. c 217 § 1. Formerly RCW 28A.58.770.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

28A.190.040 Educational programs for residential school residents—Duties and authority of department of children, youth, and families and residential school superintendent. (*Effective July 1, 2019.*) The duties and authority of the department of social and health services or the depart-

ment of children, youth, and families and of each superintendent or chief administrator of a residential school to support each program of education conducted by a school district pursuant to RCW 28A.190.030, shall include the following:

(1) The provision of transportation for residential school students to and from the sites of the program of education through the purchase, lease or rental of school buses and other vehicles as necessary;

(2) The provision of safe and healthy building and playground space for the conduct of the program of education through the construction, purchase, lease or rental of such space as necessary;

(3) The provision of furniture, vocational instruction machines and tools, building and playground fixtures, and other equipment and fixtures for the conduct of the program of education through construction, purchase, lease or rental as necessary;

(4) The provision of heat, lights, telephones, janitorial services, repair services, and other support services for the vehicles, building and playground spaces, equipment and fixtures provided for in this section;

(5) The employment, supervision and control of persons to transport students and to maintain the vehicles, building and playground spaces, equipment and fixtures, provided for in this section;

(6) Clinical and medical evaluation services necessary to a determination by the school district of the educational needs of residential school students; and

(7) Such other support services and facilities as are reasonably necessary for the conduct of the program of education. [2017 3rd sp.s. c 6 § 722; 1990 c 33 § 173; 1979 ex.s. c 217 § 3. Formerly RCW 28A.58.774.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

28A.190.050 Educational programs for residential school residents—Contracts between school district and department of children, youth, and families—Scope. (Effective July 1, 2019.) Each school district required to conduct a program of education pursuant to RCW 28A.190.030, and the department of social and health services and the department of children, youth, and families shall hereafter negotiate and execute a written contract for each school year or such longer period as may be agreed to which delineates the manner in which their respective duties and authority will be cooperatively performed and exercised, and any disputes and grievances resolved. Any such contract may provide for the performance of duties by a school district in addition to those set forth in RCW 28A.190.030 (1) through (5), including duties imposed upon the department of social and health services and the department of children, youth, and families and their agents pursuant to RCW 28A.190.040: PROVIDED, That funds identified in RCW 28A.190.030(6) and/or funds provided by the department of social and health services and the department of children, youth, and families are available to fully pay the direct and indirect costs of such additional duties and the district is otherwise authorized by law to perform such duties in connec-

tion with the maintenance and operation of a school district. [2017 3rd sp.s. c 6 § 723; 1990 c 33 § 174; 1979 ex.s. c 217 § 4. Formerly RCW 28A.58.776.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

28A.190.060 Educational programs for residential school residents—Department of social and health services and department of children, youth, and families to give notice when need for reduction of staff—Liability upon failure. (Effective July 1, 2019.) The department of social and health services and the department of children, youth, and families shall provide written notice on or before April 15th of each school year to the superintendent of each school district conducting a program of education pursuant to this chapter of any foreseeable residential school closure, reduction in the number of residents, or any other cause for a reduction in the school district's staff for the next school year. In the event the department of social and health services and the department of children, youth, and families fail to provide notice as prescribed by this section, the departments shall be liable and responsible for the payment of the salary and employment related costs for the next school year of each school district employee whose contract the school district would have nonrenewed but for the failure of the departments to provide notice. [2017 3rd sp.s. c 6 § 724; 2014 c 157 § 4; 1990 c 33 § 175; 1979 ex.s. c 217 § 5. Formerly RCW 28A.58.778.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

Chapter 28A.210 RCW

HEALTH—SCREENING AND REQUIREMENTS

Sections

28A.210.070	Immunization program—Definitions. (Effective July 1, 2018.)
28A.210.260	Public and private schools—Administration of medication—Conditions.
28A.210.278	Topical sunscreen products—Sun safety guidelines.
28A.210.305	Registered nurse or advance registered nurse practitioner—Duties relating to nursing care of students—Notice to school districts.

28A.210.070 Immunization program—Definitions. (Effective July 1, 2018.) As used in RCW 28A.210.060 through 28A.210.170:

(1) "Chief administrator" shall mean the person with the authority and responsibility for the immediate supervision of the operation of a school or day care center as defined in this section or, in the alternative, such other person as may hereafter be designated in writing for the purposes of RCW 28A.210.060 through 28A.210.170 by the statutory or corporate board of directors of the school district, school, or day care center or, if none, such other persons or person with the authority and responsibility for the general supervision of the operation of the school district, school or day care center.

(2) "Child" shall mean any person, regardless of age, in attendance at a public or private school or a licensed day care center.

(3) "Day care center" shall mean an agency which regularly provides care for a group of thirteen or more children for periods of less than twenty-four hours and is licensed pursuant to chapter 43.216 RCW.

(4) "Full immunization" shall mean immunization against certain vaccine-preventable diseases in accordance with schedules and with immunizing agents approved by the state board of health.

(5) "Local health department" shall mean the city, town, county, district or combined city-county health department, board of health, or health officer which provides public health services.

(6) "School" shall mean and include each building, facility, and location at or within which any or all portions of a preschool, kindergarten and grades one through twelve program of education and related activities are conducted for two or more children by or in behalf of any public school district and by or in behalf of any private school or private institution subject to approval by the state board of education pursuant to RCW 28A.305.130, 28A.195.010 through 28A.195.050, and 28A.410.120. [2017 3rd sp.s. c 6 § 217; 2006 c 263 § 908; 1990 c 33 § 191; 1985 c 49 § 2; 1984 c 40 § 4; 1979 ex.s. c 118 § 2. Formerly RCW 28A.31.102.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Additional notes found at www.leg.wa.gov

28A.210.260 Public and private schools—Administration of medication—Conditions. Public school districts and private schools which conduct any of grades kindergarten through the twelfth grade may provide for the administration of oral medication, topical medication, eye drops, ear drops, or nasal spray, of any nature to students who are in the custody of the school district or school at the time of administration, but are not required to do so by this section, subject to the following conditions:

(1) The board of directors of the public school district or the governing board of the private school or, if none, the chief administrator of the private school shall adopt policies which address the designation of employees who may administer oral medications, topical medications, eye drops, ear drops, or nasal spray to students, the acquisition of parent requests and instructions, and the acquisition of requests from licensed health professionals prescribing within the scope of their prescriptive authority and instructions regarding students who require medication for more than fifteen consecutive school days, the identification of the medication to be administered, the means of safekeeping medications with special attention given to the safeguarding of legend drugs as defined in chapter 69.41 RCW, and the means of maintaining a record of the administration of such medication;

(2) The board of directors shall seek advice from one or more licensed physicians or nurses in the course of developing the foregoing policies;

(3) The public school district or private school is in receipt of a written, current and unexpired request from a parent, or a legal guardian, or other person having legal control over the student to administer the medication to the student;

(4) The public school district or the private school is in receipt of (a) a written, current and unexpired request from a licensed health professional prescribing within the scope of his or her prescriptive authority for administration of the medication, as there exists a valid health reason which makes administration of such medication advisable during the hours when school is in session or the hours in which the student is under the supervision of school officials, and (b) written, current and unexpired instructions from such licensed health professional prescribing within the scope of his or her prescriptive authority regarding the administration of prescribed medication to students who require medication for more than fifteen consecutive workdays;

(5) The medication is administered by an employee designated by or pursuant to the policies adopted pursuant to subsection (1) of this section and in substantial compliance with the prescription of a licensed health professional prescribing within the scope of his or her prescriptive authority or the written instructions provided pursuant to subsection (4) of this section. If a school nurse is on the premises, a nasal spray that is a legend drug or a controlled substance must be administered by the school nurse. If no school nurse is on the premises, a nasal spray that is a legend drug or a controlled substance may be administered by a trained school employee or parent-designated adult who is not a school nurse. The board of directors shall allow school personnel, who have received appropriate training and volunteered for such training, to administer a nasal spray that is a legend drug or a controlled substance. After a school employee who is not a school nurse administers a nasal spray that is a legend drug or a controlled substance, the employee shall summon emergency medical assistance as soon as practicable;

(6) The medication is first examined by the employee administering the same to determine in his or her judgment that it appears to be in the original container and to be properly labeled; and

(7) The board of directors shall designate a professional person licensed pursuant to chapter 18.71 RCW or chapter 18.79 RCW as it applies to registered nurses and advanced registered nurse practitioners, to delegate to, train, and supervise the designated school district personnel in proper medication procedures;

(8)(a) For the purposes of this section, "parent-designated adult" means a volunteer, who may be a school district employee, who receives additional training from a health care professional or expert in epileptic seizure care selected by the parents, and who provides care for the child consistent with the individual health plan.

(b) To be eligible to be a parent-designated adult, a school district employee not licensed under chapter 18.79 RCW must file, without coercion by the employer, a voluntary written, current, and unexpired letter of intent stating the employee's willingness to be a parent-designated adult. If a school employee who is not licensed under chapter 18.79

RCW chooses not to file a letter under this section, the employee shall not be subject to any employer reprisal or disciplinary action for refusing to file a letter;

(9) The board of directors shall designate a professional person licensed under chapter 18.71, 18.57, or 18.79 RCW as it applies to registered nurses and advanced registered nurse practitioners, to consult and coordinate with the student's parents and health care provider, and train and supervise the appropriate school district personnel in proper procedures for care for students with epilepsy to ensure a safe, therapeutic learning environment. Training may also be provided by an epilepsy educator who is nationally certified. Parent-designated adults who are school employees are required to receive the training provided under this subsection. Parent-designated adults who are not school employees must show evidence of comparable training. The parent-designated adult must also receive additional training as established in subsection (8)(a) of this section for the additional care the parents have authorized the parent-designated adult to provide. The professional person designated under this subsection is not responsible for the supervision of the parent-designated adult for those procedures that are authorized by the parents;

(10) This section does not apply to topical sunscreen products regulated by the United States food and drug administration for over-the-counter use. Provisions related to possession and application of topical sunscreen products are in RCW 28A.210.278. [2017 c 186 § 2; 2013 c 180 § 1; 2012 c 16 § 1; 2000 c 63 § 1; 1994 sp.s. c 9 § 720; 1982 c 195 § 1. Formerly RCW 28A.31.150.]

Application—Short title—Effective date—2017 c 186: See notes following RCW 28A.210.278.

Additional notes found at www.leg.wa.gov

28A.210.278 Topical sunscreen products—Sun safety guidelines. (1) Any person, including students, parents, and school personnel, may possess topical sunscreen products to help prevent sunburn while on school property, at a school-related event or activity, or at summer camp. As excepted in RCW 28A.210.260, a sunscreen product may be possessed and applied under this section without the prescription or note of a licensed health care professional if the product is regulated by the United States food and drug administration for over-the-counter use. For student use, a sunscreen product must be supplied by a parent or guardian.

(2) Schools are encouraged to educate students about sun safety guidelines.

(3) Nothing in this section requires school personnel to assist students in applying sunscreen.

(4) As used in this section, "school" means a public school, school district, educational service district, or private school with any of grades kindergarten through twelve. [2017 c 186 § 1.]

Application—2017 c 186: "This act does not create any civil liability on the part of the state or any state agency, officer, employee, agent, political subdivision, or school district." [2017 c 186 § 3.]

Short title—2017 c 186: "This act may be known and cited as the student sun safety education act." [2017 c 186 § 4.]

Effective date—2017 c 186: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 4, 2017]." [2017 c 186 § 5.]

28A.210.305 Registered nurse or advanced registered nurse practitioner—Duties relating to nursing care of students—Notice to school districts. (1)(a) A registered nurse or an advanced registered nurse practitioner licensed under chapter 18.79 RCW working in a school setting is authorized and responsible for the nursing care of students to the extent that the care is within the practice of nursing as defined in this section.

(b) A school administrator may supervise a registered nurse or an advanced registered nurse practitioner licensed under chapter 18.79 RCW in aspects of employment other than the practice of nursing as defined in this section.

(c) Only a registered nurse or an advanced registered nurse practitioner licensed under chapter 18.79 RCW may supervise, direct, or evaluate a licensed nurse working in a school setting with respect to the practice of nursing as defined in this section.

(2) Nothing in this section:

(a) Prohibits a nonnurse supervisor from supervising, directing, or evaluating a licensed nurse working in a school setting with respect to matters other than the practice of nursing;

(b) Requires a registered nurse or an advanced registered nurse practitioner to be clinically supervised in a school setting; or

(c) Prohibits a nonnurse supervisor from conferring with a licensed nurse working in a school setting with respect to the practice of nursing.

(3) Within existing funds, the superintendent of public instruction shall notify each school district in this state of the requirements of this section.

(4) For purposes of this section, "practice of nursing" means:

(a) Registered nursing practice as defined in RCW 18.79.040, advanced registered nursing practice as defined in RCW 18.79.050, and licensed practical nursing practice as defined in RCW 18.79.060, including, but not limited to:

(i) The administration of medication pursuant to a medication or treatment order; and

(ii) The decision to summon emergency medical assistance; and

(b) Compliance with any state or federal statute or administrative rule specifically regulating licensed nurses, including any statute or rule defining or establishing standards of patient care or professional conduct or practice. [2017 c 84 § 2.]

Findings—Intent—2017 c 84: "(1) The legislature finds that:

(a) A registered nurse or an advanced registered nurse practitioner working in a school setting is authorized and responsible for the nursing care of students to the extent that the care is within the practice of nursing. A school administrator may supervise a registered nurse or an advanced registered nurse practitioner in aspects of employment other than the practice of nursing;

(b) Nursing is governed by specific laws and regulations and requires a unique license to practice. Clinical supervision of a nurse is based on knowledge of the laws, regulations, and rules governing nursing practice, nursing practice standards, and nursing performance standards;

(c) Student health needs have changed dramatically over the last twenty years. The number of students with special health care needs has risen exponentially;

(d) School nurses are held accountable through chapter 18.79 RCW and the uniform disciplinary act, chapter 18.130 RCW, for errors in nursing judgment and actions;

(e) Individuals who are not nurses are unqualified to make nursing judgments and assessments;

(f) The independent nature of nursing has been recognized in both statute and rule. For example, under RCW 18.79.040, "registered nursing practice" includes the "administration, supervision, delegation, and evaluation of nursing practice." Furthermore, continuing competency rules recently adopted by the nursing care quality assurance commission recognize and acknowledge the independent nature of nursing; and

(g) The ability of a nurse to practice nursing without the supervision of a nonnurse supervisor is particularly important given the primacy of the nurse-patient relationship.

(2) It is therefore the intent of the legislature to reaffirm the authority of a licensed nurse working in a school setting to practice nursing without the supervision of a person who is not a licensed nurse.

(3) It is not the intent of the legislature to:

(a) Prohibit a nonnurse from supervising a licensed nurse working in a school setting with respect to matters other than the practice of nursing, such as matters of administration, terms and conditions of employment, and employee performance; or

(b) Require a school to provide clinical supervision for a licensed nurse working in a school setting." [2017 c 84 § 1.]

Chapter 28A.215 RCW

EARLY CHILDHOOD, PRESCHOOLS, AND BEFORE-AND-AFTER SCHOOL CARE

Sections

28A.215.020 Allocations of state or federal funds—Rules. (*Effective July 1, 2018.*)

28A.215.080 Washington academic, innovation, and mentoring program.

28A.215.020 Allocations of state or federal funds—Rules. (*Effective July 1, 2018.*) Expenditures under federal funds and/or state appropriations made to carry out the purposes of RCW 28A.215.010 through 28A.215.050 shall be made by warrants issued by the state treasurer upon order of the superintendent of public instruction. The superintendent of public instruction shall make necessary rules to carry out the purpose of RCW 28A.215.010. The superintendent shall consult with the department of children, youth, and families when establishing relevant rules. [2017 3rd sp.s. c 6 § 218; 2006 c 263 § 411; 1995 c 335 § 308; 1990 c 33 § 210; 1969 ex.s. c 223 § 28A.34.020. Prior: 1943 c 220 § 2; Rem. Supp. 1943 § 5109-2. Formerly RCW 28A.34.020, 28.34.020, 28.34.030.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Additional notes found at www.leg.wa.gov

28A.215.080 Washington academic, innovation, and mentoring program. (1) The Washington academic, innovation, and mentoring program is established.

(2) The purpose of the program is to enable eligible neighborhood youth development entities to provide out-of-school time programs for youth ages six to eighteen years of age that include educational services, social emotional learning, mentoring, and linkages to positive, prosocial leisure, and recreational activities. The programs must be designed for mentoring and academic enrichment.

(3) Eligible entities must meet the following requirements:

(a) Ensure that sixty percent or more of the academic, innovation, and mentoring program participants must qualify for free or reduced-price lunch;

(b) Have an existing partnership with the school district and a commitment to develop a formalized data-sharing agreement;

(c) Be facility based;

(d) Combine, or have a plan to combine, academics and social emotional learning;

(e) Engage in a continuous program quality improvement process;

(f) Conduct national criminal background checks for all employees and volunteers who work with children; and

(g) Have adopted standards for care including staff training, health and safety standards, and mechanisms for assessing and enforcing the program's compliance with the standards.

(4) Nonprofit entities applying for funding as a statewide network must:

(a) Have an existing infrastructure or network of academic, innovation, and mentoring program grant-eligible entities;

(b) Provide after-school and summer programs with youth development services; and

(c) Provide proven and tested recreational, educational, and character-building programs for children ages six to eighteen years of age.

(5) The office of the superintendent of public instruction must submit a report to the appropriate education and fiscal committees of the legislature by December 31, 2018, and an annual update by December 31 each year thereafter. The report must outline the programs established, target populations, and pretesting and posttesting results. [2017 c 180 § 1.]

Chapter 28A.220 RCW

TRAFFIC SAFETY

Sections

28A.220.020 Definitions. (*Effective August 1, 2018.*)

28A.220.030 Traffic safety education section—Administration of traffic safety education program—Certification and endorsement of qualified teachers of driver training—Powers and duties of school officials—Administration of knowledge and driving portions of driver licensing examination. (*Effective August 1, 2018.*)

28A.220.035 Traffic safety education program—Required curriculum—Development by the office of the superintendent of public instruction and the department of licensing. (*Effective August 1, 2018.*)

28A.220.037 Traffic safety education program—Development and administration of certification process—Program audits—Suspension of program certification—Duties of department of licensing. (*Effective August 1, 2018.*)

28A.220.050 Repealed. (*Effective August 1, 2018.*)

28A.220.060 Repealed. (*Effective August 1, 2018.*)

28A.220.080 Repealed. (*Effective August 1, 2018.*)

28A.220.085 Repealed. (*Effective August 1, 2018.*)

28A.220.901 Coordination of responsibilities with department of licensing—2017 c 197.

28A.220.020 Definitions. (*Effective August 1, 2018.*)

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

(1) "Appropriate course delivery standards" means the classroom and behind-the-wheel student learning experiences considered acceptable to the superintendent of public

instruction under RCW 28A.220.030 that must be satisfactorily accomplished by the student in order to successfully complete the driver training education course.

(2) "Approved private school" means a private school approved by the board of education under chapter 28A.195 RCW.

(3) "Director" means the director of the department of licensing.

(4) "Driver training education course" means a course of instruction in traffic safety education (a) offered as part of a traffic safety education program authorized by the superintendent of public instruction and certified by the department of licensing and (b) taught by a qualified teacher of driver training education that consists of classroom and behind-the-wheel instruction using curriculum that meets joint superintendent of public instruction and department of licensing standards and the course requirements established by the superintendent of public instruction under RCW 28A.220.030. Behind-the-wheel instruction is characterized by driving experience.

(5) "Qualified teacher of driver training education" means an instructor who:

(a) Is certificated under chapter 28A.410 RCW and has obtained a traffic safety endorsement or a letter of approval to teach traffic safety education from the superintendent of public instruction or is certificated by the superintendent of public instruction to teach a driver training education course; or

(b) Is an instructor provided by a driver training school that has contracted with a school district's or districts' board of directors under RCW 28A.220.030(3) to teach driver education for the school district.

(6) "Superintendent" or "state superintendent" means the superintendent of public instruction.

(7) "Traffic safety education program" means the administration and provision of driver training education courses offered by secondary schools of a school district or vocational-technical schools that are conducted by such schools in a like manner to their other regular courses. [2017 c 197 § 2; 1990 c 33 § 218; 1979 c 158 § 195; 1977 c 76 § 2; 1969 ex.s. c 218 § 1; 1963 c 39 § 2. Formerly RCW 28A.08.010, 46.81.010.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—2017 c 197: "The legislature finds that there is a need to establish consistency in the quality of driver training education in this state to reduce the number of young driver accidents that are prematurely killing our youth. The traffic safety commission reports that out of two hundred forty-five fatalities in the first half of 2016, thirty-one involved young drivers aged sixteen to twenty-five. The intent of this act is to require driver training education curriculum to be developed and maintained jointly by the office of the superintendent of public instruction and the department of licensing. The legislature also finds that there is a need to audit driver training education courses; therefore, the intent of this act is also to provide the department of licensing with resources and authority to audit all driver training education courses, in consultation with the superintendent of public instruction for driver training education courses offered by school districts." [2017 c 197 § 1.]

Effective date—2017 c 197: "Except for section 13 of this act, this act takes effect August 1, 2018." [2017 c 197 § 16.]

Additional notes found at www.leg.wa.gov

28A.220.030 Traffic safety education section—Administration of traffic safety education program—Certification and endorsement of qualified teachers of

driver training—Powers and duties of school officials—Administration of knowledge and driving portions of driver licensing examination. (Effective August 1, 2018.)

(1) The superintendent of public instruction is authorized to establish a section of traffic safety education, and through such section shall: Define appropriate course delivery standards required to provide an effective driver training education course, establish a level of driving competency required of each student to successfully complete the course, and ensure that an effective statewide program is implemented and sustained; administer, supervise, and develop the traffic safety education program; and assist local school districts and approved private schools in the conduct of their traffic safety education programs. The superintendent shall adopt necessary rules governing the operation and scope of the traffic safety education program; and each school district and approved private school shall submit a report to the superintendent on the condition of its traffic safety education program: PROVIDED, That the superintendent shall monitor the quality of the program and carry out the purposes of this chapter.

(2)(a) The board of directors of any school district maintaining a secondary school which includes any of the grades 10 to 12, inclusive, or any approved private school which includes any of the grades 10 to 12, inclusive, may establish and maintain a traffic safety education program.

(b) Any school district or approved private school that offers a driver training education course must certify to the department of licensing that it is operating a traffic safety education program, that the driver training education course follows the curriculum promulgated by the office of the superintendent of public instruction and the department of licensing, that it meets the course delivery standards promulgated by the office of the superintendent of public instruction, that a record retention policy is in place to meet the requirements of subsection (5) of this section, and that the school district or approved private school has verified that all instructors are authorized by the office of the superintendent of public instruction to teach a driver training education course.

(c) Any portion of a driver training education course offered by a school district may be taught before or after regular school hours or on Saturdays as well as on regular school days or as a summer school course, at the option of the local school district. If a school district elects to offer a driver training education course and has within its boundaries a private accredited secondary school which includes any of the grades 10 to 12, inclusive, at least one driver training education course must be given at times other than regular school hours if there is sufficient demand for it.

(3)(a) A qualified teacher of driver training education must be certificated under chapter 28A.410 RCW and obtain a traffic safety endorsement or a letter of approval to teach traffic safety education from the superintendent of public instruction to teach either the classroom instruction or the behind-the-wheel instruction portion of the driver training education course, or both, under rules adopted by the superintendent. The classroom or behind-the-wheel instruction portion of the driver training education course may also be taught by instructors certificated under rules adopted by the superintendent of public instruction, exclusive of any

requirement that the instructor be certificated under chapter 28A.410 RCW.

(b) The superintendent shall establish a required minimum number of hours of continuing traffic safety education for qualified teachers of driver training education.

(4) The board of directors of a school district, or combination of school districts, may contract with any driver training school licensed under chapter 46.82 RCW to teach the behind-the-wheel instruction portion of the driver training education course. Instructors provided by any such contracting driver training school must be properly qualified teachers of driver training education under the joint qualification requirements adopted by the superintendent of public instruction and the director of licensing.

(5) Each school district or approved private school offering a traffic safety education program must maintain: (a) Documentation of each instructor's name and address and that establishes the instructor as a qualified teacher of driver training education as defined in RCW 28A.220.020; and (b) student records that include the student's name, address, and telephone number, the date of enrollment and all dates of instruction, the student's driver's instruction permit or driver's license number, the type of training received, the total number of hours of instruction, and the name of the instructor or instructors. These records must be maintained for three years following the completion of the instruction and are subject to inspection upon request of the department of licensing or the office of the superintendent of public instruction. The superintendent may adopt rules regarding the retention of additional documents that are subject to inspection by the department of licensing or the office of the superintendent of public instruction.

(6) A driver training education course may not be offered by a school district or an approved private school to a student who is under the age of fifteen, and behind-the-wheel instruction may not be given by an instructor to a student in a motor vehicle unless the student possesses either a current and valid driver's instruction permit issued under RCW 46.20.055 or a current and valid driver's license.

(7) School districts that offer a driver training education course under this chapter may administer the portions of the driver licensing examination that test the applicant's knowledge of traffic laws and ability to safely operate a motor vehicle as authorized under RCW 46.20.120(7). The superintendent shall work with the department of licensing, in consultation with school districts that offer a traffic safety education program, to develop standards and requirements for administering each portion of the driver licensing examination that are comparable to the standards and requirements for driver training schools under RCW 46.82.450.

(8) Before a school district may provide a portion of the driver licensing examination, the school district must, after consultation with the superintendent, enter into an agreement with the department of licensing that sets forth an accountability and audit process that takes into account the unique nature of school district facilities and school hours and, at a minimum, contains provisions that:

(a) Allow the department of licensing to conduct random examinations, inspections, and audits without prior notice;

(b) Allow the department of licensing to conduct on-site inspections at least annually;

(c) Allow the department of licensing to test, at least annually, a random sample of the drivers approved by the school district for licensure and to cancel any driver's license that may have been issued to any driver selected for testing who refuses to be tested; and

(d) Reserve to the department of licensing the right to take prompt and appropriate action against a school district that fails to comply with state or federal standards for a driver licensing examination or to comply with any terms of the agreement. [2017 c 197 § 3; 2011 c 370 § 2; 2000 c 115 § 9; 1979 c 158 § 196; 1977 c 76 § 3; 1969 ex.s. c 218 § 2; 1963 c 39 § 3. Formerly RCW 28A.08.020, 46.81.020.]

Findings—Intent—Effective date—2017 c 197: See notes following RCW 28A.220.020.

Intent—2011 c 370: "It is the intent of the legislature to utilize the infrastructure and resources of the commercial driver training schools and the school districts' traffic safety education programs by authorizing these entities to provide driver licensing examinations. The legislature intends for the department of licensing to authorize the administration of driver licensing examinations by these entities in order to maintain and reprioritize its staff for the purpose of reducing the wait times at its driver licensing offices.

Further, the legislature recognizes the growing importance of the work performed by department of licensing driver licensing services employees, who play an increasingly vital role in our security by ensuring that applicants are properly issued identification." [2011 c 370 § 1.]

Inclusion of stakeholder groups in communications to facilitate transition of driver licensing examination administration—2011 c 370: See note following RCW 46.82.450.

Finding—2000 c 115: See note following RCW 46.20.075.

Additional notes found at www.leg.wa.gov

28A.220.035 Traffic safety education program—Required curriculum—Development by the office of the superintendent of public instruction and the department of licensing. (Effective August 1, 2018.) The office of the superintendent of public instruction and the department of licensing shall jointly develop and maintain a required curriculum for school districts and approved private schools operating a traffic safety education program. The jointly developed curriculum must be prepared by August 1, 2018. The curriculum and instructional materials must comply with the course content requirements of RCW 46.82.420(2) and 46.82.430. In developing the curriculum, the office of the superintendent of public instruction and the department of licensing shall consult with one or more of Central Washington University's traffic safety education instructors or program content developers. [2017 c 197 § 4.]

Findings—Intent—Effective date—2017 c 197: See notes following RCW 28A.220.020.

28A.220.037 Traffic safety education program—Development and administration of certification process—Program audits—Suspension of program certification—Duties of department of licensing. (Effective August 1, 2018.) (1) The department of licensing shall develop and administer the certification process required under RCW 28A.220.030 for a school district's or approved private school's traffic safety education program in consultation with the superintendent.

(2) The department of licensing shall conduct audits of traffic safety education programs to ensure that the instructors are qualified teachers of driver training education and teaching the required curriculum material, and that accurate

records are maintained and accurate information is provided to the department of licensing regarding student performance. Each school district and approved private school may be audited at least once every five years or more frequently. The audit process must take into account the unique nature of school district facilities, operations, and hours. As part of its audit process, the department of licensing may examine all relevant information, including driver training education course curriculum materials and student records, and visit any course in progress that is part of the traffic safety education program. The director shall consult with the superintendent in developing and carrying out these auditing practices.

(3) The department of licensing may suspend a school's or school district's traffic safety education program certification if: The school or school district does not follow the curriculum promulgated by the office of the superintendent of public instruction and the department of licensing, any program instructors are not qualified teachers of driver training education, accurate records have not been maintained under RCW 28A.220.030(5) or accurate information regarding student performance has not been provided to the department of licensing, or the school or school district refuses to cooperate with the department of licensing audit process authorized under this chapter. The director shall consult with the superintendent in developing and carrying out these program certification suspension practices. [2017 c 197 § 5.]

Findings—Intent—Effective date—2017 c 197: See notes following RCW 28A.220.020.

28A.220.050 Repealed. (Effective August 1, 2018.)
See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.220.060 Repealed. (Effective August 1, 2018.)
See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.220.080 Repealed. (Effective August 1, 2018.)
See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.220.085 Repealed. (Effective August 1, 2018.)
See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.220.901 Coordination of responsibilities with department of licensing—2017 c 197. The department of licensing and the office of the superintendent of public instruction must work together on the transfer and coordination of responsibilities to comply with chapter 197, Laws of 2017. [2017 c 197 § 13.]

Findings—Intent—2017 c 197: See note following RCW 28A.220.020.

**Chapter 28A.225 RCW
COMPULSORY SCHOOL ATTENDANCE AND
ADMISSION**

Sections

28A.225.010 Attendance mandatory—Age—Exceptions. (Effective July 1, 2019.)

- 28A.225.015 Attendance mandatory—Six or seven year olds—Unexcused absences—Petition.
- 28A.225.020 School's duties upon child's failure to attend school.
- 28A.225.025 Community truancy boards.
- 28A.225.026 Community truancy boards—Memoranda of understanding with juvenile courts—Designation of school district coordinators to address absenteeism and truancy—Community-wide partnerships.
- 28A.225.030 Petition to juvenile court for violations by a parent or child—School district responsibilities.
- 28A.225.090 Court orders—Penalties—Parents' defense.
- 28A.225.115 Repealed.
- 28A.225.151 Student-level truancy data—Reports—Data protocols and guidance for school districts.

28A.225.010 Attendance mandatory—Age—Exceptions. (Effective July 1, 2019.) (1) All parents in this state of any child eight years of age and under eighteen years of age shall cause such child to attend the public school of the district in which the child resides and such child shall have the responsibility to and therefore shall attend for the full time when such school may be in session unless:

(a) The child is attending an approved private school for the same time or is enrolled in an extension program as provided in RCW 28A.195.010(4);

(b) The child is receiving home-based instruction as provided in subsection (4) of this section;

(c) The child is attending an education center as provided in chapter 28A.205 RCW;

(d) The school district superintendent of the district in which the child resides shall have excused such child from attendance because the child is physically or mentally unable to attend school, is attending a residential school operated by the department of social and health services or the department of children, youth, and families, is incarcerated in an adult correctional facility, or has been temporarily excused upon the request of his or her parents for purposes agreed upon by the school authorities and the parent: PROVIDED, That such excused absences shall not be permitted if deemed to cause a serious adverse effect upon the student's educational progress: PROVIDED FURTHER, That students excused for such temporary absences may be claimed as full-time equivalent students to the extent they would otherwise have been so claimed for the purposes of RCW 28A.150.250 and 28A.150.260 and shall not affect school district compliance with the provisions of RCW 28A.150.220;

(e) The child is excused from school subject to approval by the student's parent for a reason of faith or conscience, or an organized activity conducted under the auspices of a religious denomination, church, or religious organization, for up to two days per school year without any penalty. Such absences may not mandate school closures. Students excused for such temporary absences may be claimed as full-time equivalent students to the extent they would otherwise have been so claimed for the purposes of RCW 28A.150.250 and 28A.150.260 and may not affect school district compliance with the provisions of RCW 28A.150.220; or

(f) The child is sixteen years of age or older and:

(i) The child is regularly and lawfully employed and either the parent agrees that the child should not be required to attend school or the child is emancipated in accordance with chapter 13.64 RCW;

(ii) The child has already met graduation requirements in accordance with state board of education rules and regulations; or

(iii) The child has received a certificate of educational competence under rules and regulations established by the state board of education under RCW 28A.305.190.

(2) A parent for the purpose of this chapter means a parent, guardian, or person having legal custody of a child.

(3) An approved private school for the purposes of this chapter and chapter 28A.200 RCW shall be one approved under regulations established by the state board of education pursuant to RCW 28A.305.130.

(4) For the purposes of this chapter and chapter 28A.200 RCW, instruction shall be home-based if it consists of planned and supervised instructional and related educational activities, including a curriculum and instruction in the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of an appreciation of art and music, provided for a number of hours equivalent to the total annual program hours per grade level established for approved private schools under RCW 28A.195.010 and 28A.195.040 and if such activities are:

(a) Provided by a parent who is instructing his or her child only and are supervised by a certificated person. A certificated person for purposes of this chapter and chapter 28A.200 RCW shall be a person certified under chapter 28A.410 RCW. For purposes of this section, "supervised by a certificated person" means: The planning by the certificated person and the parent of objectives consistent with this subsection; a minimum each month of an average of one contact hour per week with the child being supervised by the certificated person; and evaluation of such child's progress by the certificated person. The number of children supervised by the certificated person shall not exceed thirty for purposes of this subsection; or

(b) Provided by a parent who is instructing his or her child only and who has either earned forty-five college level quarter credit hours or its equivalent in semester hours or has completed a course in home-based instruction at a postsecondary institution or a vocational-technical institute; or

(c) Provided by a parent who is deemed sufficiently qualified to provide home-based instruction by the superintendent of the local school district in which the child resides.

(5) The legislature recognizes that home-based instruction is less structured and more experiential than the instruction normally provided in a classroom setting. Therefore, the provisions of subsection (4) of this section relating to the nature and quantity of instructional and related educational activities shall be liberally construed. [2017 3rd sp.s. c 6 § 630; 2014 c 168 § 3; 1998 c 244 § 14; 1996 c 134 § 1; 1990 c 33 § 219; 1986 c 132 § 1; 1985 c 441 § 1; 1980 c 59 § 1; 1979 ex.s. c 201 § 4; 1973 c 51 § 1; 1972 ex.s. c 10 § 2. Prior: 1971 ex.s. c 215 § 2; 1971 ex.s. c 51 § 1; 1969 ex.s. c 109 § 2; 1969 ex.s. c 223 § 28A.27.010; prior: 1909 p 364 § 1; RRS § 5072; prior: 1907 c 240 § 7; 1907 c 231 § 1; 1905 c 162 § 1; 1903 c 48 § 1; 1901 c 177 § 11; 1899 c 140 § 1; 1897 c 118 § 71. Formerly RCW 28A.27.010, 28.27.010.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Private schools: RCW 28A.305.130(5), 28A.195.010 through 28A.195.050.

Work permits for minors required: RCW 49.12.123.

[2017 RCW Supp—page 250]

Additional notes found at www.leg.wa.gov

28A.225.015 Attendance mandatory—Six or seven year olds—Unexcused absences—Petition. (1) If a parent enrolls a child who is six or seven years of age in a public school, the child is required to attend and that parent has the responsibility to ensure the child attends for the full time that school is in session. An exception shall be made to this requirement for children whose parents formally remove them from enrollment if the child is less than eight years old and a petition has not been filed against the parent under subsection (3) of this section. The requirement to attend school under this subsection does not apply to a child enrolled in a public school part-time for the purpose of receiving ancillary services. A child required to attend school under this subsection may be temporarily excused upon the request of his or her parent for purposes agreed upon by the school district and parent.

(2) If a six or seven year old child is required to attend public school under subsection (1) of this section and that child has unexcused absences, the public school in which the child is enrolled shall:

(a) Inform the child's custodial parent, parents, or guardian by a notice in writing or by telephone whenever the child has failed to attend school after one unexcused absence within any month during the current school year;

(b) Request a conference or conferences with the custodial parent, parents, or guardian and child at a time reasonably convenient for all persons included for the purpose of analyzing the causes of the child's absences after three unexcused absences within any month during the current school year. If a regularly scheduled parent-teacher conference day is to take place within thirty days of the third unexcused absence, then the school district may schedule this conference on that day; and

(c) Take steps to eliminate or reduce the child's absences. These steps shall include, where appropriate, adjusting the child's school program or school or course assignment, providing more individualized or remedial instruction, offering assistance in enrolling the child in available alternative schools or programs, or assisting the parent or child to obtain supplementary services that may help eliminate or ameliorate the cause or causes for the absence from school.

(3) If a child required to attend public school under subsection (1) of this section has seven unexcused absences in a month or ten unexcused absences in a school year, the school district shall file a petition for civil action as provided in RCW 28A.225.035 against the parent of the child.

(4) This section does not require a six or seven year old child to enroll in a public or private school or to receive home-based instruction. This section only applies to six or seven year old children whose parents enroll them full time in public school and do not formally remove them from enrollment as provided in subsection (1) of this section. [2017 c 291 § 1; 1999 c 319 § 6.]

28A.225.020 School's duties upon child's failure to attend school. (1) If a child required to attend school under RCW 28A.225.010 fails to attend school without valid justification, the public school in which the child is enrolled shall:

(a) Inform the child's parent by a notice in writing or by telephone whenever the child has failed to attend school after one unexcused absence within any month during the current school year. School officials shall inform the parent of the potential consequences of additional unexcused absences. If the parent is not fluent in English, the school must make reasonable efforts to provide this information in a language in which the parent is fluent;

(b) Schedule a conference or conferences with the parent and child at a time reasonably convenient for all persons included for the purpose of analyzing the causes of the child's absences after three unexcused absences within any month during the current school year. If a regularly scheduled parent-teacher conference day is to take place within thirty days of the third unexcused absence, then the school district may schedule this conference on that day. If the child's parent does not attend the scheduled conference, the conference may be conducted with the student and school official. However the parent shall be notified of the steps to be taken to eliminate or reduce the child's absence; and

(c) At some point after the second and before the fifth unexcused absence, take data-informed steps to eliminate or reduce the child's absences.

(i) In middle school and high school, these steps must include application of the Washington assessment of the risks and needs of students (WARNS) or other assessment by a school district's designee under RCW 28A.225.026.

(ii) For any child with an existing individualized education plan or 504 plan, these steps must include the convening of the child's individualized education plan or 504 plan team, including a behavior specialist or mental health specialist where appropriate, to consider the reasons for the absences. If necessary, and if consent from the parent is given, a functional behavior assessment to explore the function of the absence behavior shall be conducted and a detailed behavior plan completed. Time should be allowed for the behavior plan to be initiated and data tracked to determine progress.

(iii) With respect to any child, without an existing individualized education plan or 504 plan, reasonably believed to have a mental or physical disability or impairment, these steps must include informing the child's parent of the right to obtain an appropriate evaluation at no cost to the parent to determine whether the child has a disability or impairment and needs accommodations, related services, or special education services. This includes children with suspected emotional or behavioral disabilities as defined in WAC 392-172A-01035. If the school obtains consent to conduct an evaluation, time should be allowed for the evaluation to be completed, and if the child is found to be eligible for special education services, accommodations, or related services, a plan developed to address the child's needs.

(iv) These steps must include, where appropriate, providing an available approved best practice or research-based intervention, or both, consistent with the WARNS profile or other assessment, if an assessment was applied, adjusting the child's school program or school or course assignment, providing more individualized or remedial instruction, providing appropriate vocational courses or work experience, referring the child to a community truancy board, requiring the child to attend an alternative school or program, or assisting the parent or child to obtain supplementary services that might elim-

inate or ameliorate the cause or causes for the absence from school.

(2) For purposes of this chapter, an "unexcused absence" means that a child:

(a)(i) Has failed to attend the majority of hours or periods in an average school day or has failed to comply with a more restrictive school district policy; and

(ii) Has failed to meet the school district's policy for excused absences; or

(b) Has failed to comply with alternative learning experience program attendance requirements as described by the superintendent of public instruction.

(3) If a child transfers from one school district to another during the school year, the receiving school or school district shall include the unexcused absences accumulated at the previous school or from the previous school district for purposes of this section, RCW 28A.225.030, and 28A.225.015. The sending school district shall provide this information to the receiving school, together with a copy of any previous assessment as required under subsection (1)(c) of this section, history of any best practices or researched-based intervention previously provided to the child by the child's sending school district, and a copy of the most recent truancy information including any online or written acknowledgment by the parent and child, as provided for in RCW 28A.225.005. All school districts must use the standard choice transfer form for releasing a student to a nonresident school district for the purposes of accessing an alternative learning experience program. [2017 c 291 § 2; 2016 c 205 § 4; 2009 c 266 § 1; 1999 c 319 § 1; 1996 c 134 § 2; 1995 c 312 § 67; 1992 c 205 § 202; 1986 c 132 § 2; 1979 ex.s. c 201 § 1. Formerly RCW 28A.27.020.]

Additional notes found at www.leg.wa.gov

28A.225.025 Community truancy boards. (1) For purposes of this chapter, "community truancy board" means a board established pursuant to a memorandum of understanding between a juvenile court and a school district and composed of members of the local community in which the child attends school. Community truancy boards must include members who receive training regarding the identification of barriers to school attendance, the use of the Washington assessment of the risks and needs of students (WARNS) or other assessment tools to identify the specific needs of individual children, cultural responsive interactions, trauma-informed approaches to discipline, evidence-based treatments that have been found effective in supporting at-risk youth and their families, and the specific services and treatment available in the particular school, court, community, and elsewhere. Duties of a community truancy board shall include, but not be limited to: Identifying barriers to school attendance, recommending methods for improving attendance such as connecting students and their families with community services, culturally appropriate promising practices, and evidence-based services such as functional family therapy, suggesting to the school district that the child enroll in another school, an alternative education program, an education center, a skill center, a dropout prevention program, or another public or private educational program, or recommending to the juvenile court that a juvenile be offered the

opportunity for placement in a HOPE center or crisis residential center, if appropriate.

(2) The legislature finds that utilization of community truancy boards is the preferred means of intervention when preliminary methods to eliminate or reduce unexcused absences as required by RCW 28A.225.020 have not been effective in securing the child's attendance at school. The legislature intends to encourage and support the development and expansion of community truancy boards. Operation of a school truancy board does not excuse a district from the obligation of filing a petition within the requirements of RCW 28A.225.015(3). [2017 c 291 § 3; 2016 c 205 § 5; 2009 c 266 § 2; 1999 c 319 § 5; 1996 c 134 § 9; 1995 c 312 § 66.]

Additional notes found at www.leg.wa.gov

28A.225.026 Community truancy boards—Memoranda of understanding with juvenile courts—Designation of school district coordinators to address absenteeism and truancy—Community-wide partnerships. (1) By the beginning of the 2017-18 school year, juvenile courts must establish, through a memorandum of understanding with each school district within their respective counties, a coordinated and collaborative approach to address truancy through the establishment of a community truancy board or, with respect to certain small districts, through other means as provided in subsection (3) of this section.

(2) Except as provided in subsection (3) of this section, each school district must enter into a memorandum of understanding with the juvenile court in the county in which it is located with respect to the operation of a community truancy board. A community truancy board may be operated by a juvenile court, a school district, or a collaboration between both entities, so long as the agreement is memorialized in a memorandum of understanding. For a school district that is located in more than one county, the memorandum of understanding shall be with the juvenile court in the county that acts as the school district's treasurer.

(3) A school district with fewer than three hundred students must enter into a memorandum of understanding with the juvenile court in the county in which it is located with respect to: (a) The operation of a community truancy board; or (b) addressing truancy through other coordinated means of intervention aimed at identifying barriers to school attendance, and connecting students and their families with community services, culturally appropriate promising practices, and evidence-based services such as functional family therapy. School districts with fewer than three hundred students may work cooperatively with other school districts or the school district's educational service district to ensure access to a community truancy board or to provide other coordinated means of intervention.

(4) All school districts must designate, and identify to the local juvenile court and to the office of the superintendent of public instruction, a person or persons to coordinate school district efforts to address excessive absenteeism and truancy, including tasks associated with: Outreach and conferences pursuant to RCW 28A.225.018; entering into a memorandum of understanding with the juvenile court; establishing protocols and procedures with the court; coordinating trainings; sharing evidence-based and culturally appropriate promising practices; identifying a person within every school to serve as

a contact with respect to excessive absenteeism and truancy; and assisting in the recruitment of community truancy board members.

(5) As has been demonstrated by school districts and county juvenile courts around the state that have worked together and led the way with community truancy boards, success has resulted from involving the entire community and leveraging existing dollars from a variety of sources, including public and private, local and state, and court, school, and community. In emulating this coordinated and collaborative approach statewide pursuant to local memoranda of understanding, courts and school districts are encouraged to create strong community-wide partnerships and to leverage existing dollars and resources. [2017 c 291 § 4; 2016 c 205 § 6.]

28A.225.030 Petition to juvenile court for violations by a parent or child—School district responsibilities. (1)

If a child under the age of seventeen is required to attend school under RCW 28A.225.010 and if the actions taken by a school district under RCW 28A.225.020 are not successful in substantially reducing an enrolled student's absences from public school, not later than the seventh unexcused absence by a child within any month during the current school year or not later than the tenth unexcused absence during the current school year the school district shall file a petition and supporting affidavit for a civil action with the juvenile court alleging a violation of RCW 28A.225.010: (a) By the parent; (b) by the child; or (c) by the parent and the child. The petition must include a list of all interventions that have been attempted as set forth in RCW 28A.225.020, include a copy of any previous truancy assessment completed by the child's current school district, the history of approved best practices intervention or research-based intervention previously provided to the child by the child's current school district, and a copy of the most recent truancy information document provided to the parent, pursuant to RCW 28A.225.005. Except as provided in this subsection, no additional documents need be filed with the petition. Nothing in this subsection requires court jurisdiction to terminate when a child turns seventeen or precludes a school district from filing a petition for a child that is seventeen years of age.

(2) The district shall not later than the fifth unexcused absence in a month:

(a) Enter into an agreement with a student and parent that establishes school attendance requirements;

(b) Refer a student to a community truancy board as defined in RCW 28A.225.025. The community truancy board shall enter into an agreement with the student and parent that establishes school attendance requirements and take other appropriate actions to reduce the child's absences; or

(c) File a petition under subsection (1) of this section.

(3) The petition may be filed by a school district employee who is not an attorney.

(4) If the school district fails to file a petition under this section, the parent of a child with five or more unexcused absences in any month during the current school year or upon the tenth unexcused absence during the current school year may file a petition with the juvenile court alleging a violation of RCW 28A.225.010.

(5) Petitions filed under this section may be served by certified mail, return receipt requested. If such service is unsuccessful, or the return receipt is not signed by the addressee, personal service is required. [2017 c 291 § 6; 2016 c 205 § 7; 2012 c 157 § 1; 1999 c 319 § 2; 1996 c 134 § 3; 1995 c 312 § 68; 1992 c 205 § 203; 1990 c 33 § 220; 1986 c 132 § 3; 1979 ex.s. c 201 § 2. Formerly RCW 28A.27.022.]

Additional notes found at www.leg.wa.gov

28A.225.090 Court orders—Penalties—Parents' defense. (1) A court may order a child subject to a petition under RCW 28A.225.035 to do one or more of the following:

(a) Attend the child's current school, and set forth minimum attendance requirements, which shall not consider a suspension day as an unexcused absence;

(b) If there is space available and the program can provide educational services appropriate for the child, order the child to attend another public school, an alternative education program, center, a skill center, dropout prevention program, or another public educational program;

(c) Attend a private nonsectarian school or program including an education center. Before ordering a child to attend an approved or certified private nonsectarian school or program, the court shall: (i) Consider the public and private programs available; (ii) find that placement is in the best interest of the child; and (iii) find that the private school or program is willing to accept the child and will not charge any fees in addition to those established by contract with the student's school district. If the court orders the child to enroll in a private school or program, the child's school district shall contract with the school or program to provide educational services for the child. The school district shall not be required to contract for a weekly rate that exceeds the state general apportionment dollars calculated on a weekly basis generated by the child and received by the district. A school district shall not be required to enter into a contract that is longer than the remainder of the school year. A school district shall not be required to enter into or continue a contract if the child is no longer enrolled in the district;

(d) Submit to a substance abuse assessment if the court finds on the record that such assessment is appropriate to the circumstances and behavior of the child and will facilitate the child's compliance with the mandatory attendance law and, if any assessment, including a urinalysis test ordered under this subsection indicates the use of controlled substances or alcohol, order the minor to abstain from the unlawful consumption of controlled substances or alcohol and adhere to the recommendations of the substance abuse assessment at no expense to the school; or

(e) Submit to a mental health evaluation or other diagnostic evaluation and adhere to the recommendations of the drug assessment, at no expense to the school, if the court finds on the court records that such evaluation is appropriate to the circumstances and behavior of the child, and will facilitate the child's compliance with the mandatory attendance law.

(2)(a) If the child fails to comply with the court order, the court may impose:

(i) Community restitution;

(ii) Nonresidential programs with intensive wraparound services;

(iii) A requirement that the child meet with a mentor for a specified number of times; or

(iv) Other services and interventions that the court deems appropriate.

(b) If the child continues to fail to comply with the court order and the court makes a finding that other measures to secure compliance have been tried but have been unsuccessful and no less restrictive alternative is available, the court may order the child to be subject to detention, as provided in RCW 7.21.030(2)(e). Failure by a child to comply with an order issued under this subsection shall not be subject to detention for a period greater than that permitted pursuant to a civil contempt proceeding against a child under chapter 13.32A RCW. Detention ordered under this subsection may be for no longer than seven days. Detention ordered under this subsection shall preferably be served at a secure crisis residential center close to the child's home rather than in a juvenile detention facility. A warrant of arrest for a child under this subsection may not be served on a child inside of school during school hours in a location where other students are present.

(3) Any parent violating any of the provisions of either RCW 28A.225.010, 28A.225.015, or 28A.225.080 shall be fined not more than twenty-five dollars for each day of unexcused absence from school. The court shall remit fifty percent of the fine collected under this section to the child's school district. It shall be a defense for a parent charged with violating RCW 28A.225.010 to show that he or she exercised reasonable diligence in attempting to cause a child in his or her custody to attend school or that the child's school did not perform its duties as required in RCW 28A.225.020. The court may order the parent to provide community restitution instead of imposing a fine. Any fine imposed pursuant to this section may be suspended upon the condition that a parent charged with violating RCW 28A.225.010 shall participate with the school and the child in a supervised plan for the child's attendance at school or upon condition that the parent attend a conference or conferences scheduled by a school for the purpose of analyzing the causes of a child's absence.

(4) If a child continues to be truant after entering into a court-approved order with the truancy board under RCW 28A.225.035, the juvenile court shall find the child in contempt, and the court may order the child to be subject to detention, as provided in RCW 7.21.030(2)(e), or may impose alternatives to detention such as meaningful community restitution. Failure by a child to comply with an order issued under this subsection may not subject a child to detention for a period greater than that permitted under a civil contempt proceeding against a child under chapter 13.32A RCW.

(5) Subsections (1), (2), and (4) of this section shall not apply to a six or seven year old child required to attend public school under RCW 28A.225.015. [2017 c 291 § 5; 2016 c 205 § 9; 2009 c 266 § 4; 2008 c 171 § 1; 2002 c 175 § 29. Prior: 2000 c 162 § 15; 2000 c 162 § 6; 2000 c 61 § 1; 1999 c 319 § 4; 1998 c 296 § 39; 1997 c 68 § 2; prior: 1996 c 134 § 6; 1996 c 133 § 32; 1995 c 312 § 74; 1992 c 205 § 204; 1990 c 33 § 226; 1987 c 202 § 189; 1986 c 132 § 5; 1979 ex.s. c 201 § 6; 1969 ex.s. c 223 § 28A.27.100; prior: 1909 c 97 p 365 § 3; RRS § 5074; prior: 1907 c 231 § 3; 1905 c 162 § 3. Formerly RCW 28A.27.100, 28.27.100.]

Findings—Intent—1998 c 296 §§ 36-39: See note following RCW 7.21.030.

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

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

Additional notes found at www.leg.wa.gov

28A.225.115 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.225.151 Student-level truancy data—Reports—Data protocols and guidance for school districts. (1) As required under subsection (2) of this section, the office of superintendent of public instruction shall collect and school districts shall submit student-level truancy data in order to allow a better understanding of actions taken under RCW 28A.225.030. The office shall prepare an annual report to the legislature by December 15th of each year.

(2) The reports under subsection (1) of this section shall include, disaggregated by student group:

(a) The number of enrolled students and the number of unexcused absences;

(b) The number of enrolled students with ten or more unexcused absences in a school year or five or more unexcused absences in a month during a school year;

(c) A description of any programs or schools developed to serve students who have had five or more unexcused absences in a month or ten in a year including information about the number of students in the program or school and the number of unexcused absences of students during and after participation in the program. The school district shall also describe any placements in an approved private nonsectarian school or program or certified program under a court order under RCW 28A.225.090;

(d) The number of petitions filed by a school district with the juvenile court and, beginning in the 2018-19 school year, whether the petition results in:

- (i) Referral to a community truancy board;
- (ii) Other coordinated means of intervention;
- (iii) A hearing in the juvenile court; or

(iv) Other less restrictive disposition (e.g., change of placement, home school, alternative learning experience, residential treatment); and

(e) Each instance of imposition of detention for failure to comply with a court order under RCW 28A.225.090, with a statement of the reasons for each instance of detention.

(3) A report required under this section shall not disclose the name or other identification of a child or parent.

(4) The K-12 data governance group shall develop the data protocols and guidance for school districts in the collection of data to provide a clearer understanding of actions taken under RCW 28A.225.030. [2017 c 291 § 7; 1996 c 134 § 5; 1995 c 312 § 72.]

Additional notes found at www.leg.wa.gov

Chapter 28A.230 RCW

COMPULSORY COURSEWORK AND ACTIVITIES

Sections

28A.230.055 Physical education programs—Annual review.

28A.230.090 High school graduation requirements or equivalencies—High school and beyond plans—Career and college ready graduation requirements and waivers—Reevaluation of graduation requirements—Review and authorization of proposed changes—Credit for courses taken before attending high school—Postsecondary credit equivalencies.

28A.230.055 Physical education programs—Annual review. (1) Beginning in the 2018-19 school year, all school districts must conduct an annual review of their physical education programs that includes:

(a) The number of individual students completing a physical education class during the school year;

(b) The average number of minutes per week of physical education received by students in grades one through eight, expressed in appropriate reporting ranges;

(c) The number of students granted waivers from physical education requirements;

(d) An indication of whether all physical education classes are taught by instructors who possess a valid health and fitness endorsement;

(e) The physical education class sizes, expressed in appropriate reporting ranges;

(f) The frequency with which physical education is provided to students;

(g) An indication of whether there is sufficient dedicated gym space and sheltered areas to support the minimum amount of physical activity required of students by law or agency rule;

(h) An indication of whether the physical education curriculum of the district addresses the Washington state K-12 learning standards;

(i) An indication of whether, as a matter of policy or procedure, the district routinely modifies and adapts its physical education curriculum for students with disabilities; and

(j) An indication of whether the district routinely excludes students from physical education classes for disciplinary reasons.

(2) The results of the review required by this section must be submitted by the school district to the district's wellness committee and to the office of the superintendent of public instruction. The office of the superintendent of public instruction, upon receipt of the review data, must aggregate and analyze the data, summarize the information provided by each district, and post the summarized information, by district, on its web site.

(3) In fulfilling the requirements of this section, the K-12 data governance group established under RCW 28A.300.507 shall develop the data protocols and guidance for school districts in the collection of data to provide a clearer understanding of physical education instructional minutes and certification. [2017 c 80 § 1.]

28A.230.090 High school graduation requirements or equivalencies—High school and beyond plans—Career and college ready graduation requirements and waivers—Reevaluation of graduation requirements—Review and authorization of proposed changes—Credit

for courses taken before attending high school—Postsecondary credit equivalencies. (1) The state board of education shall establish high school graduation requirements or equivalencies for students, except as provided in RCW 28A.230.122 and except those equivalencies established by local high schools or school districts under RCW 28A.230.097. The purpose of a high school diploma is to declare that a student is ready for success in postsecondary education, gainful employment, and citizenship, and is equipped with the skills to be a lifelong learner.

(a) Any course in Washington state history and government used to fulfill high school graduation requirements shall consider including information on the culture, history, and government of the American Indian peoples who were the first inhabitants of the state.

(b) The certificate of academic achievement requirements under RCW 28A.655.061 or the certificate of individual achievement requirements under RCW 28A.155.045 are required for graduation from a public high school but are not the only requirements for graduation.

(c)(i) Each student must have a high school and beyond plan to guide the student's high school experience and prepare the student for postsecondary education or training and career.

(ii) A high school and beyond plan must be initiated for each student during the seventh or eighth grade. In preparation for initiating that plan, each student must first be administered a career interest and skills inventory.

(iii) The high school and beyond plan must be updated to reflect high school assessment results in RCW 28A.655.070(3)(b) and to review transcripts, assess progress toward identified goals, and revised as necessary for changing interests, goals, and needs. The plan must identify available interventions and academic support, courses, or both, that are designed for students who have not met the high school graduation standard, to enable them to meet the standard. School districts are encouraged to involve parents and guardians in the process of developing and updating the high school and beyond plan.

(iv) All high school and beyond plans must, at a minimum, include the following elements:

(A) Identification of career goals, aided by a skills and interest assessment;

(B) Identification of educational goals;

(C) A four-year plan for course taking that fulfills state and local graduation requirements and aligns with the student's career and educational goals; and

(D) By the end of the twelfth grade, a current resume or activity log that provides a written compilation of the student's education, any work experience, and any community service and how the school district has recognized the community service pursuant to RCW 28A.320.193.

(d) Any decision on whether a student has met the state board's high school graduation requirements for a high school and beyond plan shall remain at the local level. Effective with the graduating class of 2015, the state board of education may not establish a requirement for students to complete a culminating project for graduation. A district may establish additional, local requirements for a high school and beyond plan to serve the needs and interests of its students and the purposes of this section.

(e)(i) The state board of education shall adopt rules to implement the career and college ready graduation requirement proposal adopted under board resolution on November 10, 2010, and revised on January 9, 2014, to take effect beginning with the graduating class of 2019 or as otherwise provided in this subsection (1)(e). The rules must include authorization for a school district to waive up to two credits for individual students based on unusual circumstances and in accordance with written policies that must be adopted by each board of directors of a school district that grants diplomas. The rules must also provide that the content of the third credit of mathematics and the content of the third credit of science may be chosen by the student based on the student's interests and high school and beyond plan with agreement of the student's parent or guardian or agreement of the school counselor or principal.

(ii) School districts may apply to the state board of education for a waiver to implement the career and college ready graduation requirement proposal beginning with the graduating class of 2020 or 2021 instead of the graduating class of 2019. In the application, a school district must describe why the waiver is being requested, the specific impediments preventing timely implementation, and efforts that will be taken to achieve implementation with the graduating class proposed under the waiver. The state board of education shall grant a waiver under this subsection (1)(e) to an applying school district at the next subsequent meeting of the board after receiving an application.

(iii) A school district must update the high school and beyond plans for each student who has not earned a score of level 3 or level 4 on the middle school mathematics assessment identified in RCW 28A.655.070 by ninth grade, to ensure that the student takes a mathematics course in both ninth and tenth grades. This course may include career and technical education equivalencies in mathematics adopted pursuant to RCW 28A.230.097.

(2)(a) In recognition of the statutory authority of the state board of education to establish and enforce minimum high school graduation requirements, the state board shall periodically reevaluate the graduation requirements and shall report such findings to the legislature in a timely manner as determined by the state board.

(b) The state board shall reevaluate the graduation requirements for students enrolled in vocationally intensive and rigorous career and technical education programs, particularly those programs that lead to a certificate or credential that is state or nationally recognized. The purpose of the evaluation is to ensure that students enrolled in these programs have sufficient opportunity to earn a certificate of academic achievement, complete the program and earn the program's certificate or credential, and complete other state and local graduation requirements.

(c) The state board shall forward any proposed changes to the high school graduation requirements to the education committees of the legislature for review. The legislature shall have the opportunity to act during a regular legislative session before the changes are adopted through administrative rule by the state board. Changes that have a fiscal impact on school districts, as identified by a fiscal analysis prepared by the office of the superintendent of public instruction, shall take effect only if formally authorized and funded by the leg-

islature through the omnibus appropriations act or other enacted legislation.

(3) Pursuant to any requirement for instruction in languages other than English established by the state board of education or a local school district, or both, for purposes of high school graduation, students who receive instruction in American sign language or one or more American Indian languages shall be considered to have satisfied the state or local school district graduation requirement for instruction in one or more languages other than English.

(4) If requested by the student and his or her family, a student who has completed high school courses before attending high school shall be given high school credit which shall be applied to fulfilling high school graduation requirements if:

(a) The course was taken with high school students, if the academic level of the course exceeds the requirements for seventh and eighth grade classes, and the student has successfully passed by completing the same course requirements and examinations as the high school students enrolled in the class; or

(b) The academic level of the course exceeds the requirements for seventh and eighth grade classes and the course would qualify for high school credit, because the course is similar or equivalent to a course offered at a high school in the district as determined by the school district board of directors.

(5) Students who have taken and successfully completed high school courses under the circumstances in subsection (4) of this section shall not be required to take an additional competency examination or perform any other additional assignment to receive credit.

(6) At the college or university level, five quarter or three semester hours equals one high school credit. [2017 3rd sp.s. c 31 § 4; 2016 c 162 § 2; 2014 c 217 § 202; 2011 c 203 § 2. Prior: 2009 c 548 § 111; 2009 c 223 § 2; 2006 c 114 § 3; 2005 c 205 § 3; 2004 c 19 § 103; 1997 c 222 § 2; 1993 c 371 § 3; prior: 1992 c 141 § 402; 1992 c 60 § 1; 1990 1st ex.s. c 9 § 301; 1988 c 172 § 1; 1985 c 384 § 2; 1984 c 278 § 6. Formerly RCW 28A.05.060.]

Effective date—2017 3rd sp.s. c 31: See note following RCW 28A.655.061.

Finding—Intent—2014 c 217: See note following RCW 28A.150.220.

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Finding—2009 c 223: "The legislature finds that although the United States has long exemplified democratic practice to the rest of the world, we ought not to neglect it at home. Two-thirds of our nation's twelfth graders scored below proficient on the last national civics assessment, and fewer than ten percent could list two ways that a democracy benefits from citizen participation. A healthy democracy depends on the participation of citizens. But participation is learned behavior, and in recent years civic learning has been pushed aside. Preparation for citizenship is as important as preparation for college and a career, and should take its place as a requirement for receiving a high school diploma." [2009 c 223 § 1.]

Finding—Intent—2006 c 114: See note following RCW 28A.230.097.

Intent—Findings—2005 c 205: See note following RCW 28A.320.170.

Intent—1997 c 222: "In 1994, the legislature directed the higher education board and the state board of education to convene a task force to examine and provide recommendations on establishing credit equivalencies. In November 1994, the task force recommended unanimously that the state

board of education maintain the definition of five quarter or three semester college credits as equivalent to one high school credit. Therefore, the legislature intends to adopt the recommendations of the task force." [1997 c 222 § 1.]

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

Additional notes found at www.leg.wa.gov

Chapter 28A.232 RCW ALTERNATIVE LEARNING EXPERIENCE COURSES

Sections

28A.232.030 Attendance and truancy definitions—Rules.

28A.232.030 Attendance and truancy definitions—Rules. The superintendent of public instruction may adopt rules to bring consistency and uniformity to attendance and truancy definitions in the alternative learning experience setting, establish procedures for addressing truancy in all alternative learning experience courses, leverage existing systems to facilitate truancy actions between school districts and courts when the student has transferred out of his or her resident district to enroll in an alternative learning experience course; and clarify the responsibility of school districts in the event of rescinding a student transfer. [2017 c 291 § 9.]

Chapter 28A.245 RCW SKILL CENTERS

Sections

28A.245.100 Minor repair and maintenance capital accounts.

28A.245.100 Minor repair and maintenance capital accounts. A host district of a cooperative skill center must maintain a separate minor repair and maintenance capital account for facilities constructed or renovated with state funding. Participating school districts must make annual deposits into the account to pay for future minor repair and maintenance costs of those facilities. The host district has authority to collect those deposits by charging participating districts an annual per-pupil facility fee. [2017 c 187 § 1.]

Chapter 28A.250 RCW ONLINE LEARNING

Sections

28A.250.070 Rights of students to attend nonresident school district for the purposes of enrolling in alternative learning experience programs—Standard release form.

28A.250.070 Rights of students to attend nonresident school district for the purposes of enrolling in alternative learning experience programs—Standard release form. Nothing in this chapter is intended to diminish the rights of students to attend a nonresident school district in accordance with RCW 28A.225.220 through 28A.225.230 for the purposes of enrolling in alternative learning experience programs. The office of online learning under RCW 28A.250.030 shall develop a standard form, which must be

used by all school districts, for releasing a student to a non-resident school district for the purposes of enrolling in an alternative learning experience program. [2017 c 291 § 8; 2013 2nd sp.s. c 18 § 508; 2009 c 542 § 8.]

Application—Enforcement of laws protecting health and safety—2013 2nd sp.s. c 18: See note following RCW 28A.600.022.

Chapter 28A.300 RCW

SUPERINTENDENT OF PUBLIC INSTRUCTION

Sections

- 28A.300.035 Assistance of certificated or classified employee—Reimbursement for substitute.
- 28A.300.236 Career and technical education courses—Methodologies for implementing equivalency crediting—Report to the office of the superintendent of public instruction, the governor, and the legislature.
- 28A.300.238 Career and technical education equipment—Competitive grant process—Rules.
- 28A.300.574 Dual language learning cohorts—Rules.
- 28A.300.600 Recodified as RCW 28A.415.430.
- 28A.300.602 Recodified as RCW 28A.415.432.
- 28A.300.604 Recodified as RCW 28A.415.434.
- 28A.300.606 Teacher and administrator professional learning—Working with paraeducators.

28A.300.035 Assistance of certificated or classified employee—Reimbursement for substitute. If the superintendent of public instruction, the Washington professional educator standards board, or the state board of education, in carrying out their powers and duties under Title 28A RCW, request the service of any certificated or classified employee of a school district upon any committee formed for the purpose of furthering education within the state, or within any school district therein, and such service would result in a need for a school district to employ a substitute for such certificated or classified employee during such service, payment for such a substitute may be made by the superintendent of public instruction from funds appropriated by the legislature for the current use of the common schools and such payments shall be construed as amounts needed for state support to the common schools under RCW 28A.150.380. If such substitute is paid by the superintendent of public instruction, no deduction shall be made from the salary of the certificated or classified employee. In no event shall a school district deduct from the salary of a certificated or classified employee serving on such committee more than the amount paid the substitute employed by the district. [2017 c 17 § 1; 1994 c 113 § 1; 1990 c 33 § 147; 1973 1st ex.s. c 3 § 1. Formerly RCW 28A.160.220, 28A.41.180.]

28A.300.236 Career and technical education courses—Methodologies for implementing equivalency crediting—Report to the office of the superintendent of public instruction, the governor, and the legislature. (1) Subject to the availability of amounts appropriated for this specific purpose, the office of the superintendent of public instruction must create methodologies for implementing equivalency crediting on a broader scale across the state and facilitate its implementation including, but not limited to, the following:

(a) Implementing statewide career and technical education course equivalency frameworks authorized under RCW 28A.700.070 for high schools and skill centers in science,

technology, engineering, and mathematics. This may include development of additional equivalency course frameworks in core subject areas, course performance assessments, and development and delivery of professional development for districts and skill centers implementing the career and technical education frameworks; and

(b) Providing competitive grant funds to school districts to increase the integration and rigor of academic instruction in career and technical education equivalency courses. The grant funds must be used to support teams of general education and career and technical education teachers to convene and design course performance assessments, deepen the understanding of integrating academic and career and technical education in student instruction, and develop professional learning modules for school districts to plan implementation of equivalency crediting.

(2) Beginning in the 2017-18 school year, school districts shall annually report to the office of the superintendent of public instruction the following information:

(a) The annual number of students participating in state-approved equivalency courses; and

(b) The annual number of state approved equivalency credit courses offered in school districts and skill centers.

(3) Beginning December 1, 2017, and every December 1st thereafter, the office of the superintendent of public instruction shall annually submit a summary of the school district information reported under subsection (2) of this section to the office of the governor and the appropriate committees of the legislature. [2017 3rd sp.s. c 13 § 410.]

Effective date—2017 3rd sp.s. c 13 §§ 401-413: See note following RCW 28A.150.200.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

28A.300.238 Career and technical education equipment—Competitive grant process—Rules. (1) The office of the superintendent of public instruction shall establish a competitive grant process for school districts to apply for grants for the purpose of purchasing career and technical education equipment.

(2) The office of the superintendent of public instruction may adopt rules for the grant program established under this section.

(3) Competitive grants awarded under this section are subject to the availability of amounts appropriated by the state for this specific purpose. [2017 3rd sp.s. c 13 § 411.]

Effective date—2017 3rd sp.s. c 13 §§ 401-413: See note following RCW 28A.150.200.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

28A.300.574 Dual language learning cohorts—Rules. (1) Within existing resources, the office of the superintendent of public instruction shall facilitate dual language learning cohorts for school districts and state-tribal compact schools establishing or expanding dual language programs. The office must provide technical assistance and support to school districts and state-tribal compact schools implementing dual language programs, including those establishing or expanding dual language programs under *section 1 of this act.

(2) The superintendent of public instruction may adopt rules to implement this section. [2017 c 236 § 3.]

***Reviser's note:** A translation of "section 1 of this act" is to the uncodified intent section noted after RCW 28A.630.095. Reference to RCW 28A.630.095 was apparently intended.

Findings—Intent—2017 c 236: See note following RCW 28A.630.095.

28A.300.600 Recodified as RCW 28A.415.430. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.300.602 Recodified as RCW 28A.415.432. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.300.604 Recodified as RCW 28A.415.434. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.300.606 Teacher and administrator professional learning—Working with paraeducators. (1) The superintendent of public instruction, in consultation with the paraeducator board created in RCW 28A.413.020 and the professional educator standards board, shall design a training program for teachers and administrators as it relates to their role working with paraeducators. Teacher training must include how to direct a paraeducator working with students in the paraeducators' classroom. Administrator training must include how to supervise and evaluate paraeducators.

(2) Subject to the availability of amounts appropriated for this specific purpose, the training program designed under subsection (1) of this section must be made available to public schools, school districts, and educational service districts. [2017 c 237 § 13.]

Chapter 28A.305 RCW STATE BOARD OF EDUCATION

Sections

28A.305.130 Powers and duties—Purpose.
28A.305.900 Repealed.
28A.305.901 Repealed.

28A.305.130 Powers and duties—Purpose. The purpose of the state board of education is to provide advocacy and strategic oversight of public education; implement a standards-based accountability framework that creates a unified system of increasing levels of support for schools in order to improve student academic achievement; provide leadership in the creation of a system that personalizes education for each student and respects diverse cultures, abilities, and learning styles; and promote achievement of the goals of RCW 28A.150.210. In addition to any other powers and duties as provided by law, the state board of education shall:

(1) Hold regularly scheduled meetings at such time and place within the state as the board shall determine and may hold such special meetings as may be deemed necessary for the transaction of public business;

(2) Form committees as necessary to effectively and efficiently conduct the work of the board;

(3) Seek advice from the public and interested parties regarding the work of the board;

(4) For purposes of statewide accountability:

(a) Adopt and revise performance improvement goals in reading, writing, science, and mathematics, by subject and grade level, once assessments in these subjects are required statewide; academic and technical skills, as appropriate, in secondary career and technical education programs; and student attendance, as the board deems appropriate to improve student learning. The goals shall be consistent with student privacy protection provisions of RCW 28A.655.090(7) and shall not conflict with requirements contained in Title I of the federal elementary and secondary education act of 1965, or the requirements of the Carl D. Perkins vocational education act of 1998, each as amended. The goals may be established for all students, economically disadvantaged students, limited English proficient students, students with disabilities, and students from disproportionately academically underachieving racial and ethnic backgrounds. The board may establish school and school district goals addressing high school graduation rates and dropout reduction goals for students in grades seven through twelve. The board shall adopt the goals by rule. However, before each goal is implemented, the board shall present the goal to the education committees of the house of representatives and the senate for the committees' review and comment in a time frame that will permit the legislature to take statutory action on the goal if such action is deemed warranted by the legislature;

(b)(i) Identify the scores students must achieve in order to meet the standard on the statewide student assessment. The board shall also determine student scores that identify levels of student performance below and beyond the standard. The board shall set such performance standards and levels in consultation with the superintendent of public instruction and after consideration of any recommendations that may be developed by any advisory committees that may be established for this purpose;

(ii)(A) The legislature intends to continue the implementation of chapter 22, Laws of 2013, 2nd sp. sess. when the legislature expressed the intent for the state board of education to identify the student performance standard that demonstrates a student's career and college readiness for the eleventh grade consortium-developed assessments. Therefore, by December 1, 2018, the state board of education, in consultation with the superintendent of public instruction, must identify and report to the governor and the education policy and fiscal committees of the legislature on the equivalent student performance standard that a tenth grade student would need to achieve on the state assessments to be on track to be career and college ready at the end of the student's high school experience;

(B) Nothing in this section prohibits the state board of education from identifying a college and career readiness score that is different from the score required for high school graduation purposes;

(iii) The legislature shall be advised of the initial performance standards and any changes made to the elementary, middle, and high school level performance standards. The board must provide an explanation of and rationale for all initial performance standards and any changes, for all grade levels of the statewide student assessment. If the board changes the performance standards for any grade level or subject, the superintendent of public instruction must recalculate the

results from the previous ten years of administering that assessment regarding students below, meeting, and beyond the state standard, to the extent that this data is available, and post a comparison of the original and recalculated results on the superintendent's web site;

(c) Annually review the assessment reporting system to ensure fairness, accuracy, timeliness, and equity of opportunity, especially with regard to schools with special circumstances and unique populations of students, and a recommendation to the superintendent of public instruction of any improvements needed to the system; and

(d) Include in the biennial report required under RCW 28A.305.035, information on the progress that has been made in achieving goals adopted by the board;

(5) Accredite, subject to such accreditation standards and procedures as may be established by the state board of education, all private schools that apply for accreditation, and approve, subject to the provisions of RCW 28A.195.010, private schools carrying out a program for any or all of the grades kindergarten through twelve. However, no private school may be approved that operates a kindergarten program only and no private school shall be placed upon the list of accredited schools so long as secret societies are knowingly allowed to exist among its students by school officials;

(6) Articulate with the institutions of higher education, workforce representatives, and early learning policymakers and providers to coordinate and unify the work of the public school system;

(7) Hire an executive director and an administrative assistant to reside in the office of the superintendent of public instruction for administrative purposes. Any other personnel of the board shall be appointed as provided by RCW 28A.300.020. The board may delegate to the executive director by resolution such duties as deemed necessary to efficiently carry on the business of the board including, but not limited to, the authority to employ necessary personnel and the authority to enter into, amend, and terminate contracts on behalf of the board. The executive director, administrative assistant, and all but one of the other personnel of the board are exempt from civil service, together with other staff as now or hereafter designated as exempt in accordance with chapter 41.06 RCW; and

(8) Adopt a seal that shall be kept in the office of the superintendent of public instruction. [2017 3rd sp.s. c 31 § 3; 2013 2nd sp.s. c 22 § 7; 2011 1st sp.s. c 6 § 1; 2009 c 548 § 502; 2008 c 27 § 1; 2006 c 263 § 102; 2005 c 497 § 104; 2002 c 205 § 3; 1997 c 13 § 5; 1996 c 83 § 1; 1995 c 369 § 9; 1991 c 116 § 11; 1990 c 33 § 266. Prior: 1987 c 464 § 1; 1987 c 39 § 1; prior: 1986 c 266 § 86; 1986 c 149 § 3; 1984 c 40 § 2; 1979 ex.s. c 173 § 1; 1975-'76 2nd ex.s. c 92 § 1; 1975 1st ex.s. c 275 § 50; 1974 ex.s. c 92 § 1; 1971 ex.s. c 215 § 1; 1971 c 48 § 2; 1969 ex.s. c 223 § 28A.04.120; prior: 1963 c 32 § 1; 1961 c 47 § 1; prior: (i) 1933 c 80 § 1; 1915 c 161 § 1; 1909 c 97 p 236 § 5; 1907 c 240 § 3; 1903 c 104 § 12; 1897 c 118 § 27; 1895 c 150 § 1; 1890 p 352 § 8; Code 1881 § 3165; RRS § 4529. (ii) 1919 c 89 § 3; RRS § 4684. (iii) 1909 c 97 p 238 § 6; 1897 c 118 § 29; RRS § 4530. Formerly RCW 28A.04.120, 28.04.120, 28.58.280, 28.58.281, 28.58.282, 43.63.140.]

Effective date—2017 3rd sp.s. c 31: See note following RCW 28A.655.061.

Findings—Intent—2013 2nd sp.s. c 22: See note following RCW 28A.655.061.

Effective date—2011 1st sp.s. c 6: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 31, 2011]." [2011 1st sp.s. c 6 § 2.]

Intent—Finding—2009 c 548: "(1)(a) The legislature intends to develop a system in which the state and school districts share accountability for achieving state educational standards and supporting continuous school improvement. The legislature recognizes that comprehensive education finance reform and the increased investment of public resources necessary to implement that reform must be accompanied by a new mechanism for clearly defining the relationships and expectations for the state, school districts, and schools. It is the legislature's intent that this be accomplished through the development of a proactive, collaborative accountability system that focuses on a school improvement system that engages and serves the local school board, parents, students, staff in the schools and districts, and the community. The improvement system shall be based on progressive levels of support, with a goal of continuous improvement in student achievement and alignment with the federal system of accountability.

(b) The legislature further recognizes that it is the state's responsibility to provide schools and districts with the tools and resources necessary to improve student achievement. These tools include the necessary accounting and data reporting systems, assessment systems to monitor student achievement, and a system of general support, targeted assistance, recognition, and, if necessary, state intervention.

(2) The legislature has already charged the state board of education to develop criteria to identify schools and districts that are successful, in need of assistance, and those where students persistently fail, as well as to identify a range of intervention strategies and a performance incentive system. The legislature finds that the state board of education should build on the work that the board has already begun in these areas. As development of these formulas, processes, and systems progresses, the legislature should monitor the progress." [2009 c 548 § 501.]

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Intent—Part headings not law—2005 c 497: See notes following RCW 28A.305.011.

Findings—Severability—Effective dates—2002 c 205 §§ 2, 3, and 4: See notes following RCW 28A.320.125.

Child abuse and neglect—Development of primary prevention program: RCW 28A.300.160.

Districts to develop programs and establish programs regarding child abuse and neglect prevention: RCW 28A.225.200.

Professional certification not required of superintendents or deputy or assistant superintendents: RCW 28A.410.120.

Use of force on children—Policy—Actions presumed unreasonable: RCW 9A.16.100.

Additional notes found at www.leg.wa.gov

28A.305.900 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.305.901 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 28A.315 RCW

ORGANIZATION AND REORGANIZATION OF SCHOOL DISTRICTS

Sections

28A.315.075 Decodified.

28A.315.075 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 28A.320 RCW

PROVISIONS APPLICABLE TO ALL DISTRICTS

Sections

28A.320.125	Safe school plans—Requirements—Duties of school districts, schools, and educational service districts—Reports—Drills—Rules.
28A.320.147	Repealed.
28A.320.191	Program of early learning under RCW 43.216.555. (<i>Effective July 1, 2018.</i>)
28A.320.192	On-time grade level progression and graduation of students who are homeless, dependent, or at-risk youth or children—Rules.
28A.320.245	Responses to audit findings on use of local revenues—Policies—Hearings—Disciplinary actions.
28A.320.330	School funds enumerated—Local revenue subfunds—Deposits—Uses.

28A.320.125 Safe school plans—Requirements—Duties of school districts, schools, and educational service districts—Reports—Drills—Rules. (1) The legislature considers it to be a matter of public safety for public schools and staff to have current safe school plans and procedures in place, fully consistent with federal law. The legislature further finds and intends, by requiring safe school plans to be in place, that school districts will become eligible for federal assistance. The legislature further finds that schools are in a position to serve the community in the event of an emergency resulting from natural disasters or man-made disasters.

(2) Schools and school districts shall consider the guidance provided by the superintendent of public instruction, including the comprehensive school safety checklist and the model comprehensive safe school plans that include prevention, intervention, all hazard/crisis response, and postcrisis recovery, when developing their own individual comprehensive safe school plans. Each school district shall adopt, no later than September 1, 2008, and implement a safe school plan consistent with the school mapping information system pursuant to RCW 36.28A.060. The plan shall:

- (a) Include required school safety policies and procedures;
- (b) Address emergency mitigation, preparedness, response, and recovery;
- (c) Include provisions for assisting and communicating with students and staff, including those with special needs or disabilities;
- (d) Use the training guidance provided by the Washington emergency management division of the state military department in collaboration with the Washington state office of the superintendent of public instruction school safety center and the school safety center advisory committee;
- (e) Require the building principal to be certified on the incident command system;
- (f) Take into account the manner in which the school facilities may be used as a community asset in the event of a community-wide emergency; and
- (g) Set guidelines for requesting city or county law enforcement agencies, local fire departments, emergency service providers, and county emergency management agencies to meet with school districts and participate in safety-related drills.

(3) To the extent funds are available, school districts shall annually:

- (a) Review and update safe school plans in collaboration with local emergency response agencies;

- (b) Conduct an inventory of all hazardous materials;
- (c) Update information on the school mapping information system to reflect current staffing and updated plans, including:

- (i) Identifying all staff members who are trained on the national incident management system, trained on the incident command system, or are certified on the incident command system; and

- (ii) Identifying school transportation procedures for evacuation, to include bus staging areas, evacuation routes, communication systems, parent-student reunification sites, and secondary transportation agreements consistent with the school mapping information system; and

- (d) Provide information to all staff on the use of emergency supplies and notification and alert procedures.

(4) To the extent funds are available, school districts shall annually record and report on the information and activities required in subsection (3) of this section to the Washington association of sheriffs and police chiefs.

(5) School districts are encouraged to work with local emergency management agencies and other emergency responders to conduct one tabletop exercise, one functional exercise, and two full-scale exercises within a four-year period.

(6)(a) Due to geographic location, schools have unique safety challenges. It is the responsibility of school principals and administrators to assess the threats and hazards most likely to impact their school, and to practice three basic functional drills, shelter-in-place, lockdown, and evacuation, as these drills relate to those threats and hazards. Some threats or hazards may require the use of more than one basic functional drill.

(b) Schools shall conduct at least one safety-related drill per month, including summer months when school is in session with students. These drills must teach students three basic functional drill responses:

- (i) "Shelter-in-place," used to limit the exposure of students and staff to hazardous materials, such as chemical, biological, or radiological contaminants, released into the environment by isolating the inside environment from the outside;

- (ii) "Lockdown," used to isolate students and staff from threats of violence, such as suspicious trespassers or armed intruders, that may occur in a school or in the vicinity of a school; and

- (iii) "Evacuation," used to move students and staff away from threats, such as fires, oil train spills, or tsunamis.

(c) The drills described in (b) of this subsection must incorporate the following requirements:

- (i) Use of the school mapping information system in at least one of the safety-related drills; and

- (ii) A pedestrian evacuation drill for schools in mapped tsunami hazard zones.

(d) The drills described in (b) of this subsection may incorporate an earthquake drill using the state-approved earthquake safety technique "drop, cover, and hold."

(e) Schools shall document the date, time, and type (shelter-in-place, lockdown, or evacuate) of each drill required under this subsection (6), and maintain the documentation in the school office.

(f) This subsection (6) is intended to satisfy all federal requirements for comprehensive school emergency drills and evacuations.

(7) Educational service districts are encouraged to apply for federal emergency response and crisis management grants with the assistance of the superintendent of public instruction and the Washington emergency management division of the state military department.

(8) The superintendent of public instruction may adopt rules to implement provisions of this section. These rules may include, but are not limited to, provisions for evacuations, lockdowns, or other components of a comprehensive safe school plan. [2017 c 165 § 1; 2013 c 14 § 1; 2009 c 578 § 10; 2007 c 406 § 1; 2002 c 205 § 2.]

Findings—2002 c 205: "Following the tragic events of September 11, 2001, the government's primary role in protecting the health, safety, and well-being of its citizens has been underscored. The legislature recognizes that there is a need to focus on the development and implementation of comprehensive safe school plans for each public school. The legislature recognizes that comprehensive safe school plans for each public school are an integral part of rebuilding public confidence. In developing these plans, the legislature finds that a coordinated effort is essential to ensure the most effective response to any type of emergency. Further, the legislature recognizes that comprehensive safe school plans for each public school are of paramount importance and will help to assure students, parents, guardians, school employees, and school administrators that our schools provide the safest possible learning environment." [2002 c 205 § 1.]

Additional notes found at www.leg.wa.gov

28A.320.147 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.320.191 Program of early learning under RCW 43.216.555. (Effective July 1, 2018.) For the program of early learning established in RCW 43.216.555, school districts:

(1) Shall work cooperatively with program providers to coordinate the transition from preschool to kindergarten so that children and their families are well-prepared and supported; and

(2) May contract with the department of children, youth, and families to deliver services under the program. [2017 3rd sp.s. c 6 § 219; 2010 c 231 § 5.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

28A.320.192 On-time grade level progression and graduation of students who are homeless, dependent, or at-risk youth or children—Rules. (1) In order to eliminate barriers and facilitate the on-time grade level progression and graduation of students who are homeless as described in RCW 28A.300.542, dependent pursuant to chapter 13.34 RCW, or at-risk youth or children in need of services pursuant to chapter 13.32A RCW, school districts must incorporate the procedures in this section.

(2) School districts must waive specific courses required for graduation if similar coursework has been satisfactorily completed in another school district or must provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school district, the receiving school district must provide an

alternative means of acquiring required coursework so that graduation may occur on time.

(3) School districts must consolidate partial credit, unresolved, or incomplete coursework and provide opportunities for credit accrual in a manner that eliminates academic and nonacademic barriers for the student.

(4) For students who have been unable to complete an academic course and receive full credit due to withdrawal or transfer, school districts must grant partial credit for coursework completed before the date of withdrawal or transfer and the receiving school must accept those credits, apply them to the student's academic progress or graduation or both, and allow the student to earn credits regardless of the student's date of enrollment in the receiving school.

(5) Should a student who is transferring at the beginning or during the student's junior or senior year be ineligible to graduate from the receiving school district after all alternatives have been considered, the sending and receiving districts must ensure the receipt of a diploma from the sending district if the student meets the graduation requirements of the sending district.

(6) The superintendent of public instruction shall adopt and distribute to all school districts lawful and reasonable rules prescribing the substantive and procedural obligations of school districts to implement these provisions.

(7) Should a student have enrolled in three or more school districts as a high school student and have met state requirements but be ineligible to graduate from the receiving school district after all alternatives have been considered, the receiving school district must waive its local requirements and ensure the receipt of a diploma. [2017 c 166 § 1; 2017 c 40 § 1; 2012 c 163 § 7.]

Reviser's note: This section was amended by 2017 c 40 § 1 and by 2017 c 166 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Effective date—2012 c 163: See notes following RCW 28B.117.010.

Short title—2012 c 163: See RCW 28B.117.902.

28A.320.245 Responses to audit findings on use of local revenues—Policies—Hearings—Disciplinary actions. Before the beginning of the 2019-20 school year, each school district board of directors must adopt a policy for responding to any audit findings resulting from the audits conducted by the state auditor on the use of local revenues by the school district in accordance with RCW 28A.150.276 and 43.09.2856. The policy must require a public hearing by the school district board of directors of the findings of the state auditor within thirty days of the issuance of the findings; and may include progressive disciplinary actions for the district superintendent, which may be implemented by the school district board of directors. [2017 3rd sp.s. c 13 § 504.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

28A.320.330 School funds enumerated—Local revenue subfunds—Deposits—Uses. School districts shall establish the following funds in addition to those provided elsewhere by law:

(1)(a) A general fund for the school district to account for all financial operations of the school district except those required to be accounted for in another fund.

(b) By the 2019-20 school year, a local revenue subfund of its general fund to account for the financial operations of a school district that are paid from local revenues. The local revenues that must be deposited in the local revenue subfund are enrichment levies and transportation vehicle enrichment levies collected under RCW 84.52.053, local effort assistance funding received under chapter 28A.500 RCW, and other school district local revenues including, but not limited to, grants, donations, and state and federal payments in lieu of taxes, but do not include other federal revenues, or local revenues that operate as an offset to the district's basic education allocation under RCW 28A.150.250. School districts must track expenditures from this subfund separately to account for the expenditure of each of these streams of revenue by source, and must provide any supplemental expenditure schedules required by the superintendent of public instruction or state auditor for purposes of RCW 43.09.2856.

(2) A capital projects fund shall be established for major capital purposes. All statutory references to a "building fund" shall mean the capital projects fund so established. Money to be deposited into the capital projects fund shall include, but not be limited to, bond proceeds, proceeds from excess levies authorized by RCW 84.52.053, state apportionment proceeds as authorized by RCW 28A.150.270, earnings from capital projects fund investments as authorized by RCW 28A.320.310 and 28A.320.320, and state forest revenues transferred pursuant to subsection (3) of this section.

Money derived from the sale of bonds, including interest earnings thereof, may only be used for those purposes described in RCW 28A.530.010, except that accrued interest paid for bonds shall be deposited in the debt service fund.

Money to be deposited into the capital projects fund shall include but not be limited to rental and lease proceeds as authorized by RCW 28A.335.060, and proceeds from the sale of real property as authorized by RCW 28A.335.130.

Money legally deposited into the capital projects fund from other sources may be used for the purposes described in RCW 28A.530.010, and for the purposes of:

(a) Major renovation and replacement of facilities and systems where periodical repairs are no longer economical or extend the useful life of the facility or system beyond its original planned useful life. Such renovation and replacement shall include, but shall not be limited to, major repairs, exterior painting of facilities, replacement and refurbishment of roofing, exterior walls, windows, heating and ventilating systems, floor covering in classrooms and public or common areas, and electrical and plumbing systems.

(b) Renovation and rehabilitation of playfields, athletic fields, and other district real property.

(c) The conduct of preliminary energy audits and energy audits of school district buildings. For the purpose of this section:

(i) "Preliminary energy audits" means a determination of the energy consumption characteristics of a building, including the size, type, rate of energy consumption, and major energy using systems of the building.

(ii) "Energy audit" means a survey of a building or complex which identifies the type, size, energy use level, and

major energy using systems; which determines appropriate energy conservation maintenance or operating procedures and assesses any need for the acquisition and installation of energy conservation measures, including solar energy and renewable resource measures.

(ii) "Energy capital improvement" means the installation, or modification of the installation, of energy conservation measures in a building which measures are primarily intended to reduce energy consumption or allow the use of an alternative energy source.

(d) Those energy capital improvements which are identified as being cost-effective in the audits authorized by this section.

(e) Purchase or installation of additional major items of equipment and furniture: PROVIDED, That vehicles shall not be purchased with capital projects fund money.

(f)(i) Costs associated with implementing technology systems, facilities, and projects, including acquiring hardware, licensing software, and online applications and training related to the installation of the foregoing. However, the software or applications must be an integral part of the district's technology systems, facilities, or projects.

(ii) Costs associated with the application and modernization of technology systems for operations and instruction including, but not limited to, the ongoing fees for online applications, subscriptions, or software licenses, including upgrades and incidental services, and ongoing training related to the installation and integration of these products and services. However, to the extent the funds are used for the purpose under this subsection (2)(f)(ii), the school district shall transfer to the district's general fund the portion of the capital projects fund used for this purpose. The office of the superintendent of public instruction shall develop accounting guidelines for these transfers in accordance with internal revenue service regulations.

(g) Major equipment repair, painting of facilities, and other major preventative maintenance purposes. However, to the extent the funds are used for the purpose under this subsection (2)(g), the school district shall transfer to the district's general fund the portion of the capital projects fund used for this purpose. The office of the superintendent of public instruction shall develop accounting guidelines for these transfers in accordance with internal revenue service regulations. Based on the district's most recent two-year history of general fund maintenance expenditures, funds used for this purpose may not replace routine annual preventive maintenance expenditures made from the district's general fund.

(3) A debt service fund to provide for tax proceeds, other revenues, and disbursements as authorized in chapter 39.44 RCW. State forestland revenues that are deposited in a school district's debt service fund pursuant to RCW 79.64.110 and to the extent not necessary for payment of debt service on school district bonds may be transferred by the school district into the district's capital projects fund.

(4) An associated student body fund as authorized by RCW 28A.325.030.

(5) Advance refunding bond funds and refunded bond funds to provide for the proceeds and disbursements as authorized in chapter 39.53 RCW. [2017 3rd sp.s. c 13 § 601; 2009 c 460 § 1. Prior: 2007 c 503 § 2; 2007 c 129 § 2; 2002 c

275 § 2; 1990 c 33 § 337; 1983 c 59 § 13; 1982 c 191 § 6; 1981 c 250 § 2. Formerly RCW 28A.58.441.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Intent—2007 c 129: "The legislature recognizes that technology has become an integral part of the facilities and educational delivery systems in our schools. In order to prepare our state's students to participate fully in our state's economy, school districts are making substantial capital investments in their technology systems, facilities, and projects. Districts are implementing, applying, and modernizing their technology systems. Software companies are shifting from selling software as a one-time package to a license or an extended contractual relationship requiring a subscription and ongoing payments. School districts must be empowered to respond to the changing business models in the software industry and be given flexibility and authority to use capital projects funds to pay for licenses or online application fees. It is the intent of the legislature that these investments be deemed major capital purpose and are also permitted uses of the district's two to six-year levies authorized by RCW 84.52.053." [2007 c 129 § 1.]

Additional notes found at www.leg.wa.gov

- 28A.400.303 Record checks for employees and certain volunteers and contractors—Cost. (Effective July 1, 2018.)
- 28A.400.305 Record check information—Access—Rules.
- 28A.400.309 K-12 criminal background check account.
- 28A.400.350 Medical, dental, vision, liability, life, accident, disability, and salary insurance authorized—Expiration of authority for basic and optional benefits—Health savings accounts—Premiums—Noncompliance.

28A.400.006 Salary restrictions during the 2018-19 school year—Certificated administrative staff. (Expires August 31, 2019.) (1) A school district may not provide any school district certificated administrative staff with a percentage increase to total salary for the 2018-19 school year, including supplemental contracts, that exceeds the previous calendar year's annual average consumer price index, using the official current base compiled by the bureau of labor statistics, United States department of labor, for the city of Seattle. However, if a district's average certificated administrative staff salary is less than the average certificated administrative salary allocated by the state for that year, the district may increase salaries not to exceed the point where the district's average certificated administrative staff salary equals the average certificated administrative staff salary allocated by the state.

(2) This section expires August 31, 2019. [2017 3rd sp.s. c 13 § 703.]

Effective date—2017 3rd sp.s. c 13 §§ 701-703: See note following RCW 41.56.800.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

28A.400.007 Staffing enrichments to the program of basic education. (1) In addition to the staffing units in RCW 28A.150.260, the superintendent of public instruction must provide school districts with allocations for the following staff units if and to the extent that funding is specifically appropriated and designated for that category of staffing unit in the omnibus operating appropriations act.

(a) Additional staffing units for each level of prototypical school in RCW 28A.150.260:

**Chapter 28A.400 RCW
EMPLOYEES**

Sections

- 28A.400.006 Salary restrictions during the 2018-19 school year—Certificated administrative staff. (Expires August 31, 2019.)
- 28A.400.007 Staffing enrichments to the program of basic education.
- 28A.400.200 Salaries and compensation for employees—Minimum and maximum amounts—Limitations—Supplemental contracts.
- 28A.400.2001 Supplemental contracts—School district reporting—Report by the office of the superintendent of public instruction.
- 28A.400.201 Repealed.
- 28A.400.205 Salary inflationary increases for employees—"Inflationary adjustment index" defined.
- 28A.400.270 Employee benefit—Definitions.
- 28A.400.275 Employee benefits—Contracts or agreements—Submission of information to the office of the insurance commissioner (as amended by 2017 3rd sp.s. c 7).
- 28A.400.275 Employee benefits—Contracts or agreements—Submission of information to the office of the insurance commissioner—Annual reports (as amended by 2017 3rd sp.s. c 13).
- 28A.400.280 Employee benefits—Employer contributions—Restrictions beginning January 1, 2020.
- 28A.400.303 Record checks for employees and certain volunteers and contractors—Cost. (Effective until July 1, 2018.)

	Elementary School	Middle School	High School
Principals, assistant principals, and other certificated building-level administrators	0.0470	0.0470	0.0200
Teacher-librarians, a function that includes information literacy, technology, and media to support school library media programs	0.3370	0.4810	0.4770
Health and social services:			
School nurses	0.5090	0.8280	0.7280
Social workers	0.2690	0.0820	0.1120
Psychologists	0.0870	0.0220	0.0420
Guidance counselors, a function that includes parent outreach and graduation advising.	0.0070	0.7840	0.9610
Teaching assistance, including any aspect of educational instructional services provided by classified employees.	1.0640	0.3000	0.3480
Office support and other noninstructional aides	0.9880	1.1750	0.2310
Custodians	0.0430	0.0580	0.0350
Classified staff providing student and staff safety	0.0000	0.6080	1.1590
Parent involvement coordinators	0.9175	1.0000	1.0000

(b) Additional certificated instructional staff units sufficient to achieve the following reductions in class size in each level of prototypical school under RCW 28A.150.260:

	General education certificated instructional staff units sufficient to achieve class size reduction of:
Grades K-3 class size . . . . .	.0.00
Grade 4 . . . . .	.2.00
Grades 5-6 . . . . .	.2.00
Grades 7-8 . . . . .	.3.53
Grades 9-12 . . . . .	.3.74
CTE . . . . .	.4.00
Skills . . . . .	.4.00
	High poverty certificated instructional staff units sufficient to achieve class size reduction of:
Grades K-3 class size . . . . .	.2.00
Grade 4 . . . . .	.5.00
Grades 5-6 . . . . .	.4.00
Grades 7-8 . . . . .	.5.53
Grades 9-12 . . . . .	.5.74

(2) The staffing units in subsection (1) of this section are an enrichment to and are beyond the state's statutory program of basic education in RCW 28A.150.220 and 28A.150.260. However, if and to the extent that any of these additional staffing units are funded by specific reference to this section in the omnibus operating appropriations act, those units become part of prototypical school funding formulas and a component of the state funding that the legislature deems necessary to support school districts in offering the statutory program of basic education under Article IX, section 1 of the state Constitution. [2017 3rd sp.s. c 13 § 904.]

Intent—2017 3rd sp.s. c 13: "The legislature recognizes that legislation enacted in 2014 and 2015 established a phase-in of increased school district staffing ratios. Under current law, these increased staffing ratios begin in the 2019-2021 biennium and exceed the school district staffing ratios established in chapter 236, Laws of 2010 (Substitute House Bill No. 2776) and in chapter 13, Laws of 2017 3rd sp. sess. In light of the education investments funded pursuant to the 2010 and 2017 legislation, the legislature intends to review and prioritize future staffing ratio increases to focus on reducing the opportunity gap, assisting struggling students, enhancing the educational outcomes for all students, and strengthening support for all schools and school district staff." [2017 3rd sp.s. c 13 § 903.]

Technical work group to review staffing enrichments—2017 3rd sp.s. c 13: "(1) The superintendent of public instruction shall convene a technical work group, which must include representatives of diverse school districts and education stakeholders, to review the staffing enrichments to the program of basic education detailed in section 904 of this act [RCW 28A.400.007]. The superintendent, together with the technical work group, shall make recommendations to the legislature on a possible phase-in plan of staffing enrichments that prioritizes the enrichments that are research or evidence-based strategies for reducing the opportunity gap, assisting struggling students, enhancing the educational outcomes for all students, or strengthening support for all school and school district staff. The superintendent shall report the recommendations to the education policy and operating budget committees of the legislature by December 1, 2019.

(2) This section expires June 30, 2020." [2017 3rd sp.s. c 13 § 905.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

28A.400.200 Salaries and compensation for employees—Minimum and maximum amounts—Limitations—

Supplemental contracts. (1) Every school district board of directors shall fix, alter, allow, and order paid salaries and compensation for all district employees in conformance with this section.

(2)(a) Through the 2017-18 school year, salaries for certificated instructional staff shall not be less than the salary provided in the appropriations act in the statewide salary allocation schedule for an employee with a baccalaureate degree and zero years of service;

(b) Salaries for certificated instructional staff with a master's degree shall not be less than the salary provided in the appropriations act in the statewide salary allocation schedule for an employee with a master's degree and zero years of service; and

(c) Beginning with the 2019-20 school year:

(i) Salaries for full-time certificated instructional staff must not be less than forty thousand dollars, to be adjusted for regional differences in the cost of hiring staff as specified in RCW 28A.150.410, and to be adjusted annually by the same inflationary measure as provided in RCW 28A.400.205;

(ii) Salaries for full-time certificated instructional staff with at least five years of experience must exceed by at least ten percent the value specified in (c)(i) of this subsection;

(iii) A district may not pay full-time certificated instructional staff a salary that exceeds ninety thousand dollars, subject to adjustment for regional differences in the cost of hiring staff as specified in RCW 28A.150.410. This maximum salary is adjusted annually by the inflationary measure in RCW 28A.400.205;

(iv) These minimum and maximum salaries apply to the services provided as part of the state's statutory program of basic education and exclude supplemental contracts for additional time, responsibility, or incentive pursuant to this section or for enrichment pursuant to RCW 28A.150.276;

(v) A district may pay a salary that exceeds this maximum salary by up to ten percent for full-time certificated instructional staff: Who are educational staff associates; who teach in the subjects of science, technology, engineering, or math; or who teach in the transitional bilingual instruction or special education programs.

(3)(a)(i) Through the 2017-18 school year the actual average salary paid to certificated instructional staff shall not exceed the district's average certificated instructional staff salary used for the state basic education allocations for that school year as determined pursuant to RCW 28A.150.410.

(ii) For the 2018-19 school year, salaries for certificated instructional staff are subject to the limitations in RCW 41.59.800.

(iii) Beginning with the 2019-20 school year, for purposes of subsection (4) of this section, RCW 28A.150.276, and 28A.505.100, each school district must annually identify the actual salary paid to each certificated instructional staff for services rendered as part of the state's program of basic education.

(b) Through the 2018-19 school year, fringe benefit contributions for certificated instructional staff shall be included as salary under (a)(i) of this subsection only to the extent that the district's actual average benefit contribution exceeds the amount of the insurance benefits allocation, less the amount remitted by districts to the health care authority for retiree subsidies, provided per certificated instructional staff unit in

the state operating appropriations act in effect at the time the compensation is payable. For purposes of this section, fringe benefits shall not include payment for unused leave for illness or injury under RCW 28A.400.210; employer contributions for old age survivors insurance, workers' compensation, unemployment compensation, and retirement benefits under the Washington state retirement system; or employer contributions for health benefits in excess of the insurance benefits allocation provided per certificated instructional staff unit in the state operating appropriations act in effect at the time the compensation is payable. A school district may not use state funds to provide employer contributions for such excess health benefits.

(c) Salary and benefits for certificated instructional staff in programs other than basic education shall be consistent with the salary and benefits paid to certificated instructional staff in the basic education program.

(4)(a) Salaries and benefits for certificated instructional staff may exceed the limitations in subsection (3) of this section only by separate contract for additional time, for additional responsibilities, or for incentives. Supplemental contracts shall not cause the state to incur any present or future funding obligation. Supplemental contracts must be accounted for by a school district when the district is developing its four-year budget plan under RCW 28A.505.040.

(b) Supplemental contracts shall be subject to the collective bargaining provisions of chapter 41.59 RCW and the provisions of RCW 28A.405.240, shall not exceed one year, and if not renewed shall not constitute adverse change in accordance with RCW 28A.405.300 through 28A.405.380. No district may enter into a supplemental contract under this subsection for the provision of services which are a part of the basic education program required by Article IX, section 1 of the state Constitution and RCW 28A.150.220. Beginning September 1, 2019, supplemental contracts for certificated instructional staff are subject to the following additional restrictions: School districts may enter into supplemental contracts only for enrichment activities as defined in and subject to the limitations of RCW 28A.150.276. The rate the district pays under a supplemental contract may not exceed the hourly rate provided to that same instructional staff for services under the basic education salary identified pursuant to subsection (3)(a)(iii) of this section.

(5) Employee benefit plans offered by any district shall comply with RCW 28A.400.350, 28A.400.275, and 28A.400.280. [2017 3rd sp.s. c 13 § 103; 2010 c 235 § 401; 2002 c 353 § 2; 1997 c 141 § 2; 1993 c 492 § 225. Prior: 1990 1st ex.s. c 11 § 2; 1990 c 33 § 381; 1987 1st ex.s. c 2 § 205. Formerly RCW 28A.58.0951.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Finding—2010 c 235: See note following RCW 28A.405.245.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1990 1st ex.s. c 11: "The legislature recognizes the rising costs of health insurance premiums for school employees, and the increasing need to ensure effective use of state benefit dollars to obtain basic coverage for employees and their dependents. In school districts that do not pool benefit allocations among employees, increases in premium rates create particular hardships for employees with families. For many of these employees, the increases translate directly into larger payroll deductions simply to maintain basic benefits.

The goal of this act is to provide access for school employees to basic coverage, including coverage for dependents, while minimizing employees'

out-of-pocket premium costs. Unnecessary utilization of medical services can contribute to rising health insurance costs. Therefore, the legislature intends to encourage plans that promote appropriate utilization without creating major barriers to access to care. The legislature also intends that school districts pool state benefit allocations so as to eliminate major differences in out-of-pocket premium expenses for employees who do and do not need coverage for dependents." [1990 1st ex.s. c 11 § 1.]

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Additional notes found at www.leg.wa.gov

28A.400.2001 Supplemental contracts—School district reporting—Report by the office of the superintendent of public instruction. Beginning September 1, 2017, school districts must annually report to the superintendent of public instruction on supplemental contracts entered into subject to RCW 28A.400.200(4) for additional time, responsibility, or incentive. The office of the superintendent of public instruction shall summarize the district information and submit an annual report to the education and appropriate fiscal committees of the house of representatives and the senate. [2017 3rd sp.s. c 13 § 505.]

Effective date—2017 3rd sp.s. c 13 §§ 102, 505, and 801: See note following RCW 28A.400.205.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

28A.400.201 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.400.205 Salary inflationary increases for employees—"Inflationary adjustment index" defined. (1) School district employees shall be provided an annual salary inflationary increase in accordance with this section.

(a) The inflationary increase shall be calculated by applying the rate of the yearly increase in the inflationary adjustment index to any state-funded salary base used in state funding formulas for teachers and other school district employees. Beginning with the 2020-21 school year, each school district shall be provided an inflationary adjustment allocation sufficient to grant this inflationary increase.

(b) A school district shall distribute its inflationary adjustment allocation for salaries and salary-related benefits in accordance with the district's collective bargaining agreements and compensation policies. No later than the end of the school year, each school district shall certify to the superintendent of public instruction that it has spent funds provided for inflationary increases on salaries and salary-related benefits.

(c) Any funded inflationary increase shall be included in the salary base used to determine inflationary increases for school employees in subsequent years. For teachers and other certificated instructional staff, the rate of the annual inflationary increase funded for certificated instructional staff shall be applied to the base salary used with the statewide salary allocation methodology established under RCW 28A.150.410 and to any other salary allocation methodologies used to recognize school district personnel costs.

(2) For the purposes of this section, "inflationary adjustment index" means, for any school year, the implicit price deflator for that fiscal year, using the official current base, compiled by the bureau of labor statistics, United States department of labor for the state of Washington. [2017 3rd

sp.s. c 13 § 102; 2013 2nd sp.s. c 5 § 1; 2011 1st sp.s. c 18 § 1; 2009 c 573 § 1; 2003 1st sp.s. c 20 § 1; 2001 c 4 § 2 (Initiative Measure No. 732, approved November 7, 2000).]

Effective date—2017 3rd sp.s. c 13 §§ 102, 505, and 801: "Sections 102, 505, and 801 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [July 6, 2017]." [2017 3rd sp.s. c 13 § 1006.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2013 2nd sp.s. c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013." [2013 2nd sp.s. c 5 § 5.]

Effective date—2011 1st sp.s. c 18: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 18 § 7.]

Effective date—2009 c 573: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 573 § 4.]

Additional notes found at www.leg.wa.gov

28A.400.270 Employee benefit—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28A.400.275 and 28A.400.280.

(1) "Basic benefits" are limited to medical, dental, vision, group term life, and group long-term disability insurance coverage.

(2) "Benefit providers" include insurers, third party claims administrators, direct providers of employee fringe benefits, health maintenance organizations, health care service contractors, and the Washington state health care authority or any plan offered by the authority.

(3) "Fringe benefit" does not include liability coverage, old-age survivors' insurance, workers' compensation, unemployment compensation, retirement benefits under the Washington state retirement system, or payment for unused leave for illness or injury under RCW 28A.400.210.

(4) "Group long-term disability insurance coverage" means long-term disability insurance coverage provided for, at a minimum, all full-time employees in a bargaining unit or all full-time nonbargaining group employees.

(5) "Group term life insurance coverage" means term life insurance coverage provided for, at a minimum, all full-time employees in a bargaining unit or all full-time nonbargaining group employees.

(6) "School district employee benefit plan" means the overall plan used by the district for distributing fringe benefit subsidies to employees, including the method of determining employee coverage. It shall not include coverage offered to district employees for which there is no contribution from public funds. [2017 3rd sp.s. c 13 § 813; 1990 1st ex.s. c 11 § 4.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Intent—1990 1st ex.s. c 11: See note following RCW 28A.400.200.

28A.400.275 Employee benefits—Contracts or agreements—Submission of information to the office of the insurance commissioner (as amended by 2017 3rd sp.s. c 7). (1) Any contract or agreement for employee benefits executed after April 13, 1990, between a school district and a benefit

provider or employee bargaining unit is null and void unless it contains an agreement to abide by state laws relating to school district employee benefits. The term of the contract or agreement may not exceed one year.

(2) (~~School districts and their benefit providers shall annually submit, by a date determined by the office of the insurance commissioner, the following information and data for the prior calendar year to the office of the insurance commissioner:~~

~~(a) Progress by the district and its benefit providers toward greater affordability for full family coverage, health care cost savings, and significantly reduced administrative costs;~~

~~(b) Compliance with the requirement to provide a high deductible health plan option with a health savings account;~~

~~(c) An overall plan summary including the following:~~

~~(i) The financial plan structure and overall performance of each health plan including:~~

~~(A) Total premium expenses;~~

~~(B) Total claims expenses;~~

~~(C) Claims reserves; and~~

~~(D) Plan administration expenses, including compensation paid to brokers;~~

~~(ii) A description of the plan's use of innovative health plan features designed to reduce health benefit premium growth and reduce utilization of unnecessary health services including but not limited to the use of enrollee health assessments or health coach services, care management for high cost or high risk enrollees, medical or health home payment mechanisms, and plan features designed to create incentives for improved personal health behaviors;~~

~~(iii) Data to provide an understanding of employee health benefit plan coverage and costs, including: The total number of employees and, for each employee, the employee's full-time equivalent status, types of coverage or benefits received including numbers of covered dependents, the number of eligible dependents, the amount of the district's contribution to premium, additional premium costs paid by the employee through payroll deductions, and the age and sex of the employee and each dependent;~~

~~(iv) Data necessary for school districts to more effectively and competitively manage and procure health insurance plans for employees. The data must include, but not be limited to, the following:~~

~~(A) A summary of the benefit packages offered to each group of district employees, including covered benefits, employee deductibles, coinsurance, and copayments, and the number of employees and their dependents in each benefit package;~~

~~(B) Aggregated employee and dependent demographic information, including age band and gender, by insurance tier and by benefit package;~~

~~(C) Total claim payments by benefit package, including premiums paid, inpatient facility claims paid, outpatient facility claims paid, physician claims paid, pharmacy claims paid, capitation amounts paid, and other claims paid;~~

~~(D) Total premiums paid by benefit package;~~

~~(E) A listing of large claims defined as annual amounts paid in excess of one hundred thousand dollars including the amount paid, the member enrollment status, and the primary diagnosis.~~

~~(3) Annually, school districts and their benefit providers shall jointly report to the office of the insurance commissioner on their health insurance-related efforts and achievements to:~~

~~(a) Significantly reduce administrative costs for school districts;~~

~~(b) Improve customer service;~~

~~(c) Reduce differential plan premium rates between employee only and family health benefit premiums;~~

~~(d) Protect access to coverage for part-time K-12 employees.~~

~~(4) The information and data shall be submitted in a format and according to a schedule established by the office of the insurance commissioner under RCW 48.02.210 to enable the commissioner to meet the reporting obligations under that section.~~

~~(5)) Any benefit provider offering a benefit plan by contract or agreement with a school district under subsection (1) of this section shall make available to the school district the benefit plan descriptions and, where available, the demographic information on plan subscribers that the district and benefit provider are required to *report to the office of the insurance commissioner under this section.~~

~~((6) This section shall not apply to benefit plans offered in the 1989-90 school year.)) [2017 3rd sp.s. c 7 § 1; 2012 2nd sp.s. c 3 § 4; 1990 1st ex.s. c 11 § 5.]~~

***Reviser's note:** The report referenced in subsection (2) of this section was eliminated by 2017 3rd sp.s. c 7.

28A.400.275 Employee benefits—Contracts or agreements—Submission of information to the office of the insurance commissioner—Annual reports (as amended by 2017 3rd sp.s. c 13). (1) Any contract or agreement for employee benefits executed after April 13, 1990, between a school district and a benefit provider or employee bargaining unit is null and void unless it contains an agreement to abide by state laws relating to school district employee benefits. The term of the contract or agreement may not exceed one year.

(2) Through December 31, 2019, school districts and their benefit providers shall annually submit, by a date determined by the office of the insurance commissioner, the following information and data for the prior calendar year to the office of the insurance commissioner:

(a) Progress by the district and its benefit providers toward greater affordability for full family coverage, health care cost savings, and significantly reduced administrative costs;

(b) Compliance with the requirement to provide a high deductible health plan option with a health savings account;

(c) An overall plan summary including the following:

(i) The financial plan structure and overall performance of each health plan including:

(A) Total premium expenses;

(B) Total claims expenses;

(C) Claims reserves; and

(D) Plan administration expenses, including compensation paid to brokers;

(ii) A description of the plan's use of innovative health plan features designed to reduce health benefit premium growth and reduce utilization of unnecessary health services including but not limited to the use of enrollee health assessments or health coach services, care management for high cost or high-risk enrollees, medical or health home payment mechanisms, and plan features designed to create incentives for improved personal health behaviors;

(iii) Data to provide an understanding of employee health benefit plan coverage and costs, including: The total number of employees and, for each employee, the employee's full-time equivalent status, types of coverage or benefits received including numbers of covered dependents, the number of eligible dependents, the amount of the district's contribution to premium, additional premium costs paid by the employee through payroll deductions, and the age and sex of the employee and each dependent;

(iv) Data necessary for school districts to more effectively and competitively manage and procure health insurance plans for employees. The data must include, but not be limited to, the following:

(A) A summary of the benefit packages offered to each group of district employees, including covered benefits, employee deductibles, coinsurance, and copayments, and the number of employees and their dependents in each benefit package;

(B) Aggregated employee and dependent demographic information, including age band and gender, by insurance tier and by benefit package;

(C) Total claim payments by benefit package, including premiums paid, inpatient facility claims paid, outpatient facility claims paid, physician claims paid, pharmacy claims paid, capitation amounts paid, and other claims paid;

(D) Total premiums paid by benefit package;

(E) A listing of large claims defined as annual amounts paid in excess of one hundred thousand dollars including the amount paid, the member enrollment status, and the primary diagnosis;

(F) After December 31, 2018, school districts shall submit such data as required by the school employees' benefits board to administer the consolidated purchasing of health services.

(3) ~~(Annually)~~ Through December 31, 2018, school districts and their benefit providers shall jointly report to the office of the insurance commissioner on their health insurance-related efforts and achievements to:

(a) Significantly reduce administrative costs for school districts;

(b) Improve customer service;

(c) Reduce differential plan premium rates between employee only and family health benefit premiums;

(d) Protect access to coverage for part-time K-12 employees.

(4) The information and data shall be submitted in a format and according to a schedule established by the office of the insurance commissioner under *RCW 48.02.210 to enable the commissioner to meet the reporting obligations under that section.

(5) Through December 31, 2018, any benefit provider offering a benefit plan by contract or agreement with a school district under subsection (1) of this section shall make available to the school district the benefit plan descriptions and, where available, the demographic information on plan subscribers that the district and benefit provider are required to report to the

office of the insurance commissioner under this section. After December 31, 2018, a benefit provider shall submit such data to the school employees' benefits board.

~~(6) (This section shall not apply to benefit plans offered in the 1989-90 school year.)~~ Each school district shall:

(a) Carry out all actions required by the school employees' benefits board and the health care authority under chapter 41.05 RCW including, but not limited to, those necessary for the operation of benefit plans, education of employees, claims administration, and appeals process; and

(b) Report all data relating to employees eligible to participate in benefits or plans administered by the school employees' benefits board and the health care authority in a format designed and communicated by the school employees' benefits board and the health care authority. [2017 3rd sp.s. c 13 § 814; 2012 2nd sp.s. c 3 § 4; 1990 1st ex.s. c 11 § 5.]

Reviser's note: *(1) RCW 48.02.210 was repealed by 2017 3rd sp.s. c 7 § 2.

(2) RCW 28A.400.275 was amended twice during the 2017 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Findings—Goals—Intent—2012 2nd sp.s. c 3: "(1) The legislature finds that:

(a) Each year, nearly one billion dollars in public funds are spent on the purchase of employee insurance benefits for more than two hundred thousand public school employees and their dependents;

(b) The legislature and school districts and their employees need better information to improve current practices and inform future decisions with regard to health insurance benefits;

(c) Recent work by the state auditor's office and the state health care authority have advanced discussions throughout the state on opportunities to improve the current system; and

(d) Two major themes have emerged: (i) The state, school districts, and employees need better information and data to make better health insurance purchasing decisions within the K-12 system; (ii) affordability is a significant concern for all employees, especially for employees seeking full family insurance coverage and for the lowest-paid and part-time employees.

(2) The legislature establishes the following goals:

(a) Improve the transparency of health benefit plan claims and financial data to assure prudent and efficient use of taxpayers' funds at the state and local levels;

(b) Create greater affordability for full family coverage and greater equity between premium costs for full family coverage and for employee only coverage for the same health benefit plan;

(c) Promote health care innovations and cost savings, and significantly reduce administrative costs; and

(d) Provide greater parity in state allocations for state employee and K-12 employee health benefits.

(3) The legislature intends to retain current collective bargaining for benefits, and retain state, school district, and employee contributions to benefits." [2012 2nd sp.s. c 3 § 1.]

Intent—1990 1st ex.s. c 11: See note following RCW 28A.400.200.

28A.400.280 Employee benefits—Employer contributions—Restrictions beginning January 1, 2020. (1) Except as provided in subsection (2) of this section, school districts may provide employer fringe benefit contributions after October 1, 1990, only for basic benefits. However, school districts may continue payments under contracts with employees or benefit providers in effect on April 13, 1990, until the contract expires.

(2) School districts may provide employer contributions after October 1, 1990, and until December 31, 2019, for optional benefit plans, in addition to basic benefits. Optional benefits may include direct agreements as defined in chapter 48.150 RCW, and may include employee beneficiary accounts that can be liquidated by the employee on termination of employment. Optional benefit plans may be offered only if:

(a) Each full-time employee, regardless of the number of dependents receiving basic coverage, receives the same additional employer contribution for other coverage or optional benefits; and

(b) For part-time employees, participation in optional benefit plans shall be governed by the same eligibility criteria and/or proration of employer contributions used for allocations for basic benefits.

(3) School districts are not intended to divert state basic benefit allocations for other purposes, and beginning January 1, 2020, no basic or optional benefits may be provided by employer contributions if they are not provided by the school employees' benefits board administered by the health care authority, and consistent with RCW 41.56.500(2). [2017 3rd sp.s. c 13 § 815; 2012 2nd sp.s. c 3 § 2; 2011 c 269 § 1; 1990 1st ex.s. c 11 § 6.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Findings—Goals—Intent—2012 2nd sp.s. c 3: See note following RCW 28A.400.275.

Intent—1990 1st ex.s. c 11: See note following RCW 28A.400.200.

28A.400.303 Record checks for employees and certain volunteers and contractors—Cost. (Effective until July 1, 2018.) (1) School districts, educational service districts, the Washington state center for childhood deafness and hearing loss, the state school for the blind, and their contractors hiring employees who will have regularly scheduled unsupervised access to children or developmentally disabled persons shall require a record check through the Washington state patrol criminal identification system under RCW 43.43.830 through 43.43.834, 10.97.030, and 10.97.050 and through the federal bureau of investigation before hiring an employee. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. The requesting entity may provide a copy of the record report to the applicant at the applicant's request. When necessary, applicants may be employed on a conditional basis pending completion of the investigation. If the applicant has had a record check within the previous two years, the district, the Washington state center for childhood deafness and hearing loss, the state school for the blind, or contractor may waive the requirement. Except as provided in subsection (2) of this section, the district, pursuant to chapter 41.59 or 41.56 RCW, the Washington state center for childhood deafness and hearing loss, the state school for the blind, or contractor hiring the employee shall determine who shall pay costs associated with the record check.

(2) Federal bureau of Indian affairs-funded schools may use the process in subsection (1) of this section to perform record checks for their employees and applicants for employment.

(3)(a) School districts, educational service districts, the Washington state center for childhood deafness and hearing loss, the state school for the blind, federal bureau of Indian affairs-funded schools, charter schools established under chapter 28A.710 RCW, schools that are the subject of a state-tribal education compact under chapter 28A.715 RCW, and their contractors may use the process in subsection (1) of this section to perform record checks for any prospective volunteer who will have regularly scheduled unsupervised access to children under eighteen years of age or developmentally

disabled persons, during the course of his or her involvement with the school or organization under circumstances where access will or may involve the following:

(i) Groups of five or fewer children under twelve years of age;

(ii) Groups of three or fewer children between twelve and eighteen years of age; or

(iii) Developmentally disabled persons.

(b) For purposes of (a) of this subsection, "unsupervised" means not in the presence of:

(i) Another employee or volunteer from the same school or organization; or

(ii) Any relative or guardian of any of the children or developmentally disabled persons to which the prospective employee or volunteer has access during the course of his or her involvement with the school or organization.

(4) Individuals who hold a valid portable background check clearance card issued by the *department of early learning consistent with **RCW 43.215.215 can meet the requirements in subsection (1) of this section by providing a true and accurate copy of their Washington state patrol and federal bureau of investigation background report results to the office of the superintendent of public instruction.

(5) The cost of record checks must include: The fees established by the Washington state patrol and the federal bureau of investigation for the criminal history background checks; a fee paid to the superintendent of public instruction for the cost of administering this section and RCW 28A.195.080 and 28A.410.010; and other applicable fees for obtaining the fingerprints. [2017 3rd sp.s. c 33 § 1; 2014 c 50 § 1; 2009 c 381 § 29; 2007 c 35 § 1; 2001 c 296 § 3; 1992 c 159 § 2.]

Reviser's note: *(1) The department of early learning was abolished and its powers, duties, and functions transferred to the department of children, youth, and families by 2017 3rd sp.s. c 6 § 802, effective July 1, 2018.

***(2) RCW 43.215.215 was recodified as RCW 43.216.270 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Findings—Intent—2009 c 381: See note following RCW 72.40.015.

Intent—2001 c 296: See note following RCW 9.96A.060.

Findings—1992 c 159: "The legislature finds that additional safeguards are necessary to ensure the safety of Washington's school children. The legislature further finds that the results from state patrol record checks are more complete when fingerprints of individuals are provided, and that information from the federal bureau of investigation also is necessary to obtain information on out-of-state criminal records. The legislature further finds that confidentiality safeguards in state law are in place to ensure that the rights of applicants for certification or jobs and newly hired employees are protected." [1992 c 159 § 1.]

Criminal history record information—School volunteers: RCW 28A.320.155.

28A.400.303 Record checks for employees and certain volunteers and contractors—Cost. (Effective July 1, 2018.) (1) School districts, educational service districts, the Washington state center for childhood deafness and hearing loss, the state school for the blind, and their contractors hiring employees who will have regularly scheduled unsupervised access to children or developmentally disabled persons shall require a record check through the Washington state patrol criminal identification system under RCW 43.43.830 through 43.43.834, 10.97.030, and 10.97.050 and through the federal bureau of investigation before hiring an employee. The record check may include a fingerprint check using a com-

plete Washington state criminal identification fingerprint card. The requesting entity may provide a copy of the record report to the applicant at the applicant's request. When necessary, applicants may be employed on a conditional basis pending completion of the investigation. If the applicant has had a record check within the previous two years, the district, the Washington state center for childhood deafness and hearing loss, the state school for the blind, or contractor may waive the requirement. Except as provided in subsection (2) of this section, the district, pursuant to chapter 41.59 or 41.56 RCW, the Washington state center for childhood deafness and hearing loss, the state school for the blind, or contractor hiring the employee shall determine who shall pay costs associated with the record check.

(2) Federal bureau of Indian affairs-funded schools may use the process in subsection (1) of this section to perform record checks for their employees and applicants for employment.

(3)(a) School districts, educational service districts, the Washington state center for childhood deafness and hearing loss, the state school for the blind, federal bureau of Indian affairs-funded schools, charter schools established under chapter 28A.710 RCW, schools that are the subject of a state-tribal education compact under chapter 28A.715 RCW, and their contractors may use the process in subsection (1) of this section to perform record checks for any prospective volunteer who will have regularly scheduled unsupervised access to children under eighteen years of age or developmentally disabled persons, during the course of his or her involvement with the school or organization under circumstances where access will or may involve the following:

(i) Groups of five or fewer children under twelve years of age;

(ii) Groups of three or fewer children between twelve and eighteen years of age; or

(iii) Developmentally disabled persons.

(b) For purposes of (a) of this subsection, "unsupervised" means not in the presence of:

(i) Another employee or volunteer from the same school or organization; or

(ii) Any relative or guardian of any of the children or developmentally disabled persons to which the prospective employee or volunteer has access during the course of his or her involvement with the school or organization.

(4) Individuals who hold a valid portable background check clearance card issued by the department of children, youth, and families consistent with RCW 43.216.270 can meet the requirements in subsection (1) of this section by providing a true and accurate copy of their Washington state patrol and federal bureau of investigation background report results to the office of the superintendent of public instruction.

(5) The cost of record checks must include: The fees established by the Washington state patrol and the federal bureau of investigation for the criminal history background checks; a fee paid to the superintendent of public instruction for the cost of administering this section and RCW 28A.195.080 and 28A.410.010; and other applicable fees for obtaining the fingerprints. [2017 3rd sp.s. c 33 § 1; 2017 3rd sp.s. c 6 § 220; 2014 c 50 § 1; 2009 c 381 § 29; 2007 c 35 § 1; 2001 c 296 § 3; 1992 c 159 § 2.]

Reviser's note: This section was amended by 2017 3rd sp.s. c 6 § 220 and by 2017 3rd sp.s. c 33 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Findings—Intent—2009 c 381: See note following RCW 72.40.015.

Intent—2001 c 296: See note following RCW 9.96A.060.

Findings—1992 c 159: "The legislature finds that additional safeguards are necessary to ensure the safety of Washington's school children. The legislature further finds that the results from state patrol record checks are more complete when fingerprints of individuals are provided, and that information from the federal bureau of investigation also is necessary to obtain information on out-of-state criminal records. The legislature further finds that confidentiality safeguards in state law are in place to ensure that the rights of applicants for certification or jobs and newly hired employees are protected." [1992 c 159 § 1.]

Criminal history record information—School volunteers: RCW 28A.320.155.

28A.400.305 Record check information—Access—Rules. The superintendent of public instruction shall adopt rules as necessary under chapter 34.05 RCW to implement RCW 28A.400.303. The rules shall include, but not be limited to the following:

(1) Written procedures providing a school district, approved private school, Washington state center for childhood deafness and hearing loss, state school for the blind, federal bureau of Indian affairs-funded school employee, charter school established under chapter 28A.710 RCW, school that is the subject of a state-tribal education compact under chapter 28A.715 RCW, or applicant for certification or employment access to and review of information obtained based on the record check required under RCW 28A.400.303; and

(2) Written procedures limiting access to the superintendent of public instruction record check database to only those individuals processing record check information at the office of the superintendent of public instruction, the appropriate school district or districts, approved private schools, the Washington state center for childhood deafness and hearing loss, the state school for the blind, the appropriate educational service district or districts, the appropriate federal bureau of Indian affairs-funded schools, the appropriate charter schools, and the appropriate state-tribal education compact schools. [2017 3rd sp.s. c 33 § 2; 2010 c 100 § 1; 2009 c 381 § 30; 2007 c 35 § 2; 2001 c 296 § 4; 1996 c 126 § 5.]

Findings—Intent—2009 c 381: See note following RCW 72.40.015.

Intent—2001 c 296: See note following RCW 9.96A.060.

Additional notes found at www.leg.wa.gov

28A.400.309 K-12 criminal background check account. The K-12 criminal background check account is created in the custody of the state treasurer. All fees collected by the office of the superintendent of public instruction pursuant to RCW 28A.400.303 must be deposited in the account. Expenditures from the account may be made only for the purpose of administering the office of the superintendent of public instruction's duties under RCW 28A.400.303 and 28A.410.010. Only the superintendent of public instruction

or the superintendent's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2017 3rd sp.s. c 33 § 5.]

28A.400.350 Medical, dental, vision, liability, life, accident, disability, and salary insurance authorized—Expiration of authority for basic and optional benefits—Health savings accounts—Premiums—Noncompliance.

(1) The board of directors of any of the state's school districts or educational service districts may make available medical, dental, vision, liability, life, accident, disability, and salary protection or insurance, direct agreements as defined in chapter 48.150 RCW, or any one of, or a combination of the types of employee benefits enumerated in this subsection, or any other type of insurance or protection, for the members of the boards of directors, the students, and employees of the school district or educational service district, and their dependents. Except as provided in subsection (6) of this section, such coverage may be provided by contracts or agreements with private carriers, with the state health care authority, or through self-insurance or self-funding pursuant to chapter 48.62 RCW, or in any other manner authorized by law. Any direct agreement must comply with RCW 48.150.050.

(2)(a) Whenever funds are available for these purposes the board of directors of the school district or educational service district may contribute all or a part of the cost of such protection or insurance for the employees of their respective school districts or educational service districts and their dependents. The premiums on such liability insurance shall be borne by the school district or educational service district.

(b) After October 1, 1990, school districts may not contribute to any employee protection or insurance other than liability insurance unless the district's employee benefit plan conforms to RCW 28A.400.275 and 28A.400.280.

(c) After December 31, 2019, school district contributions to any employee insurance that is purchased through the health care authority must conform to the requirements established by chapter 41.05 RCW and the school employees' benefits board.

(3) For school board members, educational service district board members, and students, the premiums due on such protection or insurance shall be borne by the assenting school board member, educational service district board member, or student. The school district or educational service district may contribute all or part of the costs, including the premiums, of life, health, health care, accident or disability insurance which shall be offered to all students participating in interschool activities on the behalf of or as representative of their school, school district, or educational service district. The school district board of directors and the educational service district board may require any student participating in extracurricular interschool activities to, as a condition of participation, document evidence of insurance or purchase insurance that will provide adequate coverage, as determined by the school district board of directors or the educational service district board, for medical expenses incurred as a result of injury sustained while participating in the extracurricular activity. In establishing such a requirement, the district shall adopt regulations for waiving or reducing the premiums of such coverage as may be offered through the school district

or educational service district to students participating in extracurricular activities, for those students whose families, by reason of their low income, would have difficulty paying the entire amount of such insurance premiums. The district board shall adopt regulations for waiving or reducing the insurance coverage requirements for low-income students in order to assure such students are not prohibited from participating in extracurricular interschool activities.

(4) All contracts or agreements for insurance or protection written to take advantage of the provisions of this section shall provide that the beneficiaries of such contracts may utilize on an equal participation basis the services of those practitioners licensed pursuant to chapters 18.22, 18.25, 18.53, 18.57, and 18.71 RCW.

(5)(a) Until the creation of the school employees' benefits board under RCW 41.05.740, school districts offering medical, vision, and dental benefits shall:

(i) Offer a high deductible health plan option with a health savings account that conforms to section 223, part VII of subchapter 1 of the internal revenue code of 1986. School districts shall comply with all applicable federal standards related to the establishment of health savings accounts;

(ii) Make progress toward employee premiums that are established to ensure that full family coverage premiums are not more than three times the premiums for employees purchasing single coverage for the same coverage plan, unless a subsequent premium differential target is defined as a result of the review and subsequent actions described in *RCW 41.05.655;

(iii) Offer employees at least one health benefit plan that is not a high deductible health plan offered in conjunction with a health savings account in which the employee share of the premium cost for a full-time employee, regardless of whether the employee chooses employee-only coverage or coverage that includes dependents, does not exceed the share of premium cost paid by state employees during the state employee benefits year that started immediately prior to the school year.

(b) All contracts or agreements for employee benefits must be held to responsible contracting standards, meaning a fair, prudent, and accountable competitive procedure for procuring services that includes an open competitive process, except where an open process would compromise cost-effective purchasing, with documentation justifying the approach.

(c) School districts offering medical, vision, and dental benefits shall also make progress on promoting health care innovations and cost savings and significantly reduce administrative costs.

(d) All contracts or agreements for insurance or protection described in this section shall be in compliance with chapter 3, Laws of 2012 2nd sp. sess.

(e) Upon notification from the office of the insurance commissioner of a school district's substantial noncompliance with the data reporting requirements of RCW 28A.400.275, and the failure is due to the action or inaction of the school district, and if the noncompliance has occurred for two reporting periods, the superintendent is authorized and required to limit the school district's authority provided in subsection (1) of this section regarding employee health benefits to the provision of health benefit coverage provided by the state health care authority.

(6) The authority to make available basic and optional benefits to school employees under this section expires December 31, 2019. Beginning January 1, 2020, school districts and educational service districts shall make available basic and optional benefits through plans offered by the health care authority and the school employees' benefits board. [2017 3rd sp.s. c 13 § 816; 2012 2nd sp.s. c 3 § 3; 2011 c 269 § 2; 2001 c 266 § 2. Prior: 1995 1st sp.s. c 6 § 18; 1995 c 126 § 1; 1993 c 492 § 226; prior: 1990 1st ex.s. c 11 § 3; 1990 c 74 § 1; 1988 c 107 § 16; 1985 c 277 § 8; 1977 ex.s. c 255 § 1; 1973 1st ex.s. c 9 § 1; 1971 ex.s. c 269 § 2; 1971 c 8 § 3; 1969 ex.s. c 237 § 3; 1969 ex.s. c 223 § 28A.58.420; prior: 1967 c 135 § 2, part; 1959 c 187 § 1, part. Formerly RCW 28A.58.420, 28.76.410, part.]

*Reviser's note: RCW 41.05.655 was repealed by 2017 3rd sp.s. c 25 § 23.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Findings—Goals—Intent—2012 2nd sp.s. c 3: See note following RCW 28A.400.275.

Findings—Intent—1993 c 492: See notes following RCW 43.72.005.

Intent—1990 1st ex.s. c 11: See note following RCW 28A.400.200.

Hospitalization and medical insurance authorized: RCW 41.04.180.

Operation of student transportation program responsibility of local district—Scope—Transporting of elderly—Insurance: RCW 28A.160.010.

Retirement allowance deductions for health care benefit plans: RCW 41.04.235.

Additional notes found at www.leg.wa.gov

Chapter 28A.410 RCW CERTIFICATION

Sections

- 28A.410.010 Certification—Duty of professional educator standards board—Rules—Record check—Lapsed certificates—Superintendent of public instruction as administrator. *(Effective until July 1, 2018.)*
- 28A.410.010 Certification—Duty of professional educator standards board—Rules—Record check—Lapsed certificates—Superintendent of public instruction as administrator. *(Effective July 1, 2018.)*
- 28A.410.062 Initial educator certificates and paraeducator certificates—Application processing fee—Educator certification processing account.
- 28A.410.090 Revocation or suspension of certificate or permit to teach—Reprimand—Criminal basis—Complaints—Investigation—Process.
- 28A.410.200 Washington professional educator standards board—Creation—Membership—Executive director.
- 28A.410.210 Washington professional educator standards board—Purpose—Powers and duties.
- 28A.410.250 Washington professional educator standards board—Professional certification—Rules.
- 28A.410.251 Washington professional educator standards board—Residency certificate renewal for certain experienced teachers and principals—Rules.
- 28A.410.270 Washington professional educator standards board—Performance standards—Certification levels—Teacher effectiveness evaluations—Requirements for professional certificate and residency teaching certificate—Demonstration of educator preparation programs' outcomes.
- 28A.410.271 Washington professional educator standards board—Standards for educational interpreters.
- 28A.410.294 Teacher and administrator preparation—Working with paraeducators.

28A.410.010 Certification—Duty of professional educator standards board—Rules—Record check—Lapsed certificates—Superintendent of public instruction as administrator. *(Effective until July 1, 2018.)* (1)(a)

The Washington professional educator standards board shall establish, publish, and enforce rules determining eligibility for and certification of personnel employed in the common schools of this state, including certification for emergency or temporary, substitute or provisional duty and under such certificates or permits as the board shall deem proper or as otherwise prescribed by law. The rules shall require that the initial application for certification shall require, at the applicant's expense, a criminal history record check of the applicant through the Washington state patrol criminal identification system under RCW 43.43.830 through 43.43.834, 10.97.030, and 10.97.050 and through the federal bureau of investigation. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. An individual who holds a valid portable background check clearance card issued by the *department of early learning consistent with **RCW 43.215.215 is exempt from the office of the superintendent of public instruction fingerprint background check if the individual provides a true and accurate copy of his or her Washington state patrol and federal bureau of investigation background report results to the office of the superintendent of public instruction. The superintendent of public instruction may waive the record check for any applicant who has had a record check within the two years before application. The superintendent of public instruction shall use the fingerprint criminal history record check information solely for the purpose of determining eligibility for a certificate under this section. The rules shall permit a holder of a lapsed certificate but not a revoked or suspended certificate to be employed on a conditional basis by a school district with the requirement that the holder must complete any certificate renewal requirements established by the state board of education within two years of initial reemployment.

(b) In establishing rules pertaining to the qualifications of instructors of American sign language the board shall consult with the national association of the deaf, "sign instructors guidance network" (s.i.g.n.), and the Washington state association of the deaf for evaluation and certification of sign language instructors.

(c) The board shall develop rules consistent with RCW 18.340.020 for the certification of spouses of military personnel.

(2) The superintendent of public instruction shall act as the administrator of any such rules and have the power to issue any certificates or permits and revoke the same in accordance with board rules. [2017 3rd sp.s. c 33 § 3; 2014 c 50 § 2; 2011 2nd sp.s. c 5 § 4; 2005 c 497 § 203; 2001 c 263 § 1. Prior: 1992 c 159 § 3; 1992 c 60 § 2; prior: 1988 c 172 § 3; 1988 c 97 § 1; 1987 c 486 § 8; 1975-'76 2nd ex.s. c 92 § 2; 1969 ex.s. c 223 § 28A.70.005. Formerly RCW 28A.70.005.]

Reviser's note: *(1) The department of early learning was abolished and its powers, duties, and functions transferred to the department of children, youth, and families by 2017 3rd sp.s. c 6 § 802, effective July 1, 2018.

***(2) RCW 43.215.215 was recodified as RCW 43.216.270 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Implementation—2011 2nd sp.s. c 5: See note following RCW 18.340.010.

Intent—Part headings not law—Effective date—2005 c 497: See notes following RCW 28A.305.011.

Findings—1992 c 159: See note following RCW 28A.400.303.

Additional notes found at www.leg.wa.gov

28A.410.010 Certification—Duty of professional educator standards board—Rules—Record check—Lapsed certificates—Superintendent of public instruction as administrator. (Effective July 1, 2018.) (1)(a) The Washington professional educator standards board shall establish, publish, and enforce rules determining eligibility for and certification of personnel employed in the common schools of this state, including certification for emergency or temporary, substitute or provisional duty and under such certificates or permits as the board shall deem proper or as otherwise prescribed by law. The rules shall require that the initial application for certification shall require, at the applicant's expense, a criminal history record check of the applicant through the Washington state patrol criminal identification system under RCW 43.43.830 through 43.43.834, 10.97.030, and 10.97.050 and through the federal bureau of investigation. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. An individual who holds a valid portable background check clearance card issued by the department of children, youth, and families consistent with RCW 43.216.270 is exempt from the office of the superintendent of public instruction fingerprint background check if the individual provides a true and accurate copy of his or her Washington state patrol and federal bureau of investigation background report results to the office of the superintendent of public instruction. The superintendent of public instruction may waive the record check for any applicant who has had a record check within the two years before application. The superintendent of public instruction shall use the fingerprint criminal history record check information solely for the purpose of determining eligibility for a certificate under this section. The rules shall permit a holder of a lapsed certificate but not a revoked or suspended certificate to be employed on a conditional basis by a school district with the requirement that the holder must complete any certificate renewal requirements established by the state board of education within two years of initial reemployment.

(b) In establishing rules pertaining to the qualifications of instructors of American sign language the board shall consult with the national association of the deaf, "sign instructors guidance network" (s.i.g.n.), and the Washington state association of the deaf for evaluation and certification of sign language instructors.

(c) The board shall develop rules consistent with RCW 18.340.020 for the certification of spouses of military personnel.

(2) The superintendent of public instruction shall act as the administrator of any such rules and have the power to issue any certificates or permits and revoke the same in accordance with board rules. [2017 3rd sp.s. c 33 § 3; 2017 3rd sp.s. c 6 § 221; 2014 c 50 § 2; 2011 2nd sp.s. c 5 § 4; 2005 c 497 § 203; 2001 c 263 § 1. Prior: 1992 c 159 § 3; 1992 c 60 § 2; prior: 1988 c 172 § 3; 1988 c 97 § 1; 1987 c 486 § 8; 1975-'76 2nd ex.s. c 92 § 2; 1969 ex.s. c 223 § 28A.70.005. Formerly RCW 28A.70.005.]

Reviser's note: This section was amended by 2017 3rd sp.s. c 6 § 221 and by 2017 3rd sp.s. c 33 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

[2017 RCW Supp—page 272]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Implementation—2011 2nd sp.s. c 5: See note following RCW 18.340.010.

Intent—Part headings not law—Effective date—2005 c 497: See notes following RCW 28A.305.011.

Findings—1992 c 159: See note following RCW 28A.400.303.

Additional notes found at www.leg.wa.gov

28A.410.062 Initial educator certificates and paraeducator certificates—Application processing fee—Educator certification processing account. (1) The legislature finds that the current economic environment requires that the state, when appropriate, charge for some of the services provided directly to the users of those services. The office of the superintendent of public instruction is currently supported with state funds to process certification fees. In addition, the legislature finds that the processing of certifications should be moved to an online system that allows educators to manage their certifications and provides better information to policymakers. The legislature intends to assess a certification processing fee to eliminate state-funded support of the cost to issue educator certificates.

(2) In addition to the certification fee established under RCW 28A.410.060 for certificated instructional staff as defined in RCW 28A.150.203, the superintendent of public instruction shall charge an application processing fee for initial educator certificates and subsequent actions, and paraeducator certificates and subsequent actions. The superintendent of public instruction shall establish the amount of the fee by rule under chapter 34.05 RCW. The superintendent shall set the fee at a sufficient level to defray the costs of administering the educator certification program under RCW 28A.300.040(9) and the paraeducator certificate program under chapter 28A.413 RCW. Revenue generated through the processing fee shall be deposited in the educator certification processing account.

(3) The educator certification processing account is established in the custody of the state treasurer. The superintendent of public instruction shall deposit in the account all moneys received from the fees collected in subsection (2) of this section. Moneys in the account may be spent only for the processing of educator certificates and subsequent actions and paraeducator certificates and subsequent actions. Disbursements from the account shall be on authorization of the superintendent of public instruction or the superintendent's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements. [2017 c 237 § 16; 2011 1st sp.s. c 23 § 1.]

Effective date—2011 1st sp.s. c 23: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 23 § 2.]

28A.410.090 Revocation or suspension of certificate or permit to teach—Reprimand—Criminal basis—Complaints—Investigation—Process. (1)(a) Any certificate or permit authorized under the provisions of this chapter, chap-

ter 28A.405 RCW, or rules promulgated thereunder may be revoked or suspended by the authority authorized to grant the same based upon a criminal records report authorized by law, or upon the complaint of the professional educator standards board or any school district superintendent, educational service district superintendent, or private school administrator for lack of good moral character or personal fitness, violation of written contract, unprofessional conduct, intemperance, or crime against the law of the state. A reprimand may be issued as an alternative to suspension or revocation of a certificate or permit. School district superintendents, educational service district superintendents, the professional educator standards board, or private school administrators may file a complaint concerning any certificated employee of a school district, educational service district, or private school and this filing authority is not limited to employees of the complaining superintendent or administrator. Such written complaint shall state the grounds and summarize the factual basis upon which a determination has been made that an investigation by the superintendent of public instruction is warranted.

(b) If the superintendent of public instruction has reasonable cause to believe that an alleged violation of this chapter or rules adopted under it has occurred based on a written complaint alleging physical abuse or sexual misconduct by a certificated school employee filed by a parent or another person, but no complaint has been forwarded to the superintendent by a school district superintendent, educational service district superintendent, or private school administrator, and that a school district superintendent, educational service district superintendent, or private school administrator has sufficient notice of the alleged violation and opportunity to file a complaint, the superintendent of public instruction may cause an investigation to be made of the alleged violation, together with such other matters that may be disclosed in the course of the investigation related to certificated personnel.

(2) A parent or another person may file a written complaint with the superintendent of public instruction alleging physical abuse or sexual misconduct by a certificated school employee if:

(a) The parent or other person has already filed a written complaint with the educational service district superintendent concerning that employee;

(b) The educational service district superintendent has not caused an investigation of the allegations and has not forwarded the complaint to the superintendent of public instruction for investigation; and

(c) The written complaint states the grounds and factual basis upon which the parent or other person believes an investigation should be conducted.

(3) Any certificate or permit authorized under the provisions of this chapter, chapter 28A.405 RCW, or rules adopted thereunder may be revoked or suspended by the authority authorized to grant the same upon complaint from the professional educator standards board alleging unprofessional conduct in the form of a fraudulent submission of a test for educators. A reprimand may be issued as an alternative to suspension or revocation of a certificate or permit. The professional educator standards board must issue to the superintendent of public instruction a written complaint stating the grounds and factual basis upon which the professional educator standards board believes an investigation should be

conducted pursuant to this section. In all cases under this subsection, the person whose certificate is in question shall be given an opportunity to be heard and has the right to appeal as established in *RCW 28A.410.100.

(4)(a) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be revoked by the authority authorized to grant the certificate upon a guilty plea or the conviction of any felony crime specified under RCW 28A.400.322, in accordance with this section. The person whose certificate is in question shall be given an opportunity to be heard.

(b) Mandatory permanent revocation upon a guilty plea or the conviction of felony crimes specified under RCW 28A.400.322(1) shall apply to such convictions or guilty pleas which occur after July 23, 1989, and before July 26, 2009.

(c) Mandatory permanent revocation upon a guilty plea or conviction of felony crimes specified under RCW 28A.400.322(2) shall apply to such convictions or guilty pleas that occur on or after July 26, 2009.

(d) Revocation of any certificate or permit authorized under this chapter or chapter 28A.405 RCW for a guilty plea or criminal conviction of a crime specified under RCW 28A.400.322 occurring prior to July 23, 1989, shall be subject to the provisions of subsection (1) of this section.

(5)(a) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be suspended or revoked, according to the provisions of this subsection, by the authority authorized to grant the certificate upon a finding that an employee has engaged in an unauthorized use of school equipment to intentionally access material depicting sexually explicit conduct or has intentionally possessed on school grounds any material depicting sexually explicit conduct; except for material used in conjunction with established curriculum. A first time violation of this subsection shall result in either suspension or revocation of the employee's certificate or permit as determined by the office of the superintendent of public instruction. A second violation shall result in a mandatory revocation of the certificate or permit.

(b) In all cases under this subsection (5), the person whose certificate is in question shall be given an opportunity to be heard and has the right to appeal as established in *RCW 28A.410.100. Certificates or permits shall be suspended or revoked under this subsection only if findings are made on or after July 24, 2005. For the purposes of this subsection, "sexually explicit conduct" has the same definition as provided in RCW 9.68A.011.

(6) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be revoked by the authority authorized to grant the certificate upon a finding that the certificate holder obtained the certificate through fraudulent means, including fraudulent misrepresentation of required academic credentials or prior criminal record. In all cases under this subsection, the person whose certificate is in question shall be given an opportunity to be heard and has the right to appeal as established in RCW 28A.410.100. Certificates or permits shall be revoked under this subsection only if findings are made on or after July 26, 2009.

(7)(a) In determining whether an individual lacks good moral character or personal fitness under this chapter, the superintendent of public instruction may consider founded

reports of child abuse or neglect made by the **department of social and health services pursuant to RCW 26.44.030.

(b) The **department of social and health services shall furnish the superintendent with reports of founded findings of child abuse or neglect in a timely fashion, but shall not disclose to the superintendent screened-out, inconclusive, or unfounded reports as defined in RCW 26.44.020.

(c) If the **department of social and health services inadvertently furnishes the superintendent with a screened-out, inconclusive, or unfounded report in violation of this section, the superintendent shall:

(i) Not consider the information contained in the reports for any purpose;

(ii) Notify the **department of social and health services of the violation of this section;

(iii) Notify the subject of the reports at his or her last known address of the department of social and health service's violation; and

(iv) Destroy the improperly disclosed reports. [2017 3rd sp.s. c 33 § 4; 2013 c 163 § 1; 2009 c 396 § 5; 2005 c 461 § 2; 2004 c 134 § 2; 1996 c 126 § 2; 1992 c 159 § 4; 1990 c 33 § 408; 1989 c 320 § 1; 1975 1st ex.s. c 275 § 137; 1974 ex.s. c 55 § 2; 1971 c 48 § 51; 1969 ex.s. c 223 § 28A.70.160. Prior: 1909 c 97 p 345 § 1; RRS § 4992; prior: 1897 c 118 § 148. Formerly RCW 28A.70.160, 28.70.160.]

Reviser's note: *(1) The right to appeal was eliminated from RCW 28A.410.100 by 2009 c 531 § 3.

***(2) The powers, duties, and functions of the department of social and health services pertaining to child welfare services under chapter 26.44 RCW were transferred to the department of children, youth, and families by 2017 3rd sp.s. c 6 § 803, effective July 1, 2018.

Findings—1992 c 159: See note following RCW 28A.400.303.

Notification of conviction or guilty plea of certain felony crimes: RCW 43.43.845.

Additional notes found at www.leg.wa.gov

28A.410.200 Washington professional educator standards board—Creation—Membership—Executive director. (1)(a) The Washington professional educator standards board is created, consisting of twelve members to be appointed by the governor to four-year terms and the superintendent of public instruction or the superintendent's designee. On August 1, 2009, the board shall be reduced to twelve members.

(b) Vacancies on the board shall be filled by appointment or reappointment by the governor to terms of four years.

(c) No person may serve as a member of the board for more than two consecutive full four-year terms.

(d) The governor shall biennially appoint the chair of the board. No board member may serve as chair for more than four consecutive years.

(2) A majority of the members of the board shall be active practitioners with the majority being classroom based. Membership on the board shall include individuals having one or more of the following:

(a) Experience in one or more of the education roles for which state preparation program approval is required and certificates issued;

(b) Experience providing or leading a state-approved teacher or educator preparation program;

(c) Experience providing mentoring and coaching to education professionals or others; and

(d) Education-related community experience.

(3) In appointing board members, the governor shall consider the individual's commitment to quality education and the ongoing improvement of instruction, experiences in the public schools or private schools, involvement in developing quality teaching preparation and support programs, and vision for the most effective yet practical system of assuring teaching quality. The governor shall also consider the diversity of the population of the state.

(4) All appointments to the board made by the governor are subject to confirmation by the senate.

(5) Each member of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060.

(6) The governor may remove a member of the board for neglect of duty, misconduct, malfeasance or misfeasance in office, or for incompetency or unprofessional conduct as defined in chapter 18.130 RCW. In such a case, the governor shall file with the secretary of state a statement of the causes for and the order of removal from office, and the secretary of state shall send a certified copy of the statement of causes and order of removal to the last known post office address of the member.

(7) Members of the board shall hire an executive director and an administrative assistant to reside in the office of the superintendent of public instruction for administrative purposes only.

(8) Members of the board may create informal advisory groups as needed to inform the board's work. [2017 c 189 § 1; 2009 c 531 § 2; 2005 c 497 § 202; 2003 1st sp.s. c 22 § 1; 2002 c 92 § 1; 2000 c 39 § 102.]

Effective date—2009 c 531 § 2: "Section 2 of this act takes effect August 1, 2009." [2009 c 531 § 5.]

Intent—Part headings not law—Effective date—2005 c 497: See notes following RCW 28A.305.011.

Findings—2000 c 39: "The legislature finds and declares:

(1) Creation of a public body whose focus is educator quality would be likely to bring greater focus and attention to the profession;

(2) Professional educator standards boards are consumer protection boards, establishing assessment policies to ensure the public that its new practitioners have the knowledge to be competent;

(3) The highest possible standards for all educators are essential in ensuring attainment of high academic standards by all students;

(4) Teacher assessment for certification can guard against admission to the teaching profession of persons who have not demonstrated that they are knowledgeable in the subjects they will be assigned to teach; and

(5) Teacher assessment for certification should be implemented as an additional element to the system of teacher preparation and certification." [2000 c 39 § 101.]

Joint report to the legislature: RCW 28A.305.035.

Additional notes found at www.leg.wa.gov

28A.410.210 Washington professional educator standards board—Purpose—Powers and duties. The purpose of the Washington professional educator standards board is to establish policies and requirements for the preparation and certification of educators that provide standards for competency in professional knowledge and practice in the areas of certification; a foundation of skills, knowledge, and attitudes necessary to help students with diverse needs, abilities, cultural experiences, and learning styles meet or exceed the learning goals outlined in RCW 28A.150.210; knowledge of

research-based practice; and professional development throughout a career. The Washington professional educator standards board shall:

(1) Establish policies and practices for the approval of programs of courses, requirements, and other activities leading to educator certification including teacher, school administrator, and educational staff associate certification;

(2) Establish policies and practices for the approval of the character of work required to be performed as a condition of entrance to and graduation from any educator preparation program including teacher, school administrator, and educational staff associate preparation program as provided in subsection (1) of this section;

(3) Establish a list of accredited institutions of higher education of this and other states whose graduates may be awarded educator certificates as teacher, school administrator, and educational staff associate and establish criteria and enter into agreements with other states to acquire reciprocal approval of educator preparation programs and certification, including teacher certification from the national board for professional teaching standards;

(4) Establish policies for approval of nontraditional educator preparation programs;

(5) Conduct a review of educator program approval standards at least every five years, beginning in 2006, to reflect research findings and assure continued improvement of preparation programs for teachers, administrators, and school specialized personnel;

(6) Specify the types and kinds of educator certificates to be issued and conditions for certification in accordance with subsection (1) of this section, RCW 28A.410.251, and 28A.410.010;

(7) Apply for and receive federal or other funds on behalf of the state for purposes related to the duties of the board;

(8) Adopt rules under chapter 34.05 RCW that are necessary for the effective and efficient implementation of this chapter;

(9) Maintain data concerning educator preparation programs and their quality, educator certification, educator employment trends and needs, and other data deemed relevant by the board;

(10) Serve as an advisory body to the superintendent of public instruction on issues related to educator recruitment, hiring, mentoring and support, professional growth, retention, educator evaluation including but not limited to peer evaluation, and revocation and suspension of licensure;

(11) Submit, by October 15th of each even-numbered year and in accordance with RCW 43.01.036, a joint report with the state board of education to the legislative education committees, the governor, and the superintendent of public instruction. The report shall address the progress the boards have made and the obstacles they have encountered, individually and collectively, in the work of achieving the goals set out in RCW 28A.150.210;

(12) Establish the prospective teacher assessment system for basic skills and subject knowledge that shall be required to obtain residency certification pursuant to RCW 28A.410.220 through 28A.410.240; and

(13) Conduct meetings under the provisions of chapter 42.30 RCW. [2017 3rd sp.s. c 26 § 2; 2009 c 531 § 4; 2008 c 176 § 1; 2005 c 497 § 201; 2000 c 39 § 103.]

Effective date—2017 3rd sp.s. c 26: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 7, 2017]." [2017 3rd sp.s. c 26 § 6.]

Intent—Part headings not law—Effective date—2005 c 497: See notes following RCW 28A.305.011.

Findings—Part headings and section captions not law—2000 c 39: See notes following RCW 28A.410.200.

28A.410.250 Washington professional educator standards board—Professional certification—Rules. The agency responsible for educator certification shall adopt rules for professional certification that:

(1) Grant professional certification to any teacher who attains certification from the national board for professional teaching standards; [and]

(2) Identify an expedited professional certification process for out-of-state teachers who have five years or more of successful teaching experience, including a method to determine the comparability of rigor between the Washington professional certification process and the advanced level teacher certification process of other states. A professional certificate must be issued to these experienced out-of-state teachers if the teacher holds: (a) A valid teaching certificate issued by the national board for professional teaching standards; or (b) an advanced level teacher certificate from another state that has been determined to be comparable to the Washington professional certificate. [2017 3rd sp.s. c 26 § 3; 2016 c 233 § 4; 2005 c 498 § 2.]

Effective date—2017 3rd sp.s. c 26: See note following RCW 28A.410.210.

Teacher recruitment information—2016 c 233: "(1) Subject to the availability of amounts appropriated for this specific purpose, the workforce training and education coordinating board, in collaboration with the professional educator standards board, shall work with the student achievement council, the office of the superintendent of public instruction, school districts, educational service districts, the state board for community and technical colleges, the institutions of higher education, major employers, and other parties to develop and disseminate information designed to increase recruitment into professional educator standards board-approved teacher preparation programs. **The information must be disseminated statewide through existing channels.**

(2) This section expires July 1, 2019." [2016 c 233 § 2.]

Reviser's note: The language in bold print was a part of the underlying Session Law but was inadvertently omitted from the original publication of this section in the Revised Code of Washington. The Code Reviser has restored the language to accurately reflect the law.

Teacher recruitment specialists grant program—2016 c 233: "(1) Subject to the availability of amounts appropriated for this specific purpose, the professional educator standards board shall create and administer the recruitment specialists grant program to provide funds to professional educator standards board-approved teacher preparation programs to hire, or contract with, recruitment specialists that focus on recruitment of individuals who are from traditionally underrepresented groups among teachers in Washington when compared to the common school population.

(2) This section expires July 1, 2018." [2016 c 233 § 3.]

Intent—2005 c 498: "The legislature recognizes the importance of ongoing professional development and growth for teachers with the goal of improving student achievement. It is the intent of the legislature to ensure that professional certification is administered in such a way as to ensure that the professional development and growth of individual teachers is directly aligned to their current and future teaching responsibilities as professional educators." [2005 c 498 § 1.]

28A.410.251 Washington professional educator standards board—Residency certificate renewal for certain experienced teachers and principals—Rules. By Septem-

ber 1, 2017, the Washington professional educator standards board shall adopt rules allowing teachers and principals with at least two years of experience, who hold or have held a residency certificate and have not achieved the professional certificate, to renew their residency certificate in five-year intervals based on completion of ten credits or one hundred clock hours as defined in RCW 28A.415.020 and 28A.415.023. [2017 3rd sp.s. c 26 § 1.]

Effective date—2017 3rd sp.s. c 26: See note following RCW 28A.410.210.

28A.410.270 Washington professional educator standards board—Performance standards—Certification levels—Teacher effectiveness evaluations—Requirements for professional certificate and residency teaching certificate—Demonstration of educator preparation programs' outcomes. (1)(a) The Washington professional educator standards board shall adopt a set of articulated teacher knowledge, skill, and performance standards for effective teaching that are evidence-based, measurable, meaningful, and documented in high quality research as being associated with improved student learning. The standards shall be calibrated for each level along the entire career continuum. In developing the standards, the board shall, to the extent possible, incorporate standards for cultural competency along the entire continuum. For the purposes of this subsection, "cultural competency" includes knowledge of student cultural histories and contexts, as well as family norms and values in different cultures; knowledge and skills in accessing community resources and community and parent outreach; and skills in adapting instruction to students' experiences and identifying cultural contexts for individual students.

(b) The Washington professional educator standards board shall adopt a definition of master teacher, with a comparable level of increased competency between professional certification level and master level as between professional certification level and national board certification. Within the definition established by the Washington professional educator standards board, teachers certified through the national board for professional teaching standards shall be considered master teachers.

(2) The Washington professional educator standards board shall maintain a uniform, statewide, valid, and reliable classroom-based means of evaluating teacher effectiveness as a culminating measure at the preservice level that is to be used during the student-teaching field experience. This assessment shall include multiple measures of teacher performance in classrooms, evidence of positive impact on student learning, and shall include review of artifacts, such as use of a variety of assessment and instructional strategies, and student work.

(3) Award of a professional certificate shall be based on a minimum of two years of successful teaching experience as defined by the board, and may not require candidates to enroll in a professional certification program.

(4) Educator preparation programs approved to offer the residency teaching certificate shall be required to demonstrate how the program produces effective teachers as evidenced by the measures established under this section and other criteria established by the Washington professional

educator standards board. [2017 3rd sp.s. c 26 § 4; 2009 c 548 § 402.]

Effective date—2017 3rd sp.s. c 26: See note following RCW 28A.410.210.

Finding—2009 c 548: "The legislature recognizes that the key to providing all students the opportunity to achieve the basic education goal is effective teaching and leadership. Teachers, principals, and administrators must be provided with access to the opportunities they need to gain the knowledge and skills that will enable them to be increasingly successful in their classroom and schools. A system that clearly defines, supports, measures, and recognizes effective teaching and leadership is one of the most important investments to be made." [2009 c 548 § 401.]

Intent—2009 c 548: See RCW 28A.150.1981.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

28A.410.271 Washington professional educator standards board—Standards for educational interpreters. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Educational interpreters" means school district employees, whether certificated or classified, providing sign language interpretation, transliteration, or both, and further explanation of concepts introduced by the teacher for students who are deaf, deaf-blind, or hard of hearing.

(b) "Educational interpreter assessment" means an assessment that includes both written assessment and performance assessment that is offered by a national organization of professional sign language interpreters and transliterators, and is designed to assess performance in more than one sign system or sign language.

(c) "Interpretation" means conveying one language in the form of another language.

(d) "Transliteration" means conveying one language in a different modality of the same language.

(2) The professional educator standards board shall:

(a) Adopt standards for educational interpreters and identify and publicize educational interpreter assessments that are available and meet the requirements in this section; and

(b) Establish a performance standard for each educational interpreter assessment for the purposes of this section, defining what constitutes a minimum assessment result.

(3)(a) Except as otherwise provided by this section, by the beginning of the 2016-17 school year, educational interpreters who are employed by school districts must have successfully achieved the performance standard established by the professional educator standards board on one of the educational interpreter assessments identified by the board. Evaluations and assessments for educational interpreters for which the board has not established a performance standard may be obtained as supplemental demonstrations of professional proficiency but may not be used as evidence of compliance with this subsection (3)(a).

(b) An educational interpreter who has not successfully achieved the performance standard required by (a) of this subsection may provide or continue providing educational interpreter services to students for one calendar year after receipt of his or her most recent educational interpreter assessment results, or eighteen months after completing his or her most recent educational interpreter assessment, whichever period is longer, if he or she can demonstrate to the satisfaction of the employing school or school district, ongoing

efforts to successfully achieve the required performance standard. In making a determination under this subsection (3)(b), the employing school or school district may consult with the professional educator standards board. For purposes of this subsection (3)(b), "educational interpreter" includes persons employed as educational interpreters before the 2016-17 school year.

(4) By December 31, 2013, the professional educator standards board shall recommend to the education committees of the house of representatives and the senate how to appropriately use the national interpreter certification and the educational interpreter performance assessment for educational interpreters in Washington public schools.

(5) The provisions of this section do not apply to educational interpreters employed to interpret a sign system or sign language, including nonsigning interpretation such as oral interpreting, computer-assisted real time captioning, and cued speech transliteration, for which an educational interpreter assessment either does not exist or, as determined by the professional educator standards board, is not capable of being evaluated by the board for suitability as a performance standard in Washington. [2017 c 34 § 1; 2013 c 151 § 2.]

Effective date—2017 c 34: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2017]." [2017 c 34 § 3.]

Finding—Intent—2013 c 151: "The legislature finds that although the professional educator standards board has begun work on standards and assessments for educational interpreters as directed by the 2012 supplemental operating budget, there is a need formally to codify this as an ongoing responsibility. The legislature also intends to specify how the standards and assessments will be used to improve learning opportunities for students who are deaf, deaf-blind, or hearing impaired." [2013 c 151 § 1.]

28A.410.294 Teacher and administrator preparation—Working with paraeducators. The professional educator standards board, in consultation with the paraeducator board created in RCW 28A.413.020 and the office of the superintendent of public instruction, shall incorporate into the content required to complete a professional educator standards board-approved teacher or administrator preparation program the following:

(1) For teachers, information on how to direct a paraeducator working with students in the paraeducators' classroom; and

(2) For administrators, information on how to supervise and evaluate paraeducators. [2017 c 237 § 14.]

Chapter 28A.413 RCW PARAEDUCATORS

Sections

28A.413.005	Findings.
28A.413.010	Definitions.
28A.413.020	Paraeducator board.
28A.413.030	Board—Powers and duties—Rules—Superintendent of public instruction as administrator of rules.
28A.413.040	Minimum employment requirements.
28A.413.050	Standards of practice.
28A.413.060	Fundamental course of study.
28A.413.070	General paraeducator certificate.
28A.413.080	Paraeducator subject matter certificates.
28A.413.090	Advanced paraeducator certificate.
28A.413.095	Pilots. (<i>Expires July 1, 2020.</i>)
28A.413.097	Effectiveness of paraeducators—Study. (<i>Expires July 1, 2020.</i>)

28A.413.005 Findings. Paraeducators provide the majority of instruction in programs designed by the legislature to reduce the opportunity gap. By setting common state-wide standards, requiring training in the standards, and offering career development for paraeducators, as well as training for teachers and principals who work with paraeducators, students in these programs have a better chance of succeeding. [2017 c 237 § 1.]

28A.413.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advanced paraeducator certificate" means a credential earned by a paraeducator who may have the following duties: Assisting in highly impacted classrooms, assisting in specialized instructional support and instructional technology applications, mentoring and coaching other paraeducators, and acting as a short-term emergency substitute teacher.

(2) "Board" means the paraeducator board established in RCW 28A.413.020.

(3) "English language learner programs" means the English language learners program, the transitional bilingual instruction program, and the federal limited English proficiency program.

(4) "English language learner certificate" means a credential earned by a paraeducator working with students in English language learner programs.

(5) "Paraeducator" means a classified public school or school district employee who works under the supervision of a certificated or licensed staff member to support and assist in providing instructional and other services to students and their families. Paraeducators are not considered certificated instructional staff as that term and its meaning are used in this title.

(6) "Special education certificate" means a credential earned by a paraeducator working with students in special education programs. [2017 c 237 § 2.]

28A.413.020 Paraeducator board. (1)(a) The paraeducator board is created, consisting of nine members to be appointed to four-year terms.

(b) Vacancies on the board must be filled by appointment or reappointment as described in subsection (2) of this section to terms of four years.

(c) No person may serve as a member of the board for more than two consecutive full four-year terms.

(d) The governor must biennially appoint the chair of the board. No board member may serve as chair for more than four consecutive years.

(2) Appointments to the board must be made as follows, subject to confirmation by the senate:

(a) The superintendent of public instruction shall appoint a basic education paraeducator, a special education paraeducator, an English language learner paraeducator, a teacher, a principal, and a representative of the office of the superintendent of public instruction;

(b) The Washington state parent teacher association shall appoint a parent whose child receives instructional support from a paraeducator;

(c) The state board for community and technical colleges shall appoint a representative of the community and technical college system; and

(d) The student achievement council shall appoint a representative of a four-year institution of higher education as defined in RCW 28B.10.016.

(3) The professional educator standards board shall administer the board.

(4) Each member of the board must be compensated in accordance with RCW 43.03.240 and must be reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060.

(5) Members of the board may create informal advisory groups as needed to inform the board's work.

(6) The governor may remove a member of the board for neglect of duty, misconduct, malfeasance or misfeasance in office, or for incompetency or unprofessional conduct as defined in chapter 18.130 RCW. In such a case, the governor shall file with the secretary of state a statement of the causes for and the order of removal from the board, and the secretary of state shall send a certified copy of the statement of causes and order of removal to the last known post office address of the member. [2017 c 237 § 3.]

28A.413.030 Board—Powers and duties—Rules—Superintendent of public instruction as administrator of rules. (1) The paraeducator board has the following powers and duties:

(a) Based on the recommendations of the paraeducator work group established in chapter 136, Laws of 2014, adopt: (i) Minimum employment requirements for paraeducators, as described in RCW 28A.413.040; and (ii) paraeducator standards of practice, as described in RCW 28A.413.050;

(b) Establish requirements and policies for a general paraeducator certificate, as described in RCW 28A.413.070;

(c) Based on the recommendations of the paraeducator work group established in chapter 136, Laws of 2014, establish requirements and policies for subject matter certificates in English language learner and special education, as described in RCW 28A.413.080;

(d) Based on the recommendations of the paraeducator work group established in chapter 136, Laws of 2014, establish requirements and policies for an advanced paraeducator certificate, as described in RCW 28A.413.090;

(e) By September 1, 2018, approve, and develop if necessary, courses required to meet the provisions of this chapter, where the courses are offered in a variety of means that will limit cost and improve access;

(f) Make policy recommendations, as necessary, for a paraeducator career ladder that will increase opportunities for paraeducator advancement through advanced education, professional learning, and increased instructional responsibility;

(g) Collaborate with the office of the superintendent of public instruction to adapt the electronic educator certification process to include paraeducator certificates; and

(h) Adopt rules under chapter 34.05 RCW that are necessary for the effective and efficient implementation of this chapter.

(2) The superintendent of public instruction shall act as the administrator of any such rules and have the power to

issue any paraeducator certificates and revoke the same in accordance with board rules. [2017 c 237 § 4.]

28A.413.040 Minimum employment requirements. Effective September 1, 2018, the minimum employment requirements for paraeducators are as provided in this section. The paraeducator must:

(1) Be at least eighteen years of age and hold a high school diploma or its equivalent; and

(2)(a) Have received a passing grade on the education testing service paraeducator assessment; or

(b) Hold an associate of arts degree; or

(c) Have earned seventy-two quarter credits or forty-eight semester credits at an institution of higher education; or

(d) Have completed a registered apprenticeship program. [2017 c 237 § 5.]

28A.413.050 Standards of practice. The board shall adopt state standards of practice for paraeducators that are based on the recommendations of the paraeducator work group established in chapter 136, Laws of 2014. These standards must include:

(1) Supporting instructional opportunities;

(2) Demonstrating professionalism and ethical practices;

(3) Supporting a positive and safe learning environment;

(4) Communicating effectively and participating in the team process; and

(5) Demonstrating cultural competency aligned with standards developed by the professional educator standards board under RCW 28A.410.270. [2017 c 237 § 6.]

28A.413.060 Fundamental course of study. (1) Subject to the availability of amounts appropriated for this specific purpose, beginning September 1, 2019, school districts must provide a four-day fundamental course of study on the state standards of practice, as defined by the board, to paraeducators who have not completed the course, either in the district or in another district within the state. School districts must use best efforts to provide the fundamental course of study before the paraeducator begins to work with students and their families, and at a minimum by the deadlines provided in subsection (2) of this section.

(2) School districts must provide the fundamental course of study required in subsection (1) of this section as follows:

(a) For paraeducators hired on or before September 1st, by September 30th of that year, regardless of the size of the district; and

(b) For paraeducators hired after September 1st:

(i) For districts with ten thousand or more students, within four months of the date of hire; and

(ii) For districts with fewer than ten thousand students, no later than September 1st of the following year.

(3) School districts may collaborate with other school districts or educational service districts to meet the requirements of this section. [2017 c 237 § 7.]

28A.413.070 General paraeducator certificate. (1)(a) Paraeducators may become eligible for a general paraeducator certificate by completing the four-day fundamental course of study, as required under RCW 28A.413.060, and an additional ten days of general courses, as defined by the board, on

the state paraeducator standards of practice, described in RCW 28A.413.050.

(b) Paraeducators are not required to meet the general paraeducator certificate requirements under this subsection (1) unless amounts are appropriated for the specific purposes of subsection (2) of this section and RCW 28A.413.060.

(2) Subject to the availability of amounts appropriated for this specific purpose, beginning September 1, 2019, school districts must:

(a) Provide paraeducators with general courses on the state paraeducator standards of practice; and

(b) Ensure all paraeducators employed by the district meet the general certification requirements of this section within three years of completing the four-day fundamental course of study.

(3) The general paraeducator certificate does not expire. [2017 c 237 § 8.]

28A.413.080 Paraeducator subject matter certificates. (1) The board shall adopt requirements and policies for paraeducator subject matter certificates in special education and in English language learner that are based on the recommendations of the paraeducator work group established in chapter 136, Laws of 2014.

(2) The rules adopted by the board must include the following requirements:

(a) A subject matter certificate is not a prerequisite for a paraeducator working in any program;

(b) Paraeducators may become eligible for a subject matter certificate by completing twenty hours of professional development in the subject area of the certificate; and

(c) Subject matter certificates expire after five years. [2017 c 237 § 9.]

28A.413.090 Advanced paraeducator certificate. (1) The board shall adopt requirements and policies for an advanced paraeducator certificate that are based on the recommendations of the paraeducator work group established in chapter 136, Laws of 2014.

(2) The rules adopted by the board must include the following requirements:

(a) An advanced paraeducator certificate is not a prerequisite for a paraeducator working in any program;

(b) Paraeducators may become eligible for an advanced paraeducator certificate by completing seventy-five hours of professional development in topics related to the duties of an advanced paraeducator; and

(c) Advanced paraeducator certificates expire after five years. [2017 c 237 § 10.]

28A.413.095 Pilots. (Expires July 1, 2020.) (1) By September 1, 2018, and subject to the availability of amounts appropriated for this specific purpose, the board shall distribute grants to a diverse set of school districts that volunteer to pilot the state paraeducator standards of practice, the paraeducator certificates, and the courses described in this chapter.

(2) By September 1, 2019, the volunteer districts must report to the board with the outcomes of the pilot and any recommendations for implementing the paraeducator standards of practice, paraeducator certificates, and courses statewide. The outcomes reported must include:

(a) An analysis of the costs to the district to implement the state standards of practice by making available the required four-day fundamental course of study;

(b) The number of paraeducators who completed the course of study in the state standards of practice;

(c) The number of paraeducators who earned an advanced paraeducator certificate, or a special education or English language learner certificate;

(d) Any cost to the district and the paraeducator to earn a certificate; and

(e) The impact on the size and assignment of the paraeducator workforce as a result of the pilot.

(3) By November 1, 2019, and in compliance with RCW 43.01.036, the board shall submit a report to the appropriate committees of the legislature that summarizes the outcomes of the pilots and recommends any statutory changes necessary to improve the statewide standards of practice, paraeducator certificate requirements, and courses of study necessary to meet these standards and requirements, among other things.

(4) This section expires July 1, 2020. [2017 c 237 § 11.]

28A.413.097 Effectiveness of paraeducators—Study. (Expires July 1, 2020.) (1) Subject to the availability of amounts appropriated for this specific purpose, the Washington state institute for public policy shall conduct a study on the effectiveness of paraeducators in improving student outcomes in Washington state. The study must examine variation in the use of paraeducators across public schools and school districts and analyze whether and the extent that any differences in students' academic progress can be attributed to the use of paraeducators. The office of the superintendent of public instruction and the education data center shall provide the data necessary to conduct the analysis. The study must also include a review of the national research literature on the effectiveness of paraeducators in improving student outcomes.

(2) By December 15, 2017, and in compliance with RCW 43.01.036, the institute must submit a final report to the appropriate committees of the legislature.

(3) This section expires July 1, 2020. [2017 c 237 § 12.]

Chapter 28A.415 RCW INSTITUTES, WORKSHOPS, AND TRAINING

Sections

28A.415.310	Repealed.
28A.415.430	Professional learning—Defined—Scope.
28A.415.432	Professional learning—Standards.
28A.415.434	Professional learning—Definitions.

28A.415.310 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.415.430 Professional learning—Defined—Scope. (1) The term "professional learning" means a comprehensive, sustained, job-embedded, and collaborative approach to improving teachers' and principals' effectiveness in raising student achievement. Professional learning fosters collective responsibility for improved student performance and must comprise learning that is aligned with student learn-

ing needs, educator development needs, and school district, or state improvement goals. Professional learning shall have as its primary focus the improvement of teachers' and school leaders' effectiveness in assisting all students to meet the state learning standards.

(2) Professional learning is an ongoing process that is measurable by multiple indicators and includes learning experiences that support the acquisition and transfer of learning, knowledge, and skills into the classroom and daily practice.

(3) Professional learning shall incorporate differentiated, coherent, sustained, and evidence-based strategies that improve educator effectiveness and student achievement, including job-embedded coaching or other forms of assistance to support educators' transfer of new knowledge and skills into their practice.

(4) Professional learning should include the work of established collaborative teams of teachers, school leaders, and other administrative, instructional, and educational services staff members, who commit to working together on an ongoing basis to accomplish common goals and who are engaged in a continuous cycle of professional improvement that is focused on:

(a) Identifying student and educator learning needs using multiple sources of data;

(b) Defining a clear set of educator learning goals based on the rigorous analysis of these multiple data sources and the collective and personalized learning needs of teachers and administrators;

(c) Continuously assessing the effectiveness of the professional learning in achieving identified learning goals, improving teaching, and assisting all students in meeting state academic learning standards through reflection, observation, and sustained support;

(d) Using formative and summative measures to assess the effectiveness of professional learning in achieving educator learning goals;

(e) Realizing the three primary purposes for professional learning: (i) Individual improvement aligned with individual goals; (ii) school and team improvement aligned with school and team improvement [goals]; and (iii) program implementation aligned with state, district, and school improvement goals and initiatives.

(5) Professional learning should be facilitated by well-prepared school and district leaders who incorporate knowledge, skills, and dispositions for leading professional learning of adults and meet the standards described in *RCW 28A.300.602. These facilitators may include but are not limited to: Curriculum specialists, central office administrators, principals, coaches, mentors, master teachers, and other teacher leaders.

(6) Principals should assist staff with alignment of professional learning tied to curriculum, instruction, and state and local learning goals and assessments.

(7) Professional learning may be supported by external expert assistance or additional activities that will be held to the same definition and standards as internally supported professional learning, and that:

(a) Address defined student and educator learning goals;

(b) Include, but are not limited to, courses, workshops, institutes, networks, studio residencies, virtual learning mod-

ules, and conferences provided by for-profit and nonprofit entities outside the school such as universities, educational service districts, technical assistance providers, networks of content specialists, and other education organizations and associations; and

(c) Advance ongoing school-based professional learning that occurs throughout the year with opportunities for regular practice and feedback while developing new skills. [2016 c 77 § 2. Formerly RCW 28A.300.600.]

***Reviser's note:** RCW 28A.300.602 was recodified as RCW 28A.415.432 pursuant to 2017 3rd sp.s. c 13 § 108.

Findings—Intent—2016 c 77: "(1) The legislature finds that effective professional learning enables educators to acquire and apply the knowledge, skills, practices, and dispositions needed to help students learn and achieve at higher levels.

(2) The legislature further finds that a clear definition of professional learning provides a foundational vision that sets the course for how state, regional, and local education leaders support educator professional learning in order to advance student learning. A shared, statewide definition is a piece of critical infrastructure to guide policy and investments in the content, structure, and provision of the types of professional learning opportunities that are associated with increased student performance. A definition of professional learning is also an accountability measure to assure that professional learning will have the highest possible return on investment in terms of increased student performance.

(3) Therefore, the legislature intends to adopt a statewide definition of effective professional learning. Each public school and school district should establish targeted, sustained, relevant professional learning opportunities that meet the definition and are aligned to state and district goals." [2016 c 77 § 1.]

28A.415.432 Professional learning—Standards.

Standards for professional learning provide guidance on the preparation and delivery of high quality professional learning to those responsible for planning, facilitating, and sponsoring professional learning.

(1) Content standards. High quality professional learning:

(a) Includes clear goals and objectives relevant to desired student outcomes; and

(b) Aligns with state, district, school, and educator goals or priorities.

(2) Process standards. High quality professional learning:

(a) Is designed and based upon the analysis of data relevant to the identified goals, objectives, and audience;

(b) Is assessed to determine that it is meeting the targeted goals and objectives;

(c) Promotes collaboration among educators to encourage sharing of ideas and working together to achieve the identified goals and objectives;

(d) Advances an educator's ability to apply acquired knowledge and skills from the professional learning to specific content; and

(e) Models good pedagogical practice and applies knowledge of adult learning theory to engage educators.

(3) Context standards. High quality professional learning:

(a) Makes use of relevant resources to ensure the identified goals and objectives are met;

(b) Is facilitated by a professional knowledgeable about the identified objectives; and

(c) Is designed in such a way that sessions connect and build upon each other to provide a coherent and useful learn-

ing experience for educators. [2016 c 77 § 3. Formerly RCW 28A.300.602.]

Findings—Intent—2016 c 77: See note following RCW 28A.415.430.

28A.415.434 Professional learning—Definitions. The definitions in this section apply throughout *RCW 28A.300.600 and 28A.300.602 unless the context clearly requires otherwise.

(1) "Differentiated" means that professional learning experiences are designed to meet the needs of individual educators based on multiple sources of data such as professional growth plans, observations, and student growth data.

(2) "Job-embedded" means a sustained series of activities such as workshops and coaching occurring throughout the year that is delivered within the context of an educator's instructional assignments, including both subject and grade level, to support the educator's acquisition and application of the knowledge and skills.

(3) "Student outcomes" refers to two broad categories of student measures: Academic measures and nonacademic measures. Academic measures refer to student learning, growth, and achievement. Nonacademic measures are indicators such as health, behavioral, or socioemotional factors that support student learning.

(4) "Sustained" means ongoing professional learning supported throughout the school year occurring several times within and across school years. [2016 c 77 § 4. Formerly RCW 28A.300.604.]

***Reviser's note:** RCW 28A.300.600 and 28A.300.602 were recodified as RCW 28A.415.430 and 28A.415.432, respectively, pursuant to 2017 3rd sp.s. c 13 § 108.

Findings—Intent—2016 c 77: See note following RCW 28A.415.430.

Chapter 28A.500 RCW LOCAL EFFORT ASSISTANCE

Sections

28A.500.010	Local effort assistance funding—Purpose—Not basic education.
28A.500.015	Local effort assistance funding—Formula—Not basic education—Definitions. (<i>Effective January 1, 2019.</i>)
28A.500.020	Definitions. (<i>Effective until January 1, 2019.</i>)
28A.500.020	Repealed. (<i>Effective January 1, 2019.</i>)
28A.500.030	Repealed. (<i>Effective January 1, 2019.</i>)
28A.500.050	Recodified as RCW 28A.150.413.

28A.500.010 Local effort assistance funding—Purpose—Not basic education. The legislature intends to continue providing local effort assistance funding to school districts. Local effort assistance provides schools in property-poor districts with funding for locally determined activities that enrich the state's program of basic education, thereby enhancing equity in students' access to extracurricular activities and similar enrichments. The purpose of these funds is to mitigate the effect that above average property tax rates might have on the ability of a school district to raise local revenues to supplement the state's basic program of education. These funds serve to equalize the property tax rates that individual taxpayers would pay for such levies and to provide tax relief to taxpayers in high tax rate school districts.

Local effort assistance funding is not part of the state's statutory program of basic education, nor are allocations for it part of the district's basic education allocation. Beginning

September 1, 2019, and subject to RCW 28A.150.276, districts may use local effort assistance funding only to enrich the state's statutory program of basic education. [2017 3rd sp.s. c 13 § 205; 1999 c 317 § 1; 1997 c 259 § 4; 1993 c 410 § 1; (1993 c 465 § 2 expired December 31, 1995); 1992 c 49 § 2; 1987 1st ex.s. c 2 § 102. Formerly RCW 28A.41.155.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Additional notes found at www.leg.wa.gov

28A.500.015 Local effort assistance funding—Formula—Not basic education—Definitions. (*Effective January 1, 2019.*) (1) Beginning in calendar year 2019 and each calendar year thereafter, the state must provide state local effort assistance funding to supplement school district enrichment levies as provided in this section.

(2) For an eligible school district, annual local effort assistance funding is equal to the school district's maximum local effort assistance multiplied by a fraction equal to the school district's actual enrichment levy divided by the school district's maximum allowable enrichment levy.

(3) The state local effort assistance funding provided under this section is not part of the state's program of basic education deemed by the legislature to comply with the requirements of Article IX, section 1 of the state Constitution.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Eligible school district" means a school district whose maximum allowable enrichment levy divided by the school district's total student enrollment in the prior school year is less than the state local effort assistance threshold.

(b) "Inflation" means inflation as defined in RCW 84.55.005.

(c) "Maximum allowable enrichment levy" means the maximum levy permitted by RCW 84.52.0531.

(d) "Maximum local effort assistance" means the school district's student enrollment in the prior school year multiplied by the difference of the state local effort assistance threshold and a school district's maximum allowable enrichment levy divided by the school district's student enrollment in the prior school year.

(e) "Prior school year" means the most recent school year completed prior to the year in which the state local effort assistance funding is to be distributed.

(f) "State local effort assistance threshold" means one thousand five hundred dollars per student, adjusted for inflation beginning in calendar year 2020.

(g) "Student enrollment" means the average annual resident full-time equivalent student enrollment. [2017 3rd sp.s. c 13 § 206.]

Effective date—2017 3rd sp.s. c 13 §§ 201, 203, 206, and 207: See note following RCW 84.52.0531.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

28A.500.020 Repealed. (*Effective January 1, 2019.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.500.020 Definitions. (*Effective until January 1, 2019.*) (1) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(a) "Prior tax collection year" means the year immediately preceding the year in which the local effort assistance shall be allocated.

(b) "Statewide average fourteen percent levy rate" means fourteen percent of the total levy bases as defined in RCW 84.52.0531 (3) through (5) for calendar years 2014 and 2015, and as defined in RCW 84.52.0531 (3) and (4) in calendar years 2016 and thereafter, summed for all school districts, and divided by the total assessed valuation for excess levy purposes in the prior tax collection year for all districts as adjusted to one hundred percent by the county indicated ratio established in RCW 84.48.075.

(c) The "district's fourteen percent levy amount" means the school district's maximum levy authority after transfers determined under RCW 84.52.0531(2) (a) through (c) divided by the district's maximum levy percentage determined under *RCW 84.52.0531(6) multiplied by fourteen percent.

(d) The "district's fourteen percent levy rate" means the district's fourteen percent levy amount divided by the district's assessed valuation for excess levy purposes for the prior tax collection year as adjusted to one hundred percent by the county indicated ratio.

(e) "Districts eligible for local effort assistance" means those districts with a fourteen percent levy rate that exceeds the statewide average fourteen percent levy rate.

(2) Unless otherwise stated all rates, percents, and amounts are for the calendar year for which local effort assistance is being calculated under this chapter. [2013 2nd sp.s. c 4 § 957; 2010 c 237 § 5; 2004 c 21 § 1; 1999 c 317 § 2.]

***Reviser's note:** RCW 84.52.0531 was amended by 2013 c 242 § 8, changing subsection (6) to subsection (7).

Expiration date—2017 c 6; 2016 c 202; 2013 2nd sp.s. c 4 § 957: "Section 957 of this act expires January 1, 2019." [2017 c 6 § 9; 2016 c 202 § 56; 2013 2nd sp.s. c 4 § 1905.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Intent—2010 c 237: See note following RCW 84.52.0531.

Expiration date—2010 c 237 §§ 1, 5, and 6: See note following RCW 84.52.0531.

Effective date—2010 c 237 §§ 1 and 3-9: See note following RCW 84.52.0531.

Expiration date—2010 c 237; 2006 c 119; 2004 c 21: See note following RCW 84.52.0531.

28A.500.030 Repealed. (*Effective January 1, 2019.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.500.050 Recodified as RCW 28A.150.413. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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Chapter 28A.505 RCW SCHOOL DISTRICTS' BUDGETS

Sections

28A.505.040	Budget—Four-year budget plan—Notice of completion—Copies—Review by educational service districts. (<i>Effective January 1, 2018.</i>)
28A.505.050	Budget—Notice of meeting to adopt. (<i>Effective January 1, 2018.</i>)
28A.505.060	Budget—Hearing and adoption of—Copies filed with ESDs. (<i>Effective January 1, 2018.</i>)
28A.505.100	Budget—Contents—Display of salaries. (<i>Effective January 1, 2019.</i>)
28A.505.140	Rules for budgetary procedures—Review by superintendent—Separate accounting of state and local revenues—Notice of irregularity—Budget revisions.
28A.505.240	Enrichment levy spending plans—Preballot approval—Revised spending plan for voter-approved levies.

28A.505.040 Budget—Four-year budget plan—Notice of completion—Copies—Review by educational service districts. (*Effective January 1, 2018.*) (1) On or before the tenth day of July in each year, all school districts shall prepare their budget for the ensuing fiscal year. The annual budget development process shall include the development or update of a four-year budget plan that includes a four-year enrollment projection. The four-year budget plan must include an estimate of funding necessary to maintain the continuing costs of program and service levels and any existing supplemental contract obligations.

(2) The completed budget must include a summary of the four-year budget plan and set forth the complete financial plan of the district for the ensuing fiscal year.

(3)(a) Upon completion of their budgets, every school district shall electronically publish a notice stating that the district has completed the budget, posted it electronically, placed it on file in the school district administration office, and that a copy of the budget and a summary of the four-year budget plan will be furnished to any person who calls upon the district for it.

(b) School districts shall submit one copy of their budget and the four-year budget plan summary to their educational service districts and the office of the superintendent of public instruction for review and comment by July 10th. The superintendent of public instruction may delay the date in this section if the state's operating budget is not finally approved by the legislature until after June 1st.

(c) The office of the superintendent of public instruction shall consider the information provided under (b) of this subsection when ranking each school district by the financial health of the school district in order to provide information for districts to avoid potential financial difficulty, insolvency, or binding conditions. [2017 3rd sp.s. c 13 § 604; 1995 c 121 § 1; 1975-'76 2nd ex.s. c 118 § 4. Formerly RCW 28A.65.415.]

Effective date—2017 3rd sp.s. c 13 §§ 604, 605, and 606: "Sections 604, 605, and 606 of this act take effect January 1, 2018." [2017 3rd sp.s. c 13 § 608.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Additional notes found at www.leg.wa.gov

28A.505.050 Budget—Notice of meeting to adopt. (*Effective January 1, 2018.*) (1) Upon completion of their budgets as provided in RCW 28A.505.040, every school district shall publish a notice stating that the board of directors

will meet for the purpose of fixing and adopting the budget of the district for the ensuing fiscal year.

(2) Such notice shall designate the date, time, and place of said meeting which shall occur no later than the thirty-first day of August for first-class school districts, and the first day of August for second-class school districts.

(3) The notice shall also state that any person may appear at the meeting and be heard for or against any part of such budget, the four-year budget plan, or any proposed changes to uses of enrichment funding under RCW 28A.505.240. The notice shall be electronically published and published at least once each week for two consecutive weeks in a newspaper of general circulation in the district, or, if there be none, in a newspaper of general circulation in the county or counties in which such district is a part. The last notice shall be published no later than seven days immediately prior to the hearing. [2017 3rd sp.s. c 13 § 605; 1995 c 121 § 2; 1990 c 33 § 417; 1983 c 59 § 3; 1975-'76 2nd ex.s. c 118 § 5. Formerly RCW 28A.65.420.]

Effective date—2017 3rd sp.s. c 13 §§ 604, 605, and 606: See note following RCW 28A.505.040.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Additional notes found at www.leg.wa.gov

28A.505.060 Budget—Hearing and adoption of—Copies filed with ESDs. (Effective January 1, 2018.) (1) On the date given in the notice as provided in RCW 28A.505.050 the school district board of directors shall meet at the time and place designated. Any person may appear at the meeting and be heard for or against any part of such budget, the four-year budget plan, or any proposed changes to uses of enrichment funding under RCW 28A.505.240.

(2) Such hearing may be continued not to exceed a total of two days: PROVIDED, That the budget must be adopted no later than August 31st in first-class school districts, and not later than August 1st in second-class school districts.

(3) Upon conclusion of the hearing, the board of directors shall fix and determine the appropriation from each fund contained in the budget separately, and shall by resolution adopt the budget, the four-year budget plan summary, and the four-year enrollment projection and the appropriations as so finally determined, and enter the same in the official minutes of the board: PROVIDED, That first-class school districts shall file copies of their adopted budget with their educational service district no later than September 3rd, and second-class school districts shall forward copies of their adopted budget to their educational service district no later than August 3rd for review, alteration and approval as provided for in RCW 28A.505.070 by the budget review committee. [2017 3rd sp.s. c 13 § 606; 1990 c 33 § 418; 1983 c 59 § 4; 1975-'76 2nd ex.s. c 118 § 6. Formerly RCW 28A.65.425.]

Effective date—2017 3rd sp.s. c 13 §§ 604, 605, and 606: See note following RCW 28A.505.040.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Additional notes found at www.leg.wa.gov

28A.505.100 Budget—Contents—Display of salaries. (Effective January 1, 2019.) (1) The budget must set forth the estimated revenues from all sources for the ensuing fiscal year, the estimated revenues for the fiscal year current at the

time of budget preparation, the actual revenues for the last completed fiscal year, and the reserved and unreserved fund balances for each year. The estimated revenues from all sources for the ensuing fiscal year shall not include any revenue not anticipated to be available during that fiscal year. However, school districts, pursuant to RCW 28A.505.110, can be granted permission by the superintendent of public instruction to include as revenues in their budgets, receivables collectible in future fiscal years.

(2)(a) The budget must set forth by detailed items or classes the estimated expenditures for the ensuing fiscal year, the estimated expenditures for the fiscal year current at the time of budget preparation, and the actual expenditures for the last completed fiscal year.

(b) The budget must set forth:

(i) The state-funded basic education salary amounts, locally funded salary amounts, total salary amounts, and full-time equivalency for each individual certificated instructional staff, certificated administrative staff, and classified staff; and

(ii) The high, low, and average annual salaries, which shall be displayed by job classification within each budget classification.

(3) In districts where negotiations have not been completed, the district may budget the salaries at the current year's rate and restrict fund balance for the amount of anticipated increase in salaries, so long as an explanation is attached to the budget on such restriction of fund balance. [2017 3rd sp.s. c 13 § 603; 1990 c 33 § 420; 1983 c 59 § 7; 1975-'76 2nd ex.s. c 118 § 10. Formerly RCW 28A.65.445.]

Effective date—2017 3rd sp.s. c 13 § 603: "Section 603 of this act takes effect January 1, 2019." [2017 3rd sp.s. c 13 § 609.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Additional notes found at www.leg.wa.gov

28A.505.140 Rules for budgetary procedures—Review by superintendent—Separate accounting of state and local revenues—Notice of irregularity—Budget revisions. (1) Notwithstanding any other provision of law, the superintendent of public instruction shall adopt such rules as will ensure proper budgetary procedures and practices, including monthly financial statements consistent with the provisions of RCW 43.09.200, and this chapter. By the 2019-20 school year, the rules must require school districts to provide separate accounting of state and local revenues to expenditures.

(2) If the superintendent of public instruction determines upon a review of the budget of any district that said budget does not comply with the budget procedures established by this chapter or by rules adopted by the superintendent of public instruction, or the provisions of RCW 43.09.200, the superintendent shall give written notice of this determination to the board of directors of the local school district.

(3) The local school district, notwithstanding any other provision of law, shall, within thirty days from the date the superintendent of public instruction issues a notice pursuant to subsection (2) of this section, submit a revised budget which meets the requirements of RCW 43.09.200, this chapter, and the rules of the superintendent of public instruction. [2017 3rd sp.s. c 13 § 602; 2006 c 263 § 202; 1990 c 33 § 422;

1983 c 59 § 10; 1975-'76 2nd ex.s. c 118 § 14. Formerly RCW 28A.65.465.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Additional notes found at www.leg.wa.gov

28A.505.240 Enrichment levy spending plans—Pre-ballot approval—Revised spending plan for voter-approved levies. (1) As required by RCW 84.52.053(4), before a school district may submit an enrichment levy, including a transportation vehicle enrichment levy, under RCW 84.52.053 to the voters, it must have received approval from the office of the superintendent of public instruction of an expenditure plan for the district's enrichment levy and other local revenues as defined in RCW 28A.150.276. Within thirty days after receiving the plan the office of the superintendent of public instruction must notify the school district whether the spending plan is approved. If the office of the superintendent of public instruction rejects a district's proposed spending plan, then the district may submit a revised spending plan, and the superintendent must approve or reject the revised submission within thirty days. The office of the superintendent of public instruction may approve a spending plan only if it determines that the enrichment levy and other local revenues as defined in RCW 28A.150.276(1) will be used solely for permitted enrichment activities as provided in RCW 28A.150.276(2).

(2)(a) Except as provided in (b) of this subsection, after a school district has received voter approval for a levy for an enrichment levy under RCW 84.52.053, a school district may change its spending plan for the voter-approved levy by submitting a revised spending plan to the office of the superintendent of public instruction for review and approval. To revise a previously approved spending plan, the district must provide notice and an opportunity for review and comment at an open meeting of the school board, and the board must adopt the revised spending plan by resolution. The board must then submit the plan to the office of the superintendent of public instruction. Within thirty days after receiving the revised spending plan the office must notify the school district whether the revised spending plan is approved. The office of the superintendent of public instruction may approve a revised spending plan only if it determines that the enrichment levy and other local revenues as defined in RCW 28A.150.276(1) will be used solely for permitted enrichment activities as provided in RCW 28A.150.276(2).

(b) If the superintendent has approved expenditures for specific purposes under (a) of this subsection, a district may change the relative amounts to be spent for those respective purposes for the same levy in subsequent years without having to first receive approval for the change from the office of the superintendent of public instruction if the district adopts the change as part of its annual budget proposal after a public hearing under RCW 28A.505.060.

(3) This section applies to taxes levied for collection beginning in calendar year 2020 and thereafter. [2017 3rd sp.s. c 13 § 204.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Chapter 28A.510 RCW

APPORTIONMENT TO DISTRICT—DISTRICT ACCOUNTING

Sections

28A.510.250 Apportionment schedule by state superintendent. (*Effective September 1, 2019.*)

28A.510.250 Apportionment schedule by state superintendent. (*Effective September 1, 2019.*) (1) On or before the last business day of September 1969 and each month thereafter, the superintendent of public instruction shall apportion from the state general fund to the several educational service districts of the state the proportional share of the total annual amount due and apportionable to such educational service districts for the school districts thereof as follows:

September	.....	9%
October	.....	8%
November	.....	5%
December	.....	9%
January	.....	8.5%
February	.....	9%
March	.....	9%
April	.....	9%
May	.....	5%
June	.....	6.0%
July	.....	12.5%
August	.....	10.0%

The annual amount due and apportionable shall be the amount apportionable for all apportionment credits estimated to accrue to the schools during the apportionment year beginning September 1st and continuing through August 31st. Appropriations made for school districts for each year of a biennium shall be apportioned according to the schedule set forth in this section for the fiscal year starting September 1st of the then calendar year and ending August 31st of the next calendar year, except as provided in subsection (2) of this section. The apportionment from the state general fund for each month shall be an amount which will equal the amount due and apportionable to the several educational service districts during such month: PROVIDED, That any school district may petition the superintendent of public instruction for an emergency advance of funds which may become apportionable to it but not to exceed ten percent of the total amount to become due and apportionable during the school districts apportionment year. The superintendent of public instruction shall determine if the emergency warrants such advance and if the funds are available therefor. If the superintendent determines in the affirmative, he or she may approve such advance and, at the same time, add such an amount to the apportionment for the educational service district in which the school district is located: PROVIDED, That the emergency advance of funds and the interest earned by school districts on the investment of temporary cash surpluses resulting from obtaining such advance of state funds shall be deducted by the superintendent of public instruction from the remaining

amount apportionable to said districts during that apportionment year in which the funds are advanced.

(2) In the 2010-11 school year, the June apportionment payment to school districts shall be reduced by one hundred twenty-eight million dollars, and an additional apportionment payment shall be made on July 1, 2011, in the amount of one hundred twenty-eight million dollars. This July 1st payment shall be in addition to the regularly calculated July apportionment payment. [2017 3rd sp.s. c 13 § 1004; 2011 1st sp.s. c 4 § 1; 1990 c 33 § 426; 1982 c 136 § 1; 1981 c 282 § 1; 1981 c 5 § 32; 1980 c 6 § 5; 1979 ex.s. c 237 § 1; 1975-'76 2nd ex.s. c 118 § 27; 1975 1st ex.s. c 275 § 67; 1974 ex.s. c 89 § 1; 1972 ex.s. c 146 § 1; 1970 ex.s. c 15 § 15. Prior: 1969 ex.s. c 184 § 3; 1969 ex.s. c 176 § 108; 1969 ex.s. c 223 § 28A.48.010; prior: 1965 ex.s. c 162 § 1; 1959 c 276 § 3; prior: 1945 c 141 § 3, part; 1923 c 96 § 1; 1911 c 118 § 1; 1909 c 97 p 312 §§ 1, 2, 3; Rem. Supp. 1945 § 4940-3, part. Formerly RCW 28A.48.010, 28.48.010.]

Effective date—2017 3rd sp.s. c 13 § 1004: "Section 1004 of this act takes effect September 1, 2019." [2017 3rd sp.s. c 13 § 1005.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2011 1st sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 31, 2011]." [2011 1st sp.s. c 4 § 2.]

Student transportation allocation—Notice—Payment schedule: RCW 28A.160.190.

Vehicle acquisition—Reimbursement schedule—Maintenance and operation—Depreciation schedule: RCW 28A.160.200.

Additional notes found at www.leg.wa.gov

Chapter 28A.545 RCW

PAYMENT TO HIGH SCHOOL DISTRICTS

Sections

28A.545.030 Purposes. (*Effective January 1, 2019.*)

28A.545.070 Superintendent's annual determination of estimated amount due—Process. (*Effective January 1, 2019.*)

28A.545.030 Purposes. (*Effective January 1, 2019.*)

The purposes of RCW 28A.545.030 through 28A.545.110 and 84.52.0531 are to:

(1) Simplify the annual process of determining and paying the amounts due by nonhigh school districts to high school districts for educating students residing in a nonhigh school district;

(2) Provide for a payment schedule that coincides to the extent practicable with the ability of nonhigh school districts to pay and the need of high school districts for payment; and

(3) Establish that the maximum amount due per annual average full-time equivalent student by a nonhigh school district for each school year is no greater than the enrichment levy rate per annual average full-time equivalent student levied upon the taxpayers of the high school district. [2017 3rd sp.s. c 13 § 1001; 1990 c 33 § 488; 1981 c 264 § 1. Formerly RCW 28A.44.150.]

Effective date—2017 3rd sp.s. c 13 §§ 1001 and 1002: "Sections 1001 and 1002 of this act take effect January 1, 2019." [2017 3rd sp.s. c 13 § 1007.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Additional notes found at www.leg.wa.gov

28A.545.070 Superintendent's annual determination of estimated amount due—Process. (*Effective January 1, 2019.*) (1) The superintendent of public instruction shall annually determine the estimated amount due by a nonhigh school district to a high school district for the school year as follows:

(a) The total of the high school district's enrichment levy that has been authorized and determined by the superintendent of public instruction to be allowable pursuant to RCW 84.52.0531, as now or hereafter amended, for collection during the next calendar year, shall first be divided by the total estimated number of annual average full-time equivalent students which the high school district superintendent or the superintendent of public instruction has certified pursuant to RCW 28A.545.060 will be enrolled in the high school district during the school year;

(b) The result of the calculation provided for in subsection (1)(a) of this section shall then be multiplied by the estimated number of annual average full-time equivalent students residing in the nonhigh school district that will be enrolled in the high school district during the school year which has been established pursuant to RCW 28A.545.060; and

(c) The result of the calculation provided for in subsection (1)(b) of this section shall be adjusted upward to the extent the estimated amount due by a nonhigh school district for the prior school year was less than the actual amount due based upon actual annual average full-time equivalent student enrollments during the previous school year and the actual per annual average full-time equivalent student enrichment levy rate for the current tax collection year, of the high school district, or adjusted downward to the extent the estimated amount due was greater than such actual amount due or greater than such lesser amount as a high school district may have elected to assess pursuant to RCW 28A.545.090.

(2) The amount arrived at pursuant to subsection (1)(c) of this subsection shall constitute the estimated amount due by a nonhigh school district to a high school district for the school year. [2017 3rd sp.s. c 13 § 1002; 1990 c 33 § 491; 1981 c 264 § 5. Formerly RCW 28A.44.190.]

Effective date—2017 3rd sp.s. c 13 §§ 1001 and 1002: See note following RCW 28A.545.030.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Additional notes found at www.leg.wa.gov

Chapter 28A.630 RCW

TEMPORARY PROVISIONS—SPECIAL PROJECTS

Sections

28A.630.005 Repealed.

DUAL LANGUAGE GRANT PROGRAM

28A.630.095 Dual language grant program. (*Expires July 1, 2020.*)

28A.630.400 Paraeducator associate of arts degree.

CHILDREN'S MENTAL HEALTH AND SUBSTANCE USE DISORDER SERVICES

28A.630.500 Children's mental health and substance use disorder services—Pilot sites—Report. (*Expires January 1, 2020.*)

28A.630.005 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

DUAL LANGUAGE GRANT PROGRAM

28A.630.095 Dual language grant program. (Expires July 1, 2020.) (1)(a) The K-12 dual language grant program is created to grow capacity for high quality dual language learning in the common schools and in state-tribal compact schools.

(b) A dual language program is an instructional model that provides content-based instruction to students in two languages: English and a target language other than English spoken in the local community, for example Spanish, Somali, Vietnamese, Russian, Arabic, native languages, or indigenous languages. The goal of the program is for students to eventually become proficient and literate in both languages, while also meeting high academic standards in all subject areas. Typically, programs begin at kindergarten or first grade and continue through at least elementary school. Two-way dual language programs begin with a balanced number of native and nonnative speakers of the target language so that both groups of students serve in the role of language modeler and language learner at different times. One-way dual language programs serve only nonnative English speakers.

(2)(a) The office of the superintendent of public instruction shall develop and administer the grant program.

(b) Subject to the availability of amounts appropriated for this specific purpose, by October 1, 2017, the office of the superintendent of public instruction must award grants of up to two hundred thousand dollars each through a competitive process to school districts or state-tribal compact schools proposing to: (i) Establish a two-way dual language program or a one-way dual language program in a school with predominantly English learners; or (ii) expand a recently established two-way dual language program or a one-way dual language program in a school with predominantly English learners. When awarding a grant to a school district or a state-tribal compact school proposing to establish a dual language program in a target language other than Spanish, the office must provide a bonus of up to twenty thousand dollars.

(c) The office of the superintendent of public instruction must identify criteria for awarding the grants, evaluate applicants, and award grant money. The office must select grantees that represent sufficient geographic, demographic, and enrollment diversity to produce meaningful data for the report required in section 6, chapter 236, Laws of 2017. The application must require, among other things, that the applicant describe: (i) How the program will serve the applicant's English learner population; (ii) the number of classrooms that the applicant expects to add with the grant money; (iii) the planned use of the grant money; (iv) the applicant's plan for student enrollment and outreach to families who speak the target language; (v) the applicant's plan to recruit and support bilingual paraeducators, classified staff, parents, and high school students to become bilingual teachers in the district or state-tribal compact school; (vi) the applicant's commitment to, and plan for, sustaining a dual language program beyond the grant period; and (vii) whether the school district board of directors or the governing body of a state-tribal compact school has expressed support for dual language programs.

(d) The grant money must be used for dual language program start-up and expansion costs, such as staff and teacher

training, teacher recruitment, development and implementation of a dual language learning model and curriculum, and other costs identified in the application as key for start-up. The grant money may not be used for ongoing program costs.

(3) The grant period is two years. At the end of the grant period, the grantees must work with the office of the superintendent of public instruction to draft the report required in section 6, chapter 236, Laws of 2017.

(4) The office of the superintendent of public instruction must notify school districts and state-tribal compact schools of the grant program established under this section and provide ample time for the application process.

(5) The superintendent of public instruction may adopt rules to implement this section.

(6) This section expires July 1, 2020. [2017 c 236 § 2.]

Findings—Intent—2017 c 236: "(1) The legislature finds that it should review and revise the K-12 educational program taking into consideration the needs of students as they evolve. In Washington state, immigrant students whose first language is not English represent a significant part of evolving and more diverse school demographics. The legislature finds that Washington's educator workforce in school districts has not evolved in a manner consistent with changing student demographics. Thus, more and more schools are without the capacity to meet the needs of English learners and without the capacity to communicate effectively with parents whose first language is not English.

(2) The legislature finds that:

(a) Between 1986 and 2016, the number of students served in the state's transitional bilingual instruction program increased from fifteen thousand twenty-four to one hundred eighteen thousand five hundred twenty-six, an increase of six hundred eighty-nine percent, and that two-thirds of the students were native Spanish speakers; the next ten most common languages were Russian, Vietnamese, Somali, Chinese, Arabic, Ukrainian, Tagalog, Korean, Marshallese, and Punjabi;

(b) In the 2015-16 school year, forty-six percent of instructors in the state's transitional bilingual instruction program were instructional aides, or paraeducators, not certificated teachers; and

(c) Eleven percent of students in the transitional bilingual instruction program received instruction in their native language in the 2015-16 school year, and research shows that non-English speaking students develop academic proficiency in English more quickly when they are provided instruction in their native language initially.

(3) The legislature showed its commitment to equity in education by passing legislation creating a seal of biliteracy, requiring world language for high school graduation, easing the transitions of English learners, encouraging training for staff in cultural competence, monitoring the racial and ethnic data of teachers, and funding the creation of K-12 dual language programs.

(4) However, the legislature finds it is necessary to better serve non-English speaking students by addressing and closing the significant language and instructional gaps that hinder English learners from meeting the state's rigorous educational standards.

(5) Thus, the legislature intends to establish a comprehensive approach to support English learners by creating grant programs to: (a) Expand dual language programs for elementary and secondary students; and (b) recruit bilingual individuals to become educators who are able to provide instruction in, and support for, dual language programs." [2017 c 236 § 1.]

28A.630.400 Paraeducator associate of arts degree.

(1) The professional educator standards board and the state board for community and technical colleges, in consultation with the superintendent of public instruction, the state apprenticeship training council, and community colleges, shall adopt rules as necessary under chapter 34.05 RCW to implement the paraeducator associate of arts degree.

(2) As used in this section, a "paraeducator" is an individual who has completed an associate of arts degree for a paraeducator. The paraeducator may be hired by a school district to assist certificated instructional staff in the direct instruction of children in small and large groups, individual-

ized instruction, testing of children, recordkeeping, and preparation of materials. The paraeducator shall work under the direction of instructional certificated staff.

(3)(a) The training program for a paraeducator associate of arts degree shall include, but is not limited to, the general requirements for receipt of an associate of arts degree and training in the areas of introduction to childhood education, orientation to children with disabilities, fundamentals of childhood education, creative activities for children, instructional materials for children, fine art experiences for children, the psychology of learning, introduction to education, child health and safety, child development and guidance, first aid, and a practicum in a school setting.

(b) Subject to the availability of amounts appropriated for this specific purpose, by September 1, 2018, the training program for a paraeducator associate of arts degree must incorporate the state paraeducator standards of practice adopted by the paraeducator board under RCW 28A.413.050.

(4) Consideration shall be given to transferability of credit earned in this program to teacher preparation programs at colleges and universities. [2017 c 237 § 17; 2011 1st sp.s. c 11 § 132; 2006 c 263 § 815. Prior: 1995 c 335 § 202; 1995 c 77 § 27; 1991 c 285 § 2; 1989 c 370 § 1. Formerly RCW 28A.04.180.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Additional notes found at www.leg.wa.gov

CHILDREN'S MENTAL HEALTH AND SUBSTANCE USE DISORDER SERVICES

28A.630.500 Children's mental health and substance use disorder services—Pilot sites—Report. (Expires January 1, 2020.) (1) Subject to the availability of amounts appropriated for this specific purpose, the office of the superintendent of public instruction shall establish a competitive application process to designate two educational service districts in which to pilot one lead staff person for children's mental health and substance use disorder services.

(2) The office must select two educational service districts as pilot sites by October 1, 2017. When selecting the pilot sites, the office must endeavor to achieve a balanced geographic distribution of sites east of the crest of the Cascade mountains and west of the crest of the Cascade mountains.

(3) The lead staff person for each pilot site must have the primary responsibility for:

(a) Coordinating medicaid billing for schools and school districts in the educational service district;

(b) Facilitating partnerships with community mental health agencies, providers of substance use disorder treatment, and other providers;

(c) Sharing service models;

(d) Seeking public and private grant funding;

(e) Ensuring the adequacy of other system level supports for students with mental health and substance use disorder treatment needs; and

(f) Collaborating with the other selected project and with the office of the superintendent of public instruction.

(4) The office of the superintendent of public instruction must report on the results of the two pilot projects to the governor and the appropriate committees of the legislature in accordance with RCW 43.01.036 by December 1, 2019. The report must also include:

(a) A case study of an educational service district that is successfully delivering and coordinating children's mental health activities and services. Activities and services may include but are not limited to medicaid billing, facilitating partnerships with community mental health agencies, and seeking and securing public and private funding; and

(b) Recommendations regarding whether to continue or make permanent the pilot projects and how the projects might be replicated in other educational service districts.

(5) This section expires January 1, 2020. [2017 c 202 § 6.]

Findings—Intent—2017 c 202: See note following RCW 74.09.492.

Chapter 28A.650 RCW EDUCATION TECHNOLOGY

Sections

28A.650.010	Definitions.
28A.650.045	Digital citizenship, internet safety, and media literacy—Best practices and recommendations—Annual review—Model policy update and checklist for future updates.
28A.650.050	Digital citizenship, internet safety, and media literacy—Web-based location with links recommending practices and resources.

28A.650.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Digital citizenship" includes the norms of appropriate, responsible, and healthy behavior related to current technology use, including digital and media literacy, ethics, etiquette, and security. The term also includes the ability to access, analyze, evaluate, develop, produce, and interpret media, as well as internet safety and cyberbullying prevention and response.

(2) "Education technology" or "technology" means the effective use of electronic and optical tools, including telephones, and electronic and optical pathways in helping students learn.

(3) "Network" means integrated linking of education technology systems in schools for transmission of voice, data, video, or imaging, or a combination of these. [2017 c 90 § 1; 1993 c 336 § 702.]

28A.650.045 Digital citizenship, internet safety, and media literacy—Best practices and recommendations—Annual review—Model policy update and checklist for future updates. (1)(a) By December 1, 2016, the office of the superintendent of public instruction shall develop best practices and recommendations for instruction in digital citizenship, internet safety, and media literacy, and report to the appropriate committees of the legislature, in accordance with RCW 43.01.036, on strategies to implement the best practices and recommendations statewide. The best practices and recommendations must be developed in consultation with an

advisory committee as specified in (b) of this subsection. Best practices and recommendations must include instruction that provides guidance about thoughtful, safe, and strategic uses of online and other media resources, and education on how to apply critical thinking skills when consuming and producing information.

(b) The office of the superintendent of public instruction must convene and consult with an advisory committee when developing best practices and recommendations for instruction in digital citizenship, internet safety, and media literacy. The advisory committee must include: Representatives from the Washington state school directors' association; experts in digital citizenship, internet safety, and media literacy; teacher-librarians as defined in RCW 28A.320.240; and other stakeholders, including parent associations, educators, and administrators. Recommendations produced by the committee may include, but are not limited to:

(i) Revisions to the state learning standards for educational technology, required under RCW 28A.655.075;

(ii) Revisions to the model policy and procedures on electronic resources and internet safety developed by the Washington state school directors' association;

(iii) School district processes necessary to develop customized district policies and procedures on electronic resources and internet safety;

(iv) Best practices, resources, and models for instruction in digital citizenship, internet safety, and media literacy; and

(v) Strategies that will support school districts in local implementation of the best practices and recommendations developed by the office of the superintendent of public instruction under (a) of this subsection.

(2) Beginning in the 2017-18 school year, a school district shall annually review its policy and procedures on electronic resources and internet safety. In reviewing and amending the policy and procedures, a school district must:

(a) Involve a representation of students, parents or guardians, teachers, teacher-librarians, other school employees, administrators, and community representatives with experience or expertise in digital citizenship, media literacy, and internet safety issues;

(b) Consider customizing the model policy and procedures on electronic resources and internet safety developed by the Washington state school directors' association;

(c) Consider existing school district resources; and

(d) Consider best practices, resources, and models for instruction in digital citizenship, internet safety, and media literacy, including methods to involve parents.

(3)(a) By December 1, 2017, the Washington state school directors' association shall review and revise its model policy and procedures on electronic resources and internet safety to better support digital citizenship, media literacy, and internet safety in schools. The model policy and procedures must contain provisions requiring that media literacy resources consist of a balance of sources and perspectives.

(b) By December 1, 2017, the Washington state school directors' association shall develop a checklist of items for school districts to consider when updating their policy and procedures under subsection (2) of this section. [2017 c 90 § 2; 2016 c 59 § 2.]

Intent—2016 c 59: "The legislature recognizes that as technology becomes more prevalent, students must learn how to safely, ethically,

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responsibly, and effectively use technology. The legislature intends to provide a process in which students, parents or guardians, teachers, teacher-librarians, other school employees, administrators, and community representatives will engage in an ongoing discussion on safe technology use, internet use, digital citizenship, and media literacy as part of implementing the state's basic education goal outlined in RCW 28A.150.210(3) and essential academic learning requirements for technology outlined in RCW 28A.655.075." [2016 c 59 § 1.]

28A.650.050 Digital citizenship, internet safety, and media literacy—Web-based location with links recommending practices and resources. (1) The office of the superintendent of public instruction shall create a web-based location with links to recommended successful practices and resources to support digital citizenship, media literacy, and internet safety for use in the 2017-18 school year. The web-based location must incorporate the information gathered by the survey in section 3, chapter 90, Laws of 2017.

(2) Thereafter, the office of the superintendent of public instruction shall continue to identify and develop additional open educational resources to support digital citizenship, media literacy, and internet safety in schools for the web-based location.

(3) Media literacy resources must consist of a balance of sources and perspectives. [2017 c 90 § 4.]

Chapter 28A.655 RCW ACADEMIC ACHIEVEMENT AND ACCOUNTABILITY

Sections

- 28A.655.061 High school assessment system—Certificate of academic achievement—Exception—Options to retake high school assessment—Objective alternative assessments—Locally determined courses—High school transition courses—Interventions and academic supports—Student learning plans.
- 28A.655.065 Objective alternative assessment methods—Appeals from assessment scores—Waivers and appeals from assessment requirements—Rules.
- 28A.655.068 Statewide high school assessment in science.

28A.655.061 High school assessment system—Certificate of academic achievement—Exception—Options to retake high school assessment—Objective alternative assessments—Locally determined courses—High school transition courses—Interventions and academic supports—Student learning plans. (1) The high school assessment system shall include but need not be limited to the statewide student assessment, opportunities for a student to retake the content areas of the assessment in which the student was not successful, and, if approved by the legislature pursuant to subsection (10) of this section, one or more objective alternative assessments for a student to demonstrate achievement of state academic standards. The objective alternative assessments for each content area shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the statewide student assessment for each content area.

(2) Subject to the conditions in this section, a certificate of academic achievement shall be obtained and is evidence that the students have successfully met the state standard in the content areas included in the certificate. With the exception of students satisfying the provisions of RCW 28A.155.045 or *28A.655.0611, acquisition of the certificate

is required for graduation from a public high school but is not the only requirement for graduation.

(3)(a) Beginning with the graduating class of 2008 through the graduating class of 2015, with the exception of students satisfying the provisions of RCW 28A.155.045, a student who meets the state standards on the English language arts and mathematics high school statewide student assessment shall earn a certificate of academic achievement. The mathematics assessment shall be the end-of-course assessment for the first year of high school mathematics that assesses the standards common to algebra I and integrated mathematics I or the end-of-course assessment for the second year of high school mathematics that assesses standards common to geometry and integrated mathematics II.

(b) As the state transitions from reading and writing assessments to an English language arts assessment and from end-of-course assessments to a comprehensive assessment for high school mathematics, a student in a graduating class of 2016 through 2018 shall earn a certificate of academic achievement if the student meets the high school graduation standard as follows:

(i) Students in the graduating class of 2016 may use the results from:

(A) The reading and writing assessment or the English language arts assessment developed with the multistate consortium; and

(B) The end-of-course assessment for the first year of high school mathematics, the end-of-course assessment for the second year of high school mathematics, or the comprehensive mathematics assessment developed with the multistate consortium.

(ii) Students in the graduating classes of 2017 and 2018 may use the results from:

(A) The tenth grade English language arts assessment developed by the superintendent of public instruction using resources from the multistate consortium or the English language arts assessment developed with the multistate consortium; and

(B) The end-of-course assessment for the first year of high school mathematics, the end-of-course assessment for the second year of high school mathematics, or the comprehensive mathematics assessment developed with the multistate consortium.

(c) Beginning with the graduating class of 2019, a student who meets the high school graduation standard on the high school English language arts assessment developed with the multistate consortium and the comprehensive mathematics assessment developed with the multistate consortium shall earn a certificate of academic achievement.

(d) Beginning with the graduating class of 2020, a student who meets the high school graduation standard on the high school English language arts assessment developed with the multistate consortium and the comprehensive mathematics assessment developed with the multistate consortium to be administered in tenth grade shall earn a certificate of academic achievement.

(e) If a student does not successfully meet the state standards in one or more content areas required for the certificate of academic achievement, then the student may retake the assessment in the content area at least twice a year at no cost to the student. If the student successfully meets the state stan-

dards on a retake of the assessment then the student shall earn a certificate of academic achievement. Once objective alternative assessments are authorized pursuant to subsection (10) of this section, a student may use the objective alternative assessments to demonstrate that the student successfully meets the state standards for that content area if the student has taken the statewide student assessment at least once. If the student successfully meets the state standards on the objective alternative assessments then the student shall earn a certificate of academic achievement.

(4) Beginning with the graduating class of 2021, a student must meet the state standards in science in addition to the other content areas required under subsection (3) of this section on the statewide student assessment, a retake, or the objective alternative assessments in order to earn a certificate of academic achievement. The assessment under this subsection must be a comprehensive assessment of the science essential academic learning requirements adopted by the superintendent of public instruction in 2013.

(5) The state board of education may not require the acquisition of the certificate of academic achievement for students in home-based instruction under chapter 28A.200 RCW, for students enrolled in private schools under chapter 28A.195 RCW, or for students satisfying the provisions of RCW 28A.155.045.

(6) A student may retain and use the highest result from each successfully completed content area of the high school assessment.

(7) School districts must make available to students the following options:

(a) To retake the statewide student assessment at least twice a year in the content areas in which the student did not meet the state standards if the student is enrolled in a public school; or

(b) To retake the statewide student assessment at least twice a year in the content areas in which the student did not meet the state standards if the student is enrolled in a high school completion program at a community or technical college. The superintendent of public instruction and the state board for community and technical colleges shall jointly identify means by which students in these programs can be assessed.

(8) Students who achieve the standard in a content area of the high school assessment but who wish to improve their results shall pay for retaking the assessment, using a uniform cost determined by the superintendent of public instruction.

(9) Opportunities to retake the assessment at least twice a year shall be available to each school district.

(10)(a) The office of the superintendent of public instruction shall develop options for implementing objective alternative assessments, which may include an appeals process for students' scores, for students to demonstrate achievement of the state academic standards. The objective alternative assessments shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the statewide student assessment and be objective in its determination of student achievement of the state standards. Before any objective alternative assessments in addition to those authorized in RCW 28A.655.065 or (b) of this subsection are used by a student to demonstrate that the student has met the state standards in a content area required to obtain a certificate, the

legislature shall formally approve the use of any objective alternative assessments through the omnibus appropriations act or by statute or concurrent resolution.

(b)(i) A student's score on the mathematics, reading or English, or writing portion of the SAT or the ACT may be used as an objective alternative assessment under this section for demonstrating that a student has met or exceeded the state standards for the certificate of academic achievement. The state board of education shall identify the scores students must achieve on the relevant portion of the SAT or ACT to meet or exceed the state standard in the relevant content area on the statewide student assessment. A student's score on the science portion of the ACT or the science subject area tests of the SAT may be used as an objective alternative assessment under this section as soon as the state board of education determines that sufficient data is available to identify reliable equivalent scores for the science content area of the statewide student assessment. After the first scores are established, the state board may increase but not decrease the scores required for students to meet or exceed the state standards.

(ii) A student who scores at least a three on the grading scale of one to five for selected AP examinations may use the score as an objective alternative assessment under this section for demonstrating that a student has met or exceeded state standards for the certificate of academic achievement. A score of three on the AP examinations in calculus or statistics may be used as an alternative assessment for the mathematics portion of the statewide student assessment. A score of three on the AP examinations in English language and composition may be used as an alternative assessment for the writing portion of the statewide student assessment; and for the English language arts portion of the assessment developed with the multistate consortium, once established in the 2014-15 school year. A score of three on the AP examinations in English literature and composition, macroeconomics, microeconomics, psychology, United States history, world history, United States government and politics, or comparative government and politics may be used as an alternative assessment for the reading portion of the statewide student assessment; and for the English language arts portion of the assessment developed with the multistate consortium, once established in the 2014-15 school year. A score of three on the AP examination in biology, physics, chemistry, or environmental science may be used as an alternative assessment for the science portion of the statewide student assessment.

(iii) A student who scores at least a four on selected externally administered international baccalaureate (IB) examinations may use the score as an objective alternative assessment under this section for demonstrating that the student has met or exceeded state standards for the certificate of academic achievement. A score of four on the higher level IB examinations for any of the IB English language and literature courses or for any of the IB individuals and societies courses may be used as an alternative assessment for the reading, writing, or English language arts portions of the statewide student assessment. A score of four on the higher level IB examinations for any of the IB mathematics courses may be used as an alternative assessment for the mathematics portion of the statewide student assessment. A score of four on the higher level IB examinations for IB biology, chemis-

try, or physics may be used as an alternative assessment for the science portion of the statewide student assessment.

(iv)(A) Beginning in the 2018-19 school year, high school students who have not earned a certificate of academic achievement due to not meeting the high school graduation standard on the mathematics or English language arts assessment may take and pass a locally determined course in the content area in which the student was not successful, and may use the passing score on a locally administered assessment tied to that course and approved under the provisions of this subsection (10)(b)(iv), as an objective alternative assessment for demonstrating that the student has met or exceeded the high school graduation standard. High school transition courses and the assessments offered in association with high school transition courses shall be considered an approved locally determined course and assessment for demonstrating that the student met or exceeded the high school graduation standard. The course must be rigorous and consistent with the student's educational and career goals identified in his or her high school and beyond plan, and may include career and technical education equivalencies in English language arts or mathematics adopted pursuant to RCW 28A.230.097. School districts shall record students' participation in locally determined courses under this section in the statewide individual data system.

(B) The office of the superintendent of public instruction shall develop a process by which local school districts can submit assessments for review and approval for use as objective alternative assessments for graduation as allowed by (b)(iv) of this subsection. This process shall establish means to determine whether a local school district-administered assessment is comparable in rigor to the skills and knowledge that the student must demonstrate on the statewide student assessment and is objective in its determination of student achievement of the state standards. The office of the superintendent of public instruction shall post on its agency web site a compiled list of local school district-administered assessments approved as objective alternative assessments, including the comparable scores on these assessments necessary to meet the standard.

(C) For the purpose of this section, "high school transition course" means an English language arts or mathematics course offered in high school where successful completion by a high school student ensures the student college-level placement at participating institutions of higher education as defined in RCW 28B.10.016. High school transition courses must, in accordance with this section, satisfy core or elective credit graduation requirements established by the state board of education. A student's successful completion of a high school transition course does not entitle the student to be admitted to any institution of higher education as defined in RCW 28B.10.016.

(v) A student who completes a dual credit course in English language arts or mathematics in which the student earns college credit may use passage of the course as an objective alternative assessment under this section for demonstrating that the student has met or exceeded the high school graduation standard for the certificate of academic achievement.

(11) To help assure continued progress in academic achievement as a foundation for high school graduation and

to assure that students are on track for high school graduation, each school district shall:

(a) Provide students who have not earned a certificate of academic achievement before the beginning of grade eleven with the opportunity to access interventions and academic supports, courses, or both, designed to enable students to meet the high school graduation standard. These interventions, supports, or courses must be rigorous and consistent with the student's educational and career goals identified in his or her high school and beyond plan, and may include career and technical education equivalencies in English language arts or mathematics adopted pursuant to RCW 28A.230.097; and

(b) Prepare student learning plans and notify students and their parents or legal guardians as provided in this subsection. Student learning plans are required for eighth grade students who were not successful on any or all of the content areas of the state assessment during the previous school year or who may not be on track to graduate due to credit deficiencies or absences. The parent or legal guardian shall be notified about the information in the student learning plan, preferably through a parent conference and at least annually. To the extent feasible, schools serving English language learner students and their parents shall translate the plan into the primary language of the family. The plan shall include the following information as applicable:

- (i) The student's results on the state assessment;
- (ii) If the student is in the transitional bilingual program, the score on his or her Washington language proficiency test II;
- (iii) Any credit deficiencies;
- (iv) The student's attendance rates over the previous two years;
- (v) The student's progress toward meeting state and local graduation requirements;
- (vi) The courses, competencies, and other steps needed to be taken by the student to meet state academic standards and stay on track for graduation;
- (vii) Remediation strategies and alternative education options available to students, including informing students of the option to continue to receive instructional services after grade twelve or until the age of twenty-one;
- (viii) The alternative assessment options available to students under this section and RCW 28A.655.065;
- (ix) School district programs, high school courses, and career and technical education options available for students to meet graduation requirements; and
- (x) Available programs offered through skill centers or community and technical colleges, including the college high school diploma options under RCW 28B.50.535. [2017 3rd sp.s. c 31 § 1; 2017 3rd sp.s. c 31 § 5; 2015 3rd sp.s. c 42 § 2; 2013 2nd sp.s. c 22 § 2; 2011 1st sp.s. c 22 § 2; 2010 c 244 § 1; 2009 c 524 § 5; 2008 c 321 § 2. Prior: 2007 c 355 § 5; 2007 c 354 § 2; 2006 c 115 § 4; 2004 c 19 § 101.]

*Reviser's note: RCW 28A.655.0611 expired August 31, 2013.

Retroactive application—2017 3rd sp.s. c 31 § 5: "Section 5 of this act applies retroactively to students in the graduating class of 2017." [2017 3rd sp.s. c 31 § 7.]

Effective date—2017 3rd sp.s. c 31: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of

the state government and its existing public institutions, and takes effect immediately [July 7, 2017]." [2017 3rd sp.s. c 31 § 8.]

Finding—Purpose—2015 3rd sp.s. c 42: "The legislature finds that the graduating class of 2015 is the first class required to meet the state standard on the state science assessment. The legislature recognizes that the educational system needs more time before this graduation requirement is implemented. Therefore, the sole purpose of the legislature with this legislation is to delay for no more than two years, but not eliminate, the requirement that students must meet the state standard on the science assessment." [2015 3rd sp.s. c 42 § 1.]

Retroactive application—2015 3rd sp.s. c 42 § 2: "Section 2 of this act applies retroactively to students in the graduating class of 2015, and prospectively beginning with students in the graduating class of 2016." [2015 3rd sp.s. c 42 § 3.]

Findings—Intent—2013 2nd sp.s. c 22: "The legislature finds that the superintendent of public instruction was authorized to align the state essential academic learning requirements for mathematics, reading, writing, and communication with the common set of standards for students in grades kindergarten through twelve, known as the common core state standards, which were initiated by the governors and chief school officers of forty-five states, including Washington. The legislature further finds that Washington has joined one of two multistate consortia using a federal grant to develop new English language arts and mathematics assessments in grades three through eight and grade eleven that are, among other factors, aligned with the common core state standards and intended to demonstrate a student's career and college readiness. The legislature further finds that the assessments are required to be ready for use by the 2014-15 school year.

The legislature intends to reduce the overall costs of the state assessment system by implementing the eleventh grade English language arts and mathematics assessments being developed by a multistate consortium in which Washington is participating, maximize use of the consortium assessments by developing a tenth grade high school English language arts assessment and modifying the algebra I and geometry end-of-course assessment to be used only during the transition to the consortium-developed assessments, and reduce to three the number of assessments that will be required for students to graduate beginning with the class of 2019.

The legislature further intends that the eleventh grade consortium-developed assessments have two different student performance standards: One for the purposes of high school graduation that will be established by the state board of education and one that is intended to demonstrate a student's career and college readiness." [2013 2nd sp.s. c 22 § 1.]

Finding—Intent—2011 1st sp.s. c 22: "(1) The legislature continues to support end-of-course assessments as a fair and practical way to measure students' knowledge and skills in high school science, but the legislature also recognizes that there are important scientific concepts, principles, and content that are not able to be captured in a single course or a single assessment. The legislature also does not wish to narrow the high school science curriculum to a singular focus on biology.

(2) However, the legislature finds that the financial resources for developing additional end-of-course assessments for high school science are not available in the 2011-2013 biennium. Nevertheless, the legislature intends to revisit this issue in the future and further intends at an appropriate time to direct the superintendent of public instruction to develop one or more end-of-course assessments in additional science subjects." [2011 1st sp.s. c 22 § 1.]

Intent—2009 c 524: See note following RCW 28B.50.535.

Findings—2008 c 321: "The legislature finds that high school students need to graduate with the skills necessary to be successful in college and work. The state graduation requirements help to ensure that Washington high school graduates have the basic skills to be competitive in a global economy. Under education reform started in 1993, time was to be the variable, obtaining the skills was to be the constant. Therefore, students who need additional time to gain the academic skills needed for college and the workplace should have the opportunities they need to reach high academic achievement, even if that takes more than the standard four years of high school.

Different students face different challenges and barriers to their academic success. Some students struggle to meet the standard on a single portion of the Washington assessment of student learning while excelling in the other subject areas; other students struggle to complete the necessary state or local graduation credits; while still others have their knowledge tested on the assessments and have completed all the credit requirements but are struggling because English is not their first language. The legislature finds that many of these students need additional time and support to achieve academic proficiency and meet all graduation requirements." [2008 c 321 § 1.]

Finding—Intent—2007 c 355: See note following RCW 28B.50.535.

Findings—Intent—2007 c 354: "(1) The legislature maintains a strong commitment to high expectations and high academic achievement for all students. The legislature finds that Washington schools and students are making significant progress in improving achievement in reading and writing. Schools are adapting instruction and providing remediation for students who need additional assistance. Reading and writing are being taught across the curriculum. Therefore, the legislature does not intend to make changes to the Washington assessment of student learning or high school graduation requirements in reading and writing.

(2) However, students are having difficulty improving their academic achievement in mathematics and science, particularly as measured by the high school Washington assessment of student learning. The legislature finds that corrections are needed in the state's high school assessment system that will improve alignment between learning standards, instruction, diagnosis, and assessment of students' knowledge and skills in high school mathematics and science. The legislature further finds there is a sense of urgency to make these corrections and intends to revise high school graduation requirements in mathematics and science only for the minimum period for corrections to be fully implemented." [2007 c 354 § 1.]

Additional notes found at www.leg.wa.gov

28A.655.065 Objective alternative assessment methods—Appeals from assessment scores—Waivers and appeals from assessment requirements—Rules. (1) The legislature has made a commitment to rigorous academic standards for receipt of a high school diploma. The primary way that students will demonstrate that they meet the standards in reading, writing, mathematics, and science is through the statewide student assessment. Only objective assessments that are comparable in rigor to the state assessment are authorized as an alternative assessment. Before seeking an alternative assessment, the legislature expects students to make a genuine effort to meet state standards, through regular and consistent attendance at school and participation in extended learning and other assistance programs.

(2) Under RCW 28A.655.061, beginning in the 2006-07 school year, the superintendent of public instruction shall implement objective alternative assessment methods as provided in this section for students to demonstrate achievement of the state standards in content areas in which the student has not yet met the standard on the high school statewide student assessment. A student may access an alternative if the student meets applicable eligibility criteria in RCW 28A.655.061 and this section and other eligibility criteria established by the superintendent of public instruction, including but not limited to attendance criteria and participation in the remediation or supplemental instruction contained in the student learning plan developed under RCW 28A.655.061. A school district may waive attendance and/or remediation criteria for special, unavoidable circumstances.

(3) For the purposes of this section, "applicant" means a student seeking to use one of the alternative assessment methods in this section.

(4) One alternative assessment method shall be a combination of the applicant's grades in applicable courses and the applicant's highest score on the high school statewide student assessment, as provided in this subsection. A student is eligible to apply for the alternative assessment method under this subsection (4) if the student has a cumulative grade point average of at least 3.2 on a four point grading scale. The superintendent of public instruction shall determine which high school courses are applicable to the alternative assessment method and shall issue guidelines to school districts.

(a) Using guidelines prepared by the superintendent of public instruction, a school district shall identify the group of students in the same school as the applicant who took the same high school courses as the applicant in the applicable content area. From the group of students identified in this manner, the district shall select the comparison cohort that shall be those students who met or slightly exceeded the state standard on the statewide student assessment.

(b) The district shall compare the applicant's grades in high school courses in the applicable content area to the grades of students in the comparison cohort for the same high school courses. If the applicant's grades are equal to or above the mean grades of the comparison cohort, the applicant shall be deemed to have met the state standard on the alternative assessment.

(c) An applicant may not use the alternative assessment under this subsection (4) if there are fewer than six students in the comparison cohort.

(5) The superintendent of public instruction shall implement:

(a) By June 1, 2006, a process for students to appeal the score they received on the high school assessments;

(b) By January 1, 2007, guidelines and appeal processes for waiving specific requirements in RCW 28A.655.061 pertaining to the certificate of academic achievement and to the certificate of individual achievement for students who: (i) Transfer to a Washington public school in their junior or senior year with the intent of obtaining a public high school diploma, or (ii) have special, unavoidable circumstances;

(c)(i) For the graduating classes of 2014, 2015, 2016, 2017, and 2018, an expedited appeal process for waiving specific requirements in RCW 28A.655.061 pertaining to the certificate of academic achievement and the certificate of individual achievement for eligible students who have not met the state standard on the English language arts statewide student assessment, the mathematics high school statewide student assessment, or both. The student or the student's parent, guardian, or principal may initiate an appeal with the district and the district has the authority to determine which appeals are submitted to the superintendent of public instruction for review and approval. The superintendent of public instruction may only approve an appeal if it has been demonstrated that the student has the necessary skills and knowledge to meet the high school graduation standard and that the student has the skills necessary to successfully achieve the college or career goals established in his or her high school and beyond plan. Pathways for demonstrating the necessary skills and knowledge may include, but are not limited to:

(A) Successful completion of a college level class in the relevant subject area;

(B) Admission to a higher education institution or career preparation program;

(C) Award of a scholarship for higher education; or

(D) Enlistment in a branch of the military.

(ii) A student in the class of 2014, 2015, 2016, or 2017 is eligible for the expedited appeal process in (c)(i) of this subsection if he or she has met all other graduation requirements established by the state and district.

(iii) A student in the class of 2018 is eligible for the expedited appeal process in (c)(i) of this subsection if he or she has met all other graduation requirements established by

the state and district and has attempted at least one alternative assessment option as established in RCW 28A.655.065.

(6) The state board of education shall examine opportunities for additional alternative assessments, including the possible use of one or more standardized norm-referenced student achievement tests and the possible use of the reading, writing, or mathematics portions of the ACT ASSET and ACT COMPASS test instruments as objective alternative assessments for demonstrating that a student has met the state standards for the certificate of academic achievement. The state board shall submit its findings and recommendations to the education committees of the legislature by January 10, 2008.

(7) The superintendent of public instruction shall adopt rules to implement this section. [2017 3rd sp.s. c 31 § 2; 2009 c 556 § 19; 2008 c 170 § 205; 2007 c 354 § 6; 2006 c 115 § 1.]

Effective date—2017 3rd sp.s. c 31: See note following RCW 28A.655.061.

Findings—Intent—2008 c 170: See RCW 28A.700.005.

Findings—Intent—2007 c 354: See note following RCW 28A.655.061.

28A.655.068 Statewide high school assessment in science. (1) Beginning in the 2011-12 school year, the statewide high school assessment in science shall be an end-of-course assessment for biology that measures the state standards for life sciences, in addition to systems, inquiry, and application as they pertain to life sciences.

(2)(a) The superintendent of public instruction may develop or adopt science end-of-course assessments or a comprehensive science assessment that includes subjects in addition to biology for purposes of RCW 28A.655.061, when so directed by the legislature. The legislature intends to transition from a biology end-of-course assessment to a more comprehensive science assessment in a manner consistent with the way in which the state transitioned to an English language arts assessment and a comprehensive mathematics assessment. The legislature further intends that the transition will include at least two years of using the student assessment results from either the biology end-of-course assessment or the more comprehensive assessment in order to provide students with reasonable opportunities to demonstrate high school competencies while being mindful of the increasing rigor of the new assessment.

(b) The superintendent of public instruction shall develop or adopt a science assessment in accordance with RCW 28A.655.070(10) that is not biased toward persons with different learning styles, racial or ethnic backgrounds, or on the basis of gender.

(c) Before the next subsequent school year after the legislature directs the superintendent to develop or adopt a new science assessment, the superintendent of public instruction shall review the objective alternative assessments for the science assessment and make recommendations to the legislature regarding additional objective alternatives, if any.

(3) The superintendent of public instruction may participate with consortia of multiple states as common student learning standards and assessments in science are developed. The superintendent of public instruction, in consultation with the state board of education, may modify the essential academic learning requirements and statewide student assess-

ments in science, including the high school assessment, according to the multistate common student learning standards and assessments as long as the education committees of the legislature have opportunities for review before the modifications are adopted, as provided under RCW 28A.655.070.

(4) The statewide high school assessment under this section shall be used to demonstrate that a student meets the state standards in the science content area of the statewide student assessment until a comprehensive science assessment is required under RCW 28A.655.061. [2017 3rd sp.s. c 31 § 6; 2013 2nd sp.s. c 22 § 4; 2011 1st sp.s. c 22 § 3.]

Effective date—2017 3rd sp.s. c 31: See note following RCW 28A.655.061.

Findings—Intent—2013 2nd sp.s. c 22: See note following RCW 28A.655.061.

Finding—Intent—2011 1st sp.s. c 22: See note following RCW 28A.655.061.

Chapter 28A.660 RCW ALTERNATIVE ROUTE TEACHER CERTIFICATION

Sections

28A.660.020	Program design—Funding—Reports.
28A.660.035	Partnership grant programs—Priority assistance in advancing cultural competency skills.
28A.660.040	Repealed.
28A.660.042	Pipeline for paraeducators conditional scholarship program.

28A.660.020 Program design—Funding—Reports.

(1) The professional educator standards board shall transition the alternative route partnership grant program from a separate competitive grant program to a preparation program model to be expanded among approved preparation program providers. Alternative routes are partnerships between professional educator standards board-approved preparation programs, Washington school districts, and other partners as appropriate. Program design of alternative route programs shall continue to evolve over time to reflect innovations and improvements in educator preparation. The professional educator standards board must construct rules that address the competitive grant process and program design.

(2) As provided in RCW 28A.410.210, it is the duty of the professional educator standards board to establish policies for the approval of nontraditional preparation programs and to provide oversight and accountability related to the quality of these programs. In establishing and amending rules for alternative route programs, the professional educator standards board shall:

(a) Uphold criteria for alternative route program design that is innovative and reflects evidence-based practice;

(b) Ensure that approved partnerships reflect district engagement in their resident alternative route program as an integral part of their future workforce development, as well as school and student learning improvement strategies;

(c) Amend or adopt rules issuing preservice residents certification necessary to serve as substitute teachers in classrooms within the residency school for up to ten days per school year;

(d) Continue to prioritize program designs tailored to the needs of experienced paraeducators and candidates of high academic attainment in the subject area they intend to teach.

In doing so the program designs must take into account school district demand for certain teacher credentials;

(e) Expand access and opportunity for individuals to become teachers statewide; and

(f) Give preference in admissions to applicants for alternative route programs who are eligible veterans or national guard members and who meet the entry requirements for the alternative route program.

(3) Beginning December 1, 2017, and each odd-numbered year thereafter, the professional educator standards board shall report to the education committees of the house of representatives and the senate the following outcomes as indicators that alternative route programs are meeting legislative intent through the regulation and oversight of the professional educator standards board. In considering administrative rules for, and reporting outcomes of, alternative route programs, the professional educator standards board shall examine the historical record of the data, reporting on:

(a) The number and percentage of alternative route completers hired;

(b) The percentage of alternative route completers from underrepresented populations;

(c) Three-year and five-year retention rates of alternative route completers;

(d) The average hiring dates of alternative route completers; and

(e) The percentage of alternative route completers hired in districts where their alternative route program was completed.

(4) To the extent funds are appropriated for this purpose, alternative route programs may apply for program funds to pay stipends to trained mentor teachers of interns during the mentored internship. The per intern amount of mentor stipend provided by state funds shall not exceed five hundred dollars. [2017 c 14 § 1; 2010 c 235 § 503; 2006 c 263 § 816; 2004 c 23 § 2; 2003 c 410 § 1; 2001 c 158 § 3.]

Finding—2010 c 235: See note following RCW 28A.405.245.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

28A.660.035 Partnership grant programs—Priority assistance in advancing cultural competency skills. The office of the superintendent of public instruction shall identify school districts that have the most significant achievement gaps among subgroups of students and for large numbers of those students, and districts that should receive priority for assistance in advancing cultural competency skills in their workforce. The professional educator standards board shall provide assistance to the identified school districts to develop partnership grant programs between the districts and teacher preparation programs to provide alternative route programs under RCW 28A.660.020 and to recruit paraeducators and other individuals in the local community to become certified as teachers. An alternative route partnership program proposed by an identified school district shall receive priority eligibility for partnership grants under RCW 28A.660.020. To the maximum extent possible, the board shall coordinate the recruiting Washington teachers program under RCW 28A.415.370 with the alternative route programs under this section. [2017 c 14 § 2; 2009 c 468 § 6.]

[2017 RCW Supp—page 294]

Findings—Intent—2009 c 468: See note following RCW 28A.300.136.

28A.660.040 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28A.660.042 Pipeline for paraeducators conditional scholarship program. (1) The pipeline for paraeducators conditional scholarship program is created. Participation is limited to paraeducators without a college degree who have at least three years of classroom experience. It is anticipated that candidates enrolled in this program will complete their associate of arts degree at a community and technical college in two years or less and become eligible for an endorsement in a subject matter shortage area, as defined by the professional educator standards board, via route one in the alternative routes to teacher certification program provided in this chapter.

(2) Entry requirements for candidates include district or building validation of qualifications, including three years of successful student interaction and leadership as a classified instructional employee. [2017 c 237 § 19; 2007 c 396 § 6.]

Captions not law—2007 c 396: See note following RCW 28A.305.215.

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

Chapter 28A.710 RCW CHARTER SCHOOLS

Sections

28A.710.300 Interschool athletic activities—Washington interscholastic activities association rules.

28A.710.300 Interschool athletic activities—Washington interscholastic activities association rules. (1) The eligibility of a charter school student to participate in interschool athletic activities or other interschool extracurricular activities governed by the Washington interscholastic activities association is subject to rules adopted by the Washington interscholastic activities association.

(2) A proposal by a charter school to regulate the conduct of interschool athletic activities or other interschool extracurricular activities governed by the Washington interscholastic activities association is subject to rules adopted by the Washington interscholastic activities association.

(3) The charter school is responsible for the full cost, minus any student participation fee, for any student who participates in interschool athletic activities or other interschool extracurricular activities governed by the Washington interscholastic activities association. [2017 c 60 § 1; 2016 c 241 § 129.]

Title 28B HIGHER EDUCATION

Chapters

28B.10 Colleges and universities generally.
28B.12 State work-study program.
28B.15 College and university fees.
28B.20 University of Washington.
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28B.50	Community and technical colleges.
28B.65	High-technology education and training.
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28B.76	Office of student financial assistance.
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28B.95	Washington advanced college tuition payment program and washington college savings program.
28B.112	Campus sexual violence.
28B.115	Health professional conditional scholarship program.
28B.118	College bound scholarship program.
28B.122	Aerospace training student loan program.

Chapter 28B.10 RCW

COLLEGES AND UNIVERSITIES GENERALLY

Sections

28B.10.054	Credit policies for AP exams—Reports.
28B.10.285	Student financial aid information—Notice to students—Development of reporting form—Compliance reporting.

28B.10.054 Credit policies for AP exams—Reports.

(1) The institutions of higher education must establish a coordinated, evidence-based policy for granting as many undergraduate college credits to students who have earned minimum scores of three on AP exams as possible and appropriate.

(2) Credit policy regarding all AP exams must be posted on campus web sites effective for the 2017 fall academic term. The institutions of higher education must conduct biennial reviews of their AP credit policy and report noncompliance to the appropriate committees of the legislature by November 1st each year beginning November 1, 2019. [2017 c 179 § 2.]

Findings—Intent—2017 c 179: "The legislature finds that advanced placement coursework prepares students for postsecondary success and provides opportunities for them to earn college credit or secure placement in advanced courses. The legislature further finds that eighty-four thousand eight hundred sixty-six students took an AP exam in Washington state in 2015. The legislature further finds that six thousand six hundred sixty-seven of those students were underrepresented minority students and nine thousand four hundred seventy-one were low-income students. The legislature further finds that of the students that took an AP exam in Washington state in 2015, fifty-one thousand seven hundred twenty-five scored a three, four, or five.

Therefore, the legislature intends to establish a policy for granting as many undergraduate course credits as possible to students who have earned a minimum score of three on their AP exams and clearly communicate credit awarding policies and course equivalencies to students. The goal of the policy is to award course credit in all appropriate instances and maximize the number of college students given college credit for AP exam scores of three or higher." [2017 c 179 § 1.]

28B.10.285 Student financial aid information—Notice to students—Development of reporting form—Compliance reporting. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Educational institution" includes any entity that is an institution of higher education as defined in RCW 28B.10.016, a degree-granting institution as defined in RCW 28B.85.010, a private vocational school as defined in RCW 28C.10.020, or school as defined in RCW 18.16.020.

(b) "Student education loan" means any loan solely for personal use to finance postsecondary education and costs of attendance at an educational institution.

(2) Subject to the availability of amounts appropriated for this specific purpose, an educational institution must provide to an enrolled student who has applied for student financial aid a notification including the following information about the student education loans the educational institution has certified:

(a) An estimate, based on information available at the time the notification is provided, of the:

(i) Total amount of student education loans taken out by the student;

(ii) Potential total payoff amount of the student education loans incurred or a range of the total payoff amount, including principal and interest;

(iii) The monthly repayment amount that the student may incur for the amount of student education loans the student has taken out, based on the federal loan repayment plan borrowers are automatically enrolled in if they do not select an alternative repayment plan; and

(iv) Percentage of the aggregate federal direct loan borrowing limit applicable to the student's program of study the student has reached at the time the information is sent to the student; and

(b) Consumer information about the differences between private student loans and federal student loans, including the availability of income-based repayment plans and loan forgiveness programs for federal loans.

(3) The notification provided under subsection (2) of this section must include a statement that the estimates and ranges provided are general in nature and not meant as a guarantee or promise of the actual projected amount. It must also include a statement that a variety of repayment plans are available for federal student loans that may limit the monthly repayment amount based on income.

(4) The notification must include information about how to access resources for student education loan borrowers provided by federal or state agencies, such as a student education loan debt hotline and web site or student education loan ombuds, federal student loan repayment calculator, or other available resources.

(5) An educational institution must provide the notification required in subsection (2) of this section via email. In addition, the educational institution may provide the notification in writing, in an electronic format, or in person.

(6) An educational institution does not incur liability, including for actions under chapter 19.86 RCW by the attorney general, for any good faith representations made under subsection (2) of this section.

(7) Educational institutions must begin providing the notification required under subsection (2) of this section by July 1, 2018, each time a financial aid package that includes a new or revised student education loan is offered to the student.

(8) Subject to the availability of amounts appropriated for this specific purpose, an organization representing the public four-year colleges and universities, an organization representing the private nonprofit institutions, the state board for community and technical colleges under chapter 28B.50 RCW, the workforce training and education coordinating board as defined in RCW 28C.18.020, and the department of licensing under chapter 46.01 RCW, must develop a form for

the educational institutions to use to report compliance by July 1, 2018.

(9) Beginning December 1, 2019, and biannually thereafter until December 25, 2025, the organizations under subsection (8) of this section must submit a report in compliance with RCW 43.01.036 to the legislature that details how the educational institutions are in compliance with this section. [2017 c 154 § 2.]

Finding—Intent—2017 c 154: "The legislature finds and declares that students pursuing higher education benefit from periodic notification about the balance of their student education loan debt. This notification helps students and their families make informed borrowing decisions about how to finance their postsecondary education and be more prepared for repayment when leaving school. The legislature recognizes the steps many higher education institutions in Washington have already taken to provide financial education and information to their students. The legislature encourages schools to continue to strengthen financial literacy training, financial aid counseling, and other resources available to students. It is the intent of the legislature to ensure that all students pursuing higher education in Washington receive periodic notifications about their student education loan debt." [2017 c 154 § 1.]

Short title—2017 c 154: "This act may be known and cited as the Washington student loan transparency act." [2017 c 154 § 3.]

Chapter 28B.12 RCW

STATE WORK-STUDY PROGRAM

Sections

28B.12.030 Definitions.

28B.12.030 Definitions. As used in this chapter, the following words and terms shall have the following meanings, unless the context shall clearly indicate another or different meaning or intent:

(1) The term "needy student" shall mean a student enrolled or accepted for enrollment at a postsecondary institution who, according to a system of need analysis approved by the office of student financial assistance, demonstrates a financial inability, either parental, familial, or personal, to bear the total cost of education for any semester or quarter.

(2) The term "eligible institution" shall mean any postsecondary institution in this state accredited by the Northwest Association of Schools and Colleges, or a campus of a member institution of an accrediting association recognized by rule of the student achievement council for purposes of this section, that is eligible for federal student financial aid assistance and has operated as a nonprofit college or university delivering on-site classroom instruction for a minimum of twenty consecutive years within the state of Washington, or any public technical college in the state. [2017 c 52 § 1; 2012 c 229 § 519; 2011 1st sp.s. c 11 § 142; 2002 c 187 § 2; 1994 c 130 § 3; 1974 ex.s. c 177 § 3.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

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Chapter 28B.15 RCW COLLEGE AND UNIVERSITY FEES

Sections

28B.15.012 Classification as resident or nonresident student—Definitions.
28B.15.0139 Resident tuition rates—Border county higher education opportunity project.
28B.15.210 Fees—University of Washington—Disposition of building fees.
28B.15.310 Fees—Washington State University—Disposition of building fees.
28B.15.621 Tuition waivers—Veterans and national guard members—Dependents—Private institutions.

28B.15.012 Classification as resident or nonresident student—Definitions. Whenever used in this chapter:

(1) The term "institution" shall mean a public university, college, or community or technical college within the state of Washington.

(2) The term "resident student" shall mean:

(a) A financially independent student who has had a domicile in the state of Washington for the period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which the student has registered at any institution and has in fact established a bona fide domicile in this state primarily for purposes other than educational;

(b) A dependent student, if one or both of the student's parents or legal guardians have maintained a bona fide domicile in the state of Washington for at least one year immediately prior to commencement of the semester or quarter for which the student has registered at any institution;

(c) A student classified as a resident based upon domicile by an institution on or before May 31, 1982, who was enrolled at a state institution during any term of the 1982-1983 academic year, so long as such student's enrollment (excepting summer sessions) at an institution in this state is continuous;

(d) Any student who has spent at least seventy-five percent of both his or her junior and senior years in high schools in this state, whose parents or legal guardians have been domiciled in the state for a period of at least one year within the five-year period before the student graduates from high school, and who enrolls in a public institution of higher education within six months of leaving high school, for as long as the student remains continuously enrolled for three quarters or two semesters in any calendar year;

(e) Any person who has completed the full senior year of high school and obtained a high school diploma, both at a Washington public high school or private high school approved under chapter 28A.195 RCW, or a person who has received the equivalent of a diploma; who has lived in Washington for at least three years immediately prior to receiving the diploma or its equivalent; who has continuously lived in the state of Washington after receiving the diploma or its equivalent and until such time as the individual is admitted to an institution of higher education under subsection (1) of this section; and who provides to the institution an affidavit indicating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so and a willingness to engage in any other activities necessary to acquire citizenship, including but not limited to citizenship or civics review courses;

(f) Any person who has lived in Washington, primarily for purposes other than educational, for at least one year immediately before the date on which the person has enrolled in an institution, and who holds lawful nonimmigrant status pursuant to 8 U.S.C. Sec. (a)(15) (E)(iii), (H)(i), or (L), or who holds lawful nonimmigrant status as the spouse or child of a person having nonimmigrant status under one of those subsections, or who, holding or having previously held such lawful nonimmigrant status as a principal or derivative, has filed an application for adjustment of status pursuant to 8 U.S.C. Sec. 1255(a);

(g) A student who is on active military duty stationed in the state or who is a member of the Washington national guard;

(h) A student who is on active military duty or a member of the national guard who entered service as a Washington resident and who has maintained Washington as his or her domicile but is not stationed in the state;

(i) A student who is the spouse or a dependent of a person who is on active military duty or a member of the national guard who entered service as a Washington resident and who has maintained Washington as his or her domicile but is not stationed in the state. If the person on active military duty is reassigned out-of-state, the student maintains the status as a resident student so long as the student is continuously enrolled in a degree program;

(j) A student who is entitled to transferred federal post-9/11 veterans educational assistance act of 2008 (38 U.S.C. Sec. 3301 et seq.) benefits based on the student's relationship as a spouse, former spouse, or child to an individual who is on active duty in the uniformed services;

(k) A student who resides in the state of Washington and is the spouse or a dependent of a person who is a member of the Washington national guard;

(l) A student who has separated from the uniformed services with any period of honorable service after at least ninety days of active duty service; is eligible for benefits under the federal all-volunteer force educational assistance program (38 U.S.C. Sec. 3001 et seq.), the federal post-9/11 veterans educational assistance act of 2008 (38 U.S.C. Sec. 3301 et seq.), or any other federal law authorizing educational assistance benefits for veterans; and enters an institution of higher education in Washington within three years of the date of separation;

(m) A student who is entitled to veterans administration educational assistance benefits based on the student's relationship as a spouse, former spouse, or child to an individual who has separated from the uniformed services with any period of honorable service after at least ninety days of active duty service, and who enters an institution of higher education in Washington within three years of the service member's date of separation;

(n) A student who is entitled to veterans administration educational assistance benefits based on the student's relationship with a deceased member of the uniformed services who died in the line of duty;

(o) A student of an out-of-state institution of higher education who is attending a Washington state institution of higher education pursuant to a home tuition agreement as described in RCW 28B.15.725;

(p) A student who meets the requirements of RCW 28B.15.0131 or 28B.15.0139: PROVIDED, That a nonresident student enrolled for more than six hours per semester or quarter shall be considered as attending for primarily educational purposes, and for tuition and fee paying purposes only such period of enrollment shall not be counted toward the establishment of a bona fide domicile of one year in this state unless such student proves that the student has in fact established a bona fide domicile in this state primarily for purposes other than educational;

(q) A student who resides in Washington and is on active military duty stationed in the Oregon counties of Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington; or

(r) A student who resides in Washington and is the spouse or a dependent of a person who resides in Washington and is on active military duty stationed in the Oregon counties of Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington. If the person on active military duty moves from Washington or is reassigned out of the Oregon counties of Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington, the student maintains the status as a resident student so long as the student resides in Washington and is continuously enrolled in a degree program.

(3)(a) A student who qualifies under subsection (2)(j), (l), (m), or (n) of this section and who remains continuously enrolled at an institution of higher education shall retain resident student status.

(b) Nothing in subsection (2)(j), (l), (m), or (n) of this section applies to students who have a dishonorable discharge from the uniformed services, or to students who are the spouse or child of an individual who has had a dishonorable discharge from the uniformed services, unless the student is receiving veterans administration educational assistance benefits.

(4) The term "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of this section and RCW 28B.15.013. Except for students qualifying under subsection (2)(e) or (o) of this section, a nonresident student shall include:

(a) A student attending an institution with the aid of financial assistance provided by another state or governmental unit or agency thereof, such nonresidency continuing for one year after the completion of such semester or quarter. This condition shall not apply to students from Columbia, Multnomah, Clatsop, Clackamas, or Washington county, Oregon participating in the border county pilot project under RCW 28B.76.685, 28B.76.690, and 28B.15.0139.

(b) A person who is not a citizen of the United States of America who does not have permanent or temporary resident status or does not hold "Refugee-Parolee" or "Conditional Entrant" status with the United States citizenship immigration services or is not otherwise permanently residing in the United States under color of law and who does not also meet and comply with all the applicable requirements in this section and RCW 28B.15.013.

(5) The term "domicile" shall denote a person's true, fixed and permanent home and place of habitation. It is the place where the student intends to remain, and to which the student expects to return when the student leaves without intending to establish a new domicile elsewhere. The burden of proof that a student, parent or guardian has established a domicile in the state of Washington primarily for purposes other than educational lies with the student.

(6) The term "dependent" shall mean a person who is not financially independent. Factors to be considered in determining whether a person is financially independent shall be set forth in rules adopted by the student achievement council and shall include, but not be limited to, the state and federal income tax returns of the person and/or the student's parents or legal guardian filed for the calendar year prior to the year in which application is made and such other evidence as the council may require.

(7) The term "active military duty" means the person is serving on active duty in:

- (a) The armed forces of the United States government; or
- (b) The Washington national guard; or
- (c) The coast guard, merchant mariners, or other nonmilitary organization when such service is recognized by the United States government as equivalent to service in the armed forces.

(8) The term "active duty service" means full-time duty, other than active duty for training, as a member of the uniformed services of the United States. Active duty service as a national guard member under Title 32 U.S.C. for the purpose of organizing, administering, recruiting, instructing, or training and active service under 32 U.S.C. Sec. 502(f) for the purpose of responding to a national emergency is recognized as active duty service.

(9) The term "uniformed services" is defined by Title 10 U.S.C.; subsequently structured and organized by Titles 14, 33, and 42 U.S.C.; consisting of the United States army, United States marine corps, United States navy, United States air force, United States coast guard, United States public health service commissioned corps, and the national oceanic and atmospheric administration commissioned officer corps. [2017 c 191 § 1; 2015 3rd sp.s. c 8 § 1. Prior: 2015 c 55 § 207; 2014 c 183 § 1; 2012 c 229 § 521; 2011 1st sp.s. c 11 § 148; 2010 c 183 § 1; 2009 c 220 § 1; 2004 c 128 § 1; 2003 c 95 § 1; 2002 c 186 § 2; prior: (2002 c 186 § 1 expired June 30, 2002); 2000 c 160 § 1; 2000 c 117 § 2; (2000 c 117 § 1 expired June 30, 2002); 1999 c 320 § 5; 1997 c 433 § 2; 1994 c 188 § 2; 1993 sp.s. c 18 § 4; prior: 1987 c 137 § 1; 1987 c 96 § 1; 1985 c 370 § 62; 1983 c 285 § 1; 1982 1st ex.s. c 37 § 1; 1972 ex.s. c 149 § 1; 1971 ex.s. c 273 § 2.]

Effective date—2015 3rd sp.s. c 8 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 24, 2015." [2015 3rd sp.s. c 8 § 2.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Effective date—2009 c 220: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

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ernment and its existing public institutions, and takes effect July 1, 2009." [2009 c 220 § 2.]

Intent—2003 c 95: "It is the intent of the legislature to ensure that students who receive a diploma from a Washington state high school or receive the equivalent of a diploma in Washington state and who have lived in Washington for at least three years prior to receiving their diploma or its equivalent are eligible for in-state tuition rates when they enroll in a public institution of higher education in Washington state." [2003 c 95 § 2.]

Intent—Severability—1997 c 433: See notes following RCW 28B.15.725.

Additional notes found at www.leg.wa.gov

28B.15.0139 Resident tuition rates—Border county higher education opportunity project. For the purposes of determining resident tuition rates, "resident student" includes a resident of Oregon, residing in Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington county, who meets the following conditions:

(1) The student is eligible to pay resident tuition rates under Oregon laws and has been domiciled in Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington county for at least ninety days immediately before enrollment at a community college located in Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, or Walla Walla county, Washington;

(2) The student is enrolled in courses located at the Tri-Cities or Vancouver campus of Washington State University for eight credits or less; or

(3) The student is currently domiciled in Washington and:

(a) Was eligible to pay resident tuition rates under Oregon laws; and

(b) Had been domiciled in Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington county for at least ninety days immediately before being domiciled in Washington. [2017 c 52 § 2; 2009 c 158 § 2; 2003 c 159 § 4; 2002 c 130 § 3; 2000 c 160 § 2; 1999 c 320 § 4.]

28B.15.210 Fees—University of Washington—Disposition of building fees. Within thirty-five days from the date of collection thereof, all building fees at the University of Washington, including building fees to be charged students registering in the schools of medicine and dentistry, shall be paid into the state treasury and credited as follows:

One-half or such larger portion as may be necessary to prevent a default in the payments required to be made out of the bond retirement fund to the "University of Washington bond retirement fund" and the remainder thereof to the "University of Washington building account." The sum so credited to the University of Washington building account shall be used exclusively for the purpose of erecting, altering, maintaining, equipping, or furnishing buildings, and for certificates of participation under chapter 39.94 RCW, except for any sums transferred as authorized in RCW 28B.20.725(3). The sum so credited to the University of Washington bond retirement fund shall be used for the payment of principal of and interest on bonds outstanding as provided by chapter 28B.20 RCW except for any sums transferred as authorized in RCW 28B.20.725(5). During the

2015-2017 biennium, sums credited to the University of Washington building account shall also be used for routine facility maintenance, utility costs, and facility condition assessments. During the 2017-2019 biennium, sums credited to the University of Washington building account shall also be used for routine facility maintenance, utility costs, and facility condition assessments. [2017 3rd sp.s. c 1 § 952; 2015 3rd sp.s. c 3 § 7027; 2013 2nd sp.s. c 19 § 7026; 2011 1st sp.s. c 48 § 7022. Prior: 2009 c 499 § 1; 2009 c 497 § 6019; 1985 c 390 § 20; 1969 ex.s. c 223 § 28B.15.210; prior: 1963 c 224 § 1; 1959 c 193 § 7; 1957 c 254 § 6; 1947 c 243 § 2; 1945 c 187 § 2; 1939 c 156 § 1; 1933 c 169 § 2; 1921 c 139 § 2; 1919 c 63 § 2; 1915 c 66 § 3; Rem. Supp. 1947 § 4547. Formerly RCW 28.77.040.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective date—2015 3rd sp.s. c 3: See note following RCW 43.160.080.

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2009 c 497: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2009], except for sections 6020, 6021, and 6024 through 6027 of this act which take effect July 1, 2009." [2009 c 497 § 6055.]

28B.15.310 Fees—Washington State University—Disposition of building fees. Within thirty-five days from the date of collection thereof, all building fees shall be paid and credited as follows: To the Washington State University bond retirement fund, one-half or such larger portion as may be necessary to prevent a default in the payments required to be made out of such bond retirement fund; and the remainder thereof to the Washington State University building account.

The sum so credited to the Washington State University building account shall be expended by the board of regents for buildings, equipment, or maintenance on the campus of Washington State University as may be deemed most advisable and for the best interests of the university, and for certificates of participation under chapter 39.94 RCW, except for any sums transferred as authorized by law. During the 2015-2017 biennium, sums credited to the Washington State University building account shall also be used for routine facility maintenance, utility costs, and facility condition assessments. During the 2017-2019 biennium, sums credited to the Washington State University building account shall also be used for routine facility maintenance, utility costs, and facility condition assessments. Expenditures so made shall be accounted for in accordance with existing law and shall not be expended until appropriated by the legislature.

The sum so credited to the Washington State University bond retirement fund shall be used to pay and secure the payment of the principal of and interest on building bonds issued by the university, except for any sums which may be transferred out of such fund as authorized by law. [2017 3rd sp.s. c 1 § 953; 2015 3rd sp.s. c 3 § 7026; 2013 2nd sp.s. c 19 § 7028; 2011 1st sp.s. c 48 § 7023. Prior: 2009 c 499 § 2; 2009 c 497 § 6020; 1985 c 390 § 22; 1969 ex.s. c 223 § 28B.15.310; prior: 1961 ex.s. c 11 § 2; 1935 c 185 § 1; 1921 c 164 § 2; RRS § 4570. Formerly RCW 28.80.040.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective date—2015 3rd sp.s. c 3: See note following RCW 43.160.080.

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2009 c 497: See note following RCW 28B.15.210.

28B.15.621 Tuition waivers—Veterans and national guard members—Dependents—Private institutions. (1)

The legislature finds that active military and naval veterans, reserve military and naval veterans, and national guard members called to active duty have served their country and have risked their lives to defend the lives of all Americans and the freedoms that define and distinguish our nation. The legislature intends to honor active military and naval veterans, reserve military and naval veterans, and national guard members who have served on active military or naval duty for the public service they have provided to this country.

(2) Subject to the limitations in RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community and technical colleges, may waive all or a portion of tuition and fees for an eligible veteran or national guard member.

(3) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community and technical colleges, may waive all or a portion of tuition and fees for a military or naval veteran who is a Washington domiciliary, but who did not serve on foreign soil or in international waters or in another location in support of those serving on foreign soil or in international waters and who does not qualify as an eligible veteran or national guard member under subsection (8) of this section. However, there shall be no state general fund support for waivers granted under this subsection.

(4) Subject to the conditions in subsection (5) of this section and the limitations in RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community and technical colleges, shall waive all tuition and fees for the following persons:

(a) A child and the spouse or the domestic partner or surviving spouse or surviving domestic partner of an eligible veteran or national guard member who became totally disabled as a result of serving in active federal military or naval service, or who is determined by the federal government to be a prisoner of war or missing in action; and

(b) A child and the surviving spouse or surviving domestic partner of an eligible veteran or national guard member who lost his or her life as a result of serving in active federal military or naval service.

(5) The conditions in this subsection (5) apply to waivers under subsection (4) of this section.

(a) A child must be a Washington domiciliary between the age of seventeen and twenty-six to be eligible for the tuition waiver. A child's marital status does not affect eligibility.

(b)(i) A surviving spouse or surviving domestic partner must be a Washington domiciliary.

(ii) Except as provided in (b)(iii) of this subsection, a surviving spouse or surviving domestic partner has ten years from the date of the death, total disability, or federal determination of prisoner of war or missing in action status of the eligible veteran or national guard member to receive benefits under the waiver. Upon remarriage or registration in a subsequent domestic partnership, the surviving spouse or surviving domestic partner is ineligible for the waiver of all tuition and fees.

(iii) If a death results from total disability, the surviving spouse has ten years from the date of death in which to receive benefits under the waiver.

(c) Each recipient's continued participation is subject to the school's satisfactory progress policy.

(d) Tuition waivers for graduate students are not required for those who qualify under subsection (4) of this section but are encouraged.

(e) Recipients who receive a waiver under subsection (4) of this section may attend full-time or part-time. Total credits earned using the waiver may not exceed two hundred quarter credits, or the equivalent of semester credits.

(6) Required waivers of all tuition and fees under subsection (4) of this section shall not affect permissive waivers of tuition and fees under subsection (3) of this section.

(7) Private vocational schools and private higher education institutions are encouraged to provide waivers consistent with the terms in subsections (2) through (5) of this section.

(8) The definitions in this subsection apply throughout this section.

(a) "Child" means a biological child, adopted child, or stepchild.

(b) "Eligible veteran or national guard member" means a Washington domiciliary who was an active or reserve member of the United States military or naval forces, or a national guard member called to active duty, who served in active federal service, under either Title 10 or Title 32 of the United States Code, in a war or conflict fought on foreign soil or in international waters or in support of those serving on foreign soil or in international waters, and if discharged from service, has received an honorable discharge.

(c) "Totally disabled" means a person who has been determined to be one hundred percent disabled by the federal department of veterans affairs.

(d) "Washington domiciliary" means a person whose true, fixed, and permanent house and place of habitation is the state of Washington. "Washington domiciliary" includes a person who is residing in rental housing or residing in base housing. In ascertaining whether a child or surviving spouse or surviving domestic partner is domiciled in the state of Washington, public institutions of higher education shall, to the fullest extent possible, rely upon the standards provided in RCW 28B.15.013.

(9) As used in subsection (4) of this section, "fees" includes all assessments for costs incurred as a condition to a student's full participation in coursework and related activities at an institution of higher education.

(10) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community and technical colleges shall report to the higher education committees of the legislature by November 15, 2010, and every two years thereafter, regarding the status of

implementation of the waivers under subsection (4) of this section. The reports shall include the following data and information:

(a) Total number of waivers;

(b) Total amount of tuition waived;

(c) Total amount of fees waived;

(d) Average amount of tuition and fees waived per recipient;

(e) Recipient demographic data that is disaggregated by distinct ethnic categories within racial subgroups; and

(f) Recipient income level, to the extent possible. [2017 c 127 § 1; 2015 c 55 § 222; 2009 c 316 § 1. Prior: 2008 c 188 § 1; 2008 c 6 § 501; 2007 c 450 § 1; 2005 c 249 § 1.]

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Chapter 28B.20 RCW

UNIVERSITY OF WASHINGTON

Sections

28B.20.744 University buildings and facilities for critical patient care or specialized medical research—Alternative process for awarding contracts—Reports.

28B.20.744 University buildings and facilities for critical patient care or specialized medical research—Alternative process for awarding contracts—Reports. (1) This section provides an alternative process for awarding contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of university buildings and facilities in which critical patient care or highly specialized medical research is located. These provisions may be used, in lieu of other procedures to award contracts for such work, when the estimated cost of the work is equal to or less than five million dollars and the project involves construction, renovation, remodeling, or alteration of improvements within a building that is used directly for critical patient care or highly specialized medical research.

(2) The university may create a single critical patient care or specialized medical research facilities roster or may create multiple critical patient care or specialized medical research facilities rosters for different trade specialties or categories of anticipated work. At least once a year, the university shall publish in a newspaper of general circulation and with the office of minority and women's business enterprises, a notice of the existence of the roster or rosters and solicit a statement of qualifications from contractors who wish to be on the roster or rosters of prime contractors. In addition, qualified contractors shall be added to the roster or rosters at any time they submit a written request, necessary records, and meet the qualifications established by the university. The university may require eligible contractors desiring to be placed on a roster to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the university with input from the women-owned and minority-owned business community as a condition of being placed on a roster or rosters. Placement on a roster shall be on the basis of qualifications.

(3) The public solicitation of qualifications shall include but not be limited to:

(a) A description of the types of projects to be completed and where possible may include programmatic, performance, and technical requirements and specifications;

(b) The reasons for using the critical patient care and specialized medical research roster process;

(c) A description of the qualifications to be required of a contractor, including submission of an accident prevention program;

(d) A description of the process the university will use to evaluate qualifications, including evaluation factors and the relative weight of factors;

(e) The form of the contract to be awarded;

(f) A description of the administrative process by which the required qualifications, evaluation process, and project types may be appealed; and

(g) A description of the administrative process by which decisions of the university may be appealed.

(4) The university shall establish a committee that includes one representative from the minority-owned business community and one representative from the women-owned business community to evaluate the contractors submitting qualifications. Evaluation criteria for selection of the contractor or contractors to be included on a roster shall include, but not be limited to:

(a) Ability of a contractor's professional personnel;

(b) A contractor's past performance on similar projects, including but not limited to medical facilities, and involving either negotiated work or other public works contracts;

(c) The contractor's ability to meet time and budget requirements;

(d) The contractor's ability to provide preconstruction services, as appropriate;

(e) The contractor's capacity to successfully complete the project;

(f) The contractor's approach to executing projects;

(g) The contractor's approach to safety and the contractor's safety history;

(h) The contractor's record of performance, integrity, judgment, and skills;

(i) The contractor's record of including office of minority and women's business enterprises-certified, minority, women, veteran, and small businesses; and

(j) The contractor's past history of use of small business entities, disadvantaged business enterprises, minority business enterprises, women business enterprises, and minority women business enterprises over the last five years on projects of five million dollars or less and the contractor's proposed outreach plan and commitment to include such firms.

(5) Contractors meeting the evaluation committee's criteria for selection must be placed on the applicable roster or rosters.

(6) When a project is selected for delivery through this roster process, the university must establish a procedure for securing written quotations from all contractors on a roster to assure that a competitive price is established. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. Plans and specifications must be included in the invitation but may not be detailed. Award of a project must be made to the responsible bidder submitting the lowest responsive bid.

(7) The university shall make an effort to solicit proposals from certified minority or certified woman-owned contractors. The university business diversity program shall establish aspirational goals for small business entities, disadvantaged business enterprises, minority business enterprises, women business enterprises, and minority women business enterprises for each roster based on the projected subcontracting opportunities and to the extent permitted by the Washington state civil rights act, RCW 49.60.400.

(8) Beginning in September 2010 and every other September thereafter, the university shall provide a report to the capital projects advisory review board which must, at a minimum, include a list of rosters used, contracts awarded, office of minority and women's business enterprises-certified small business entities, disadvantaged business enterprises, veterans, and women and minority-owned business use rates on the projects.

(9) Beginning in September 2015 and every September thereafter, the university shall report to the office of minority and women's business enterprises and to the appropriate legislative fiscal committees the number of qualified women and minority-owned business contractors on the roster or rosters and the number of contracts awarded to women and minority-owned businesses.

(10) The university shall require contractors to solicit proposals from office of minority and women's business enterprises-certified firms. [2017 c 124 § 1; 2015 3rd sp.s. c 3 § 7043; 2010 c 245 § 11.]

Effective date—2017 c 124: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2017." [2017 c 124 § 3.]

Effective date—2015 3rd sp.s. c 3: See note following RCW 43.160.080.

Findings—Expand on demand—System design plan endorsed—2010 c 245: See note following RCW 28B.50.020.

Chapter 28B.30 RCW

WASHINGTON STATE UNIVERSITY

Sections

28B.30.357 Child and adolescent psychiatry residency—Creation, requirements.

28B.30.357 Child and adolescent psychiatry residency—Creation, requirements. Subject to the availability of amounts appropriated for this specific purpose, Washington State University shall offer one twenty-four month residency position that is approved by the accreditation council for graduate medical education to one resident specializing in child and adolescent psychiatry. The residency must include a minimum of twelve months of training in settings where children's mental health services are provided under the supervision of experienced psychiatric consultants and must be located east of the crest of the Cascade mountains. [2017 c 202 § 9.]

Findings—Intent—2017 c 202: See note following RCW 74.09.492.

Chapter 28B.35 RCW
REGIONAL UNIVERSITIES

Sections

28B.35.370 Disposition of building fees and normal school fund revenues—Bond payments—Capital projects accounts.

28B.35.370 Disposition of building fees and normal school fund revenues—Bond payments—Capital projects accounts. Within thirty-five days from the date of collection thereof all building fees of each regional university and The Evergreen State College shall be paid into the state treasury and these together with such normal school fund revenues as provided in RCW 28B.35.751 as are received by the state treasury shall be credited as follows:

(1) On or before June 30th of each year the board of trustees of each regional university and The Evergreen State College, if issuing bonds payable out of its building fees and above described normal school fund revenues, shall certify to the state treasurer the amounts required in the ensuing twelve months to pay and secure the payment of the principal of and interest on such bonds. The amounts so certified by each regional university and The Evergreen State College shall be a prior lien and charge against all building fees and above described normal school fund revenues of such institution. The state treasurer shall thereupon deposit the amounts so certified in the Eastern Washington University capital projects account, the Central Washington University capital projects account, the Western Washington University capital projects account, or The Evergreen State College capital projects account respectively, which accounts are hereby created in the state treasury. The amounts deposited in the respective capital projects accounts shall be used to pay and secure the payment of the principal of and interest on the building bonds issued by such regional universities and The Evergreen State College as authorized by law. If in any twelve month period it shall appear that the amount certified by any such board of trustees is insufficient to pay and secure the payment of the principal of and interest on the outstanding building and above described normal school fund revenue bonds of its institution, the state treasurer shall notify the board of trustees and such board shall adjust its certificate so that all requirements of moneys to pay and secure the payment of the principal of and interest on all such bonds then outstanding shall be fully met at all times.

(2) All normal school fund revenue pursuant to RCW 28B.35.751 shall be deposited in the Eastern Washington University capital projects account, the Central Washington University capital projects account, the Western Washington University capital projects account, or The Evergreen State College capital projects account respectively, which accounts are hereby created in the state treasury. The sums deposited in the respective capital projects accounts shall be appropriated and expended to pay and secure the payment of the principal of and interest on bonds payable out of the building fees and normal school revenue and for the construction, reconstruction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances in relation thereto except for any sums transferred therefrom as authorized by law. However, during the 2015-2017 biennium, sums in the respective capital

accounts shall also be used for routine facility maintenance, utility costs, and facility condition assessments. However, during the 2017-2019 biennium, sums in the respective capital accounts shall also be used for routine facility maintenance, utility costs, and facility condition assessments.

(3) Funds available in the respective capital projects accounts may also be used for certificates of participation under chapter 39.94 RCW. [2017 3rd sp.s. c 1 § 954; 2015 3rd sp.s. c 3 § 7029; 2013 2nd sp.s. c 19 § 7030; 2011 1st sp.s. c 48 § 7024. Prior: 2009 c 499 § 5; 2009 c 497 § 6021; 1991 sp.s. c 13 § 49; prior: 1985 c 390 § 47; 1985 c 57 § 15; 1977 ex.s. c 169 § 79; 1969 ex.s. c 223 § 28B.40.370; prior: 1967 c 47 §§ 11, 14; 1965 c 76 § 2; 1961 ex.s. c 14 § 5; 1961 ex.s. c 13 § 4. Formerly RCW 28B.40.370; 28.81.085; 28.81.540.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective date—2015 3rd sp.s. c 3: See note following RCW 43.160.080.

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2009 c 497: See note following RCW 28B.15.210.

Additional notes found at www.leg.wa.gov

Chapter 28B.45 RCW
UNIVERSITY CAMPUSES
(Formerly: Branch campuses)

Sections

28B.45.010 Legislative findings.
28B.45.012 Findings—Intent.
28B.45.014 Mission—Collaboration with community and technical colleges—Alternative models—Monitoring and evaluation—Reports to the legislature.
28B.45.020 University of Washington Tacoma—University of Washington Bothell.
28B.45.0201 Findings.
28B.45.030 Washington State University—Tri-Cities area.
28B.45.040 Washington State University Vancouver.
28B.45.080 Partnership between community and technical colleges and campuses.

28B.45.010 Legislative findings. The legislature finds that the benefits of higher education should be more widely available to the citizens of the state of Washington. The legislature also finds that a citizen's place of residence can restrict that citizen's access to educational opportunity at the upper-division and graduate level.

Because most of the state-supported baccalaureate universities are located in areas removed from major metropolitan areas, the legislature finds that many of the state's citizens, especially those citizens residing in the central Puget Sound area, the Tri-Cities, Spokane, Vancouver, and Yakima, have insufficient and inequitable access to upper-division baccalaureate and graduate education.

This lack of sufficient educational opportunities in urban areas makes it difficult or impossible for place-bound individuals, who are unable to relocate, to complete a baccalaureate or graduate degree. It also exacerbates the difficulty financially needy students have in attending school, since many of those students need to work, and work is not always readily available in some communities where the baccalaureate institutions of higher education are located.

The lack of sufficient educational opportunities in metropolitan areas also affects the economy of the underserved communities. Businesses benefit from access to the research and teaching capabilities of institutions of higher education. The absence of these institutions from some of the state's major urban centers prevents beneficial interaction between businesses in these communities and the state's universities.

The Washington state master plan for higher education, adopted by the *higher education coordinating board, recognizes the need to expand upper-division and graduate educational opportunities in the state's large urban centers. The board has also attempted to provide a means for helping to meet future educational demand through a system of campuses in the state's major urban areas.

The legislature endorses the assignment of responsibility to serve these urban centers that the board has made to various institutions of higher education. The legislature also endorses the creation of campuses for the University of Washington and Washington State University.

The legislature recognizes that, among their other responsibilities, the state's comprehensive community colleges share with the four-year universities and colleges the responsibility of providing the first two years of a baccalaureate education. It is the intent of the legislature that the four-year institutions and the community colleges work as cooperative partners to ensure the successful and efficient operation of the state's system of higher education. The legislature further intends that the four-year institutions work cooperatively with the community colleges to ensure that the campuses created under this chapter are operated as models of a two plus two educational system. [2017 c 52 § 3; 1989 1st ex.s. c 7 § 1.]

***Reviser's note:** The higher education coordinating board was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

28B.45.012 Findings—Intent. (1) In 1989, the legislature created five campuses to be operated by the state's two public research universities. Located in growing urban areas, the campuses were charged with two missions:

(a) Increasing access to higher education by focusing on upper-division and graduate programs, targeting placebound students, and operating as models of a two plus two educational system in cooperation with the community colleges; and

(b) Promoting regional economic development by responding to demand for degrees from local businesses and supporting regional economies through research activities.

(2) Fifteen years later, the legislature finds that the campuses are responding to their original mission:

(a) The campuses accounted for half of statewide upper-division and graduate public enrollment growth since 1990;

(b) The campuses have grown steadily and enroll increasing numbers of transfer students each year;

(c) The campuses enroll proportionately more older and part-time students than their main campuses and attract increasing proportions of students from nearby counties;

(d) Although the extent of their impact has not been measured, these campuses positively affect local economies and offer degree programs that roughly correspond with regional occupational projections; and

(e) The capital investments made by the state to support the campuses represent a significant benefit to regional economic development.

(3) However, the legislature also finds the policy landscape in higher education has changed since the original creation of the campuses. Demand for access to baccalaureate and graduate education is increasing rapidly. Economic development efforts increasingly recognize the importance of focusing on local and regional economic clusters and improving collaboration among communities, businesses, and colleges and universities. Each campus has evolved into a unique institution, and it is appropriate to assess the nature of this evolution to ensure the role and mission of each campus is aligned with the state's higher education goals and the needs of the region where the campus is located.

(4) Therefore, it is the legislature's intent to recognize the unique nature of Washington's higher education campuses created under this chapter, reaffirm the role and mission of each, and set the course for their continued future development.

(5) It is the further intent of the legislature that the campuses be identified by the following names: University of Washington Bothell, University of Washington Tacoma, Washington State University Tri-Cities, and Washington State University Vancouver. [2017 c 52 § 4; 2004 c 57 § 1.]

28B.45.014 Mission—Collaboration with community and technical colleges—Alternative models—Monitoring and evaluation—Reports to the legislature.

(1) The primary mission of the higher education campuses created under this chapter remains to expand access to baccalaureate and graduate education in underserved urban areas of the state in collaboration with community and technical colleges. The top priority for each of the campuses is to expand courses and degree programs for transfer and graduate students. New degree programs should be driven by the educational needs and demands of students and the community, as well as the economic development needs of local businesses and employers.

(2) The campuses created under this chapter shall collaborate with the community and technical colleges in their region to develop articulation agreements, dual admissions policies, and other partnerships to ensure that the campuses serve as innovative models of a two plus two educational system. Other possibilities for collaboration include but are not limited to joint development of curricula and degree programs, colocation of instruction, and arrangements to share faculty.

(3) In communities where a private postsecondary institution is located, representatives of the private institution may be invited to participate in the conversation about meeting the baccalaureate and graduate needs in underserved urban areas of the state.

(4) However, the legislature recognizes there are alternative models for achieving this primary mission. Some campuses may have additional missions in response to regional needs and demands. At selected campuses, an innovative combination of instruction and research targeted to support regional economic development may be appropriate to meet the region's needs for both access and economic viability. Other campuses should focus on becoming models of a two

plus two educational system through continuous improvement of partnerships and agreements with community and technical colleges. Still other campuses may be best suited to transition to a four-year university.

(5) The legislature recognizes that size, mix of degree programs, and proportion of lower versus upper-division and graduate enrollments are factors that affect costs at the campuses. However over time, the legislature intends that the campuses be funded more similarly to regional universities.

(6) Research universities are authorized to develop doctoral degree programs at their campuses.

(7) The student achievement council shall monitor and evaluate growth of the campuses and periodically report and make recommendations to the higher education committees of the legislature to ensure the campuses continue to follow the priorities established under this chapter. [2017 c 52 § 5; 2012 c 229 § 531; 2011 c 208 § 1; 2005 c 258 § 2; 2004 c 57 § 2.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Findings—Intent—2005 c 258: "(1) Since their creation in 1989, the research university branch campuses have significantly expanded access to baccalaureate and graduate education for placebound students in Washington's urban and metropolitan cities. Furthermore, the campuses have contributed to community revitalization and economic development in their regions. The campuses have met their overall mission through the development of new degree programs and through collaboration with community and technical colleges. These findings were confirmed by a comprehensive review of the campuses by the Washington state institute for public policy in 2002 and 2003, and reaffirmed through legislation enacted in 2004 that directed four of the campuses to make recommendations for their future evolution.

(2) The self-studies conducted by the University of Washington Bothell, University of Washington Tacoma, Washington State University Tri-Cities, and Washington State University Vancouver reflect thoughtful and strategic planning and involved the input of numerous students, faculty, community and business leaders, community colleges, advisory committees, and board members. The *higher education coordinating board's careful review provides a statewide context for the legislature to implement the next stage of the campuses.

(3) Concurrently, the *higher education coordinating board has developed a strategic master plan for higher education that sets a goal of increasing the number of students who earn college degrees at all levels: Associate, baccalaureate, and graduate. The strategic master plan also sets a goal to increase the higher education system's responsiveness to the state's economic needs.

(4) The legislature finds that to meet both of the master plan's goals and to provide adequate educational opportunities for Washington's citizens, additional access is needed to baccalaureate degree programs. Expansion of the four campuses is one strategy for achieving the desired outcomes of the master plan. Other strategies must also be implemented through service delivery models that reflect both regional demands and statewide priorities.

(5) Therefore, the legislature intends to increase baccalaureate access and encourage economic development through overall expansion of upper-division capacity, continued development of two plus two programs in some areas of the state, authorization of four-year university programs in other areas of the state, and creation of new types of baccalaureate programs on a pilot basis. These steps will make significant progress toward achieving the master plan goals, but the legislature will also continue to monitor the development of the higher education system and evaluate what additional changes or expansion may be necessary." [2005 c 258 § 1.]

***Reviser's note:** The higher education coordinating board was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

28B.45.020 University of Washington Tacoma—University of Washington Bothell. (1) The University of Washington is responsible for ensuring the expansion of baccalaureate and graduate educational programs in the central Puget Sound area under rules or guidelines adopted by the

student achievement council and in accordance with proportionality agreements emphasizing access for transfer students developed with the state board for community and technical colleges. The University of Washington shall meet that responsibility through the operation of at least two campuses. One campus shall be located in the Tacoma area. Another campus shall be collocated with Cascadia Community College in the Bothell-Woodinville area.

(2) At the University of Washington Tacoma, a top priority is expansion of upper-division capacity for transfer students and graduate capacity and programs. Beginning in the fall of 2006, the campus may offer lower division courses linked to specific majors in fields not addressed at local community colleges. The campus shall admit lower division students through coadmission or coenrollment agreements with a community college, or through direct transfer for students who have accumulated approximately one year of transferable college credits. In addition to offering lower division courses linked to specific majors as addressed above, the campus may also directly admit first-year students and sophomores.

(3) At the University of Washington Bothell, a top priority is expansion of upper-division capacity for transfer students and graduate capacity and programs. The campus shall also seek additional opportunities to collaborate with and maximize its collocation with Cascadia Community College. Beginning in the fall of 2006, the campus may offer lower division courses linked to specific majors in fields not addressed at local community colleges. The campus may admit lower division students through coadmission or coenrollment agreements with a community college, or through direct transfer for students who have accumulated approximately one year of transferable college credits. In addition to offering lower division courses linked to specific majors as addressed above, the campus may also directly admit first-year students and sophomores. [2017 c 52 § 6; 2013 c 23 § 54; 2012 c 229 § 532; 2005 c 258 § 3; 1994 c 217 § 3; 1989 1st ex.s. c 7 § 3.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Findings—Intent—2005 c 258: See note following RCW 28B.45.014.

Additional notes found at www.leg.wa.gov

28B.45.0201 Findings. The legislature finds that population growth in north King and south Snohomish counties has created a need to expand higher education and workforce training programs for the people living and working in those areas. In keeping with the recommendations of the *higher education coordinating board, the legislature intends to help address those education and training needs through the creation of Cascadia Community College, expansion of educational opportunities at Lake Washington Institute of Technology, and support of the University of Washington's campus at Bothell-Woodinville. It is further the intention of the legislature, in keeping with the *higher education coordinating board recommendations, that the Cascadia Community College and the University of Washington Bothell-Woodinville campus be collocated, and that the new community college and the University of Washington's Bothell-Woodinville campus work in partnership to ensure that properly prepared

students from community colleges and other institutions are able to transfer smoothly to the Bothell-Woodinville campus.

The legislature further finds that a governing board for Cascadia Community College needs to be appointed and confirmed as expeditiously as possible. The legislature intends to work cooperatively with the governor to facilitate the appointment and confirmation of trustees for the college. [2017 c 52 § 7; 2011 c 118 § 2; 1994 c 217 § 1.]

***Reviser's note:** The higher education coordinating board was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

Additional notes found at www.leg.wa.gov

28B.45.030 Washington State University—Tri-Cities area. (1) Washington State University is responsible for providing baccalaureate and graduate level higher education programs to the citizens of the Tri-Cities area, under rules or guidelines adopted by the student achievement council and in accordance with proportionality agreements emphasizing access for transfer students developed with the state board for community and technical colleges. Washington State University shall meet that responsibility through the operation of a campus in the Tri-Cities area. The Tri-Cities campus shall replace and supersede the Tri-Cities university center. All land, facilities, equipment, and personnel of the Tri-Cities university center shall be transferred from the University of Washington to Washington State University.

(2) Beginning in the fall of 2007, the Washington State University Tri-Cities campus may directly admit first-year students and sophomore students. [2017 c 52 § 8; 2013 c 23 § 55; 2012 c 229 § 533; 2006 c 166 § 1; 2005 c 258 § 4; 1989 1st ex.s. c 7 § 4.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Findings—Intent—2005 c 258: See note following RCW 28B.45.014.

28B.45.040 Washington State University Vancouver. (1) Washington State University is responsible for providing baccalaureate and graduate level higher education programs to the citizens of the southwest Washington area, under rules or guidelines adopted by the student achievement council and in accordance with proportionality agreements emphasizing access for transfer students developed with the state board for community and technical colleges. Washington State University shall meet that responsibility through the operation of a campus in the southwest Washington area.

(2) Washington State University Vancouver shall expand upper-division capacity for transfer students and graduate capacity and programs and continue to collaborate with local community colleges on coadmission and coenrollment programs. In addition, beginning in the fall of 2006, the campus may admit lower division students directly. By simultaneously admitting first-year students and sophomores, increasing transfer enrollment, coadmitting transfer students, and expanding graduate and professional programs, the campus shall develop into a four-year institution serving the southwest Washington region. [2017 c 52 § 9; 2013 c 23 § 56; 2012 c 229 § 534; 2005 c 258 § 5; 1989 1st ex.s. c 7 § 5.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Findings—Intent—2005 c 258: See note following RCW 28B.45.014.

28B.45.080 Partnership between community and technical colleges and campuses. The state board for community and technical colleges and the student achievement council shall adopt performance measures to ensure a collaborative partnership between the community and technical colleges and the campuses created under this chapter. The partnership shall be one in which the community and technical colleges prepare students for transfer to the upper-division programs of the campuses and the campuses work with community and technical colleges to enable students to transfer and obtain degrees efficiently. [2017 c 52 § 10; 2012 c 229 § 535; 2004 c 57 § 5; 1989 1st ex.s. c 7 § 8. Formerly RCW 28B.80.510.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Legislative findings—1989 1st ex.s. c 7: See RCW 28B.45.010.

Chapter 28B.50 RCW

COMMUNITY AND TECHNICAL COLLEGES

Sections

- 28B.50.281 Curriculum development and funding—Use of federal stimulus funding—Reports—Recognized programs of study under RCW 28B.50.273—Prioritization of workforce training programs.
- 28B.50.360 Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Community and technical college capital projects account—Disposition of building fees.
- 28B.50.535 Community or technical college—Issuance of high school diploma or certificate.
- 28B.50.789 Online course descriptions—Required materials' cost information—Reports.
- 28B.50.815 Associate degree education for incarcerated adults.
- 28B.50.820 Baccalaureate degree programs—Agreements with state universities, regional universities, or the state college.
- 28B.50.891 Apprenticeship programs or certificate programs—Transferable course credits.

28B.50.281 Curriculum development and funding—Use of federal stimulus funding—Reports—Recognized programs of study under RCW 28B.50.273—Prioritization of workforce training programs. (1) The state board shall work with the *leadership team, the Washington state apprenticeship and training council, and the office of the superintendent of public instruction to jointly develop, by June 30, 2010, curricula and training programs, to include on-the-job training, classroom training, and safety and health training, for the development of the skills and qualifications identified by the **department of community, trade, and economic development under ***section 7 of this act.

(2) The board shall target a portion of any federal stimulus funding received to ensure commensurate capacity for high employer-demand programs of study developed under this section. To that end, the state board must coordinate with the department, the *leadership team, the workforce board, or another appropriate state agency in the application for and receipt of any funding that may be made available through the federal youthbuild program, workforce innovation and opportunity act, job corps, or other relevant federal programs.

(3) The board shall provide an interim report to the appropriate committees of the legislature by December 1,

2011, and a final report by December 1, 2013, detailing the effectiveness of, and any recommendations for improving, the worker training curricula and programs established in this section.

(4) Existing curricula and training programs or programs provided by community and technical colleges in the state developed under this section must be recognized as programs of study under RCW 28B.50.273.

(5) Subject to available funding, the board may grant enrollment priority to persons who qualify for a waiver under RCW 28B.15.522 and who enroll in curricula and training programs provided by community or technical colleges in the state that have been developed in accordance with this section.

(6) The college board may prioritize workforce training programs that lead to a credential, certificate, or degree in green economy jobs. For purposes of this section, green economy jobs include those in the primary industries of a green economy including clean energy, high-efficiency building, green transportation, and environmental protection. Prioritization efforts may include but are not limited to: (a) Prioritization of the use of high employer-demand funding for workforce training programs in green economy jobs, if the programs meet minimum criteria for identification as a high-demand program of study as defined by the state board for community and technical colleges, however any additional community and technical college high-demand funding authorized for the 2009-2011 fiscal biennium and thereafter may be subject to prioritization; (b) increased outreach efforts to public utilities, education, labor, government, and private industry to develop tailored, green job training programs; and (c) increased outreach efforts to target populations. Outreach efforts shall be conducted in partnership with local workforce development councils.

(7) The definitions in RCW 43.330.010 apply to this section and RCW 28B.50.282. [2017 c 39 § 1; 2009 c 536 § 9.]

Reviser's note: *(1) The leadership team was created in 2009 c 536 § 3, which was vetoed.

***(2) The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

****(3) Section 7 of this act was vetoed.

Short title—2009 c 536: See note following RCW 43.330.370.

28B.50.360 Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Community and technical college capital projects account—Disposition of building fees. Within thirty-five days from the date of start of each quarter all collected building fees of each such community and technical college shall be paid into the state treasury, and shall be credited as follows:

(1) On or before June 30th of each year the college board, if issuing bonds payable out of building fees, shall certify to the state treasurer the amounts required in the ensuing twelve-month period to pay and secure the payment of the principal of and interest on such bonds. The state treasurer shall thereupon deposit the amounts so certified in the community and technical college capital projects account. Such amounts of the funds deposited in the community and technical college capital projects account as are necessary to pay and secure the payment of the principal of and interest on the

building bonds issued by the college board as authorized by this chapter shall be devoted to that purpose. If in any twelve-month period it shall appear that the amount certified by the college board is insufficient to pay and secure the payment of the principal of and interest on the outstanding building bonds, the state treasurer shall notify the college board and such board shall adjust its certificate so that all requirements of moneys to pay and secure the payment of the principal and interest on all such bonds then outstanding shall be fully met at all times.

(2) The community and technical college capital projects account is hereby created in the state treasury. The sums deposited in the capital projects account shall be appropriated and expended to pay and secure the payment of the principal of and interest on bonds payable out of the building fees and for the construction, reconstruction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets owned by the state board for community and technical colleges in the name of the state of Washington, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances in relation thereto, engineering and architectural services provided by the department of enterprise services, and for the payment of principal of and interest on any bonds issued for such purposes. However, during the 2015-2017 biennium, sums in the capital projects account shall also be used for routine facility maintenance and utility costs. However, during the 2017-2019 biennium, sums in the capital projects account shall also be used for routine facility maintenance and utility costs.

(3) Funds available in the community and technical college capital projects account may also be used for certificates of participation under chapter 39.94 RCW. [2017 3rd sp.s. c 1 § 955; 2015 3rd sp.s. c 3 § 7030; 2013 2nd sp.s. c 19 § 7031; 2011 1st sp.s. c 48 § 7025; 2009 c 499 § 6; 2005 c 488 § 922; 2004 c 277 § 910; 2002 c 238 § 303; 2000 c 65 § 1; 1997 c 42 § 1; 1991 sp.s. c 13 §§ 47, 48; 1991 c 238 § 51. Prior: 1985 c 390 § 56; 1985 c 57 § 16; 1974 ex.s. c 112 § 4; 1971 ex.s. c 279 § 20; 1970 ex.s. c 15 § 20; prior: 1969 ex.s. c 261 § 28; 1969 ex.s. c 238 § 7; 1969 ex.s. c 223 § 28B.50.360; prior: 1967 ex.s. c 8 § 36.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective date—2015 3rd sp.s. c 3: See note following RCW 43.160.080.

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Additional notes found at www.leg.wa.gov

28B.50.535 Community or technical college—Issuance of high school diploma or certificate. A community or technical college may issue a high school diploma or certificate as provided under this section.

(1) An individual who satisfactorily meets the requirements for high school completion shall be awarded a diploma from the college, subject to rules adopted by the superintendent of public instruction and the state board of education.

(2) An individual enrolled through the option established under RCW 28A.600.310 through 28A.600.400 who satisfactorily completes an associate degree, including an associ-

ate of arts degree, associate of science degree, associate of technology degree, or associate in applied science degree, shall be awarded a diploma from the college upon written request from the student.

(3) An individual, twenty-one years or older, who enrolls in a community or technical college for the purpose of obtaining an associate degree and who satisfactorily completes an associate degree, including an associate of arts degree, associate of science degree, associate of technology degree, or associate in applied science degree, shall be awarded a diploma from the college upon written request from the student. Individuals under this subsection are not eligible for funding provided under chapter 28A.150 RCW.

(4) An individual who enrolls in a technical college through the option established under RCW 28B.50.533, who satisfactorily completes an associate degree, including an associate of arts degree, associate of science degree, associate of technology degree, or associate in applied science degree, shall be awarded a diploma from the college upon written request from the student. [2017 c 93 § 1; 2009 c 524 § 2; 2007 c 355 § 2; 1991 c 238 § 58; 1969 ex.s. c 261 § 30.]

Intent—2009 c 524: "The legislature has previously affirmed the value of career and technical education, particularly in programs that lead to nationally recognized certification. These programs provide students with the knowledge and skills to become responsible citizens and contribute to their own economic well-being and that of their families and communities, which is the goal of education in the public schools. The legislature has also previously affirmed the value of dual enrollment in college and high school programs that can lead to both an associate degree and a high school diploma. Therefore, the legislature intends to maximize students' options and choices for completing high school by awarding diplomas to students who complete these valuable postsecondary programs." [2009 c 524 § 1.]

Finding—Intent—2007 c 355: "The legislature finds that the goal of Washington's education reform is for all students to meet rigorous academic standards so that they are prepared for success in college, work, and life. Educators know that not all students learn at the same rate or in the same way. Some students will take longer to meet the state's standards for high school graduation. Older students who cannot graduate with their peers need an appropriate learning environment and flexible programming that enables them simultaneously to earn a diploma, work, and pursue other training options. Providing learning options in locations in addition to high schools will encourage older students to complete their diplomas. Therefore the legislature intends to create a pilot high school completion program at two community and technical colleges for older students who have not yet received a diploma but are eligible for state basic education support." [2007 c 355 § 1.]

Additional notes found at www.leg.wa.gov

28B.50.789 Online course descriptions—Required materials' cost information—Reports. (1) To the maximum extent practicable, but no later than the first full quarter after a community or technical college has implemented the ctcLink system, a community or technical college shall provide the following information to students during registration by displaying it in the online course description or by providing a link that connects to the bookstore's web site or other web site where students can search and view:

(a) The cost of any required textbook or other course materials; and

(b) Whether a course uses open educational resources.

(2) If a course's required textbooks and course materials are not determined prior to registration due to an unassigned faculty member, the textbooks' and course materials' cost must be provided as soon as feasible after a faculty member is assigned.

(3) Each community and technical college shall report to the college board which courses provided textbooks' and course materials' costs to students during registration, and what percent of total classes this equaled. The college board shall report the information to the legislature in accordance with RCW 43.01.036 by January 1st of each biennium, beginning with January 1, 2019. [2017 c 98 § 2.]

Intent—2017 c 98: "The legislature recognizes the high cost of textbooks and the burden this can create for students. The legislature also recognizes the work of the state board for community and technical colleges in creating the open course library, in which free textbooks and other course materials are available for eighty-one of the highest enrolled courses in the community and technical college system. The student public interest research groups completed a cost analysis of the open course library and found that students who take open course library courses save ninety-six dollars on average per course over a traditional textbook. Therefore, it is the legislature's intent to incentivize faculty to use resources available on the open course library by informing students of a textbook's cost when they register for a class." [2017 c 98 § 1.]

28B.50.815 Associate degree education for incarcerated adults. The college board may authorize any board of trustees within the system to promote and conduct associate degree education and training of incarcerated adults through new or expanded partnerships between the community and technical colleges and the department of corrections. [2017 c 120 § 2.]

Findings—Intent—2017 c 120: "(1) The legislature finds that studies clearly and consistently demonstrate that incarcerated adults who obtain associate degree education and training are more likely to be employed following release, which leads to a dramatic reduction in recidivism rates, significant improvements in public safety, and a major return on investment. The legislature finds that reducing recidivism would decrease the financial burden to taxpayers and the emotional burden of victims.

(2) The legislature finds that research indicates that associate degree education and training is an effective evidence-based practice for reducing recidivism. An analysis commissioned by the United States department of justice determined that adults who received such education while incarcerated were forty-three percent less likely to recidivate.

(3) Ninety-five percent of incarcerated adults ultimately return to their communities to obtain employment and contribute to society. The legislature finds that according to the bureau of labor statistics, unemployment rates for people with only a high school education are twice that of those with an associate degree. Research has shown that adults who participated in such education while incarcerated were thirteen percent more likely to be employed.

(4) The legislature further finds that correctional education is cost-effective. A 2014 study by the Washington state institute for public policy estimated that the state received a return on investment of twenty dollars for every dollar invested in correctional education.

(5) It is the intent of the legislature to enhance public safety by reducing crime and increasing employment rates in a cost-effective manner by authorizing associate degree education and training of incarcerated adults through expanded partnerships between the community and technical colleges and the department of corrections.

(6) The legislature does not intend to provide additional funding to the department of corrections with chapter 120, Laws of 2017 and intends that the department of corrections incorporate associate degree education into its available educational and vocational opportunities for offenders within existing funds set aside for this purpose." [2017 c 120 § 1.]

28B.50.820 Baccalaureate degree programs—Agreements with state universities, regional universities, or the state college. (1) One strategy to accomplish expansion of baccalaureate capacity in underserved regions of the state is to allocate state funds for student enrollment to a community and technical college and authorize the college to enter into agreements with a state university, regional university, or state college as defined in RCW 28B.10.016, to offer baccalaureate degree programs.

(2) Subject to legislative appropriation for the purpose described in this section, the college board shall select and allocate funds to three community or technical colleges for the purpose of entering into an agreement with one or more state universities, regional universities, or the state college to offer baccalaureate degree programs on the college campus.

(3) The college board shall select the community or technical college based on analysis of gaps in service delivery, capacity, and student and employer demand for programs. Before taking effect, the agreement under this section must be approved by the student achievement council.

(4) Students enrolled in programs under this section are considered students of the state university, regional university, or state college for all purposes including tuition and reporting of state-funded enrollments. [2017 c 52 § 11; 2012 c 229 § 538; 2005 c 258 § 12.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Findings—Intent—2005 c 258: See note following RCW 28B.45.014.

28B.50.891 Apprenticeship programs or certificate programs—Transferable course credits. Beginning with the 2015-16 academic year, any community or technical college that offers an apprenticeship program or certificate program for paraeducators must provide candidates the opportunity to earn transferable course credits within the program. The programs must also incorporate the standards for cultural competence, including multicultural education and principles of language acquisition, developed by the professional educator standards board under RCW 28A.410.270. Subject to the availability of amounts appropriated for this specific purpose, by September 1, 2018, the paraeducator apprenticeship and certificate programs must also incorporate the state paraeducator standards of practice adopted by the paraeducator board under RCW 28A.413.050. [2017 c 237 § 20; 2014 c 136 § 4.]

Chapter 28B.65 RCW

HIGH-TECHNOLOGY EDUCATION AND TRAINING

Sections

28B.65.010 Repealed.
 28B.65.020 Repealed.
 28B.65.030 Repealed.
 28B.65.040 Repealed.
 28B.65.050 Repealed.
 28B.65.060 Repealed.
 28B.65.070 Repealed.
 28B.65.080 Repealed.
 28B.65.110 Repealed.
 28B.65.900 Repealed.
 28B.65.905 Repealed.

28B.65.010 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.65.020 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.65.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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28B.65.040 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.65.050 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.65.060 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.65.070 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.65.080 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.65.110 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.65.900 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.65.905 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 28B.67 RCW

CUSTOMIZED EMPLOYMENT TRAINING

Sections

28B.67.020 Customized employment training program created—Applications—Criteria—Rules.
 28B.67.030 Employment training finance account.
 28B.67.902 Repealed.
 28B.67.903 Effective date—2017 c 21.

28B.67.020 Customized employment training program created—Applications—Criteria—Rules. (1) The Washington customized employment training program is hereby created to provide training assistance to employers locating or expanding in the state.

(2)(a) Application to receive funding under this program must be made to the board in a form and manner as specified by the board. Successful applicants must receive a training allowance from the board to cover the costs of training at a qualified training institution. Employers may not receive an allowance for training costs which exceed the maximum annual training cost per employee, as established by the board, and are not eligible to receive an allowance or allowances of over five hundred thousand dollars per calendar year.

(b) Allowances must be granted for applicants who meet the following criteria:

(i) The employer must have entered into an agreement with a qualified training institution to engage in customized training and the employer must agree to: (A) Upon completion of the training, make a payment to the employment training finance account created in RCW 28B.67.030 in an amount equal to one-quarter of the amount of the training allowance; and (B) over the subsequent eighteen months, make monthly or quarterly payments, as specified in the agreement, to the employment training finance account created in RCW 28B.67.030 in an amount equal to three-quarters of the amount of the training allowance. During calendar

years 2009 and 2010, participants may delay payments due under this section for up to eighteen months. The payments into the employment training finance account provided for in this section do not constitute payment to the institution.

(ii) When hiring, the employer must make good faith efforts, as determined by the board, to hire from trainees in the participant's training program. The agreement with the qualified training institution provided for in (b)(i) of this subsection must specify terms for reimbursement or additional payment to the employment training finance account by the employer if the participant does not, when hiring, make good faith efforts to hire from trainees in the participant's training program.

(iii) The training allowance may not be used to train workers who have been hired as a result of a strike or lockout.

(c) Preference is given to employers with fewer than fifty employees.

(d) Preference is given to training that leads to transferable skills that are interchangeable among different jobs, employers, or workplaces.

(3) Qualified training institutions may enter into agreements with four-year institutions of higher education, as defined in RCW 28B.10.016, in accordance with the interlocal cooperation act, chapter 39.34 RCW.

(4) The board and qualified training institutions may solicit and receive gifts, grants, funds, fees, and endowments, in trust or otherwise, from tribal, local, federal, or other governmental entities, as well as private sources, for the purpose of providing training allowances under chapter 112, Laws of 2006. All revenue thus solicited and received must be deposited into the employment training finance account created in RCW 28B.67.030.

(5) Qualified training institutions must make good faith efforts to develop training programs using trainers preferred by participants.

(6) For employers who (a) have requested training under the job skills program created under chapter 28C.04 RCW but are not able to participate in the job skills program because the funds have all been committed, and (b) desire to become participants in the Washington customized employment training program, the board shall ensure a seamless process toward participation.

(7) The board may adopt rules to implement this section. [2017 c 21 § 1; 2012 c 46 § 1; 2011 c 151 § 4. Prior: 2009 c 296 § 1; 2006 c 112 § 3.]

28B.67.030 Employment training finance account.

(1) All payments received from a participant in the Washington customized employment training program created in RCW 28B.67.020 must be deposited into the employment training finance account, which is hereby created in the custody of the state treasurer. Only the state board for community and technical colleges may authorize expenditures from the account and no appropriation is required for expenditures. The money in the account must be used solely for training allowances under the Washington customized employment training program created in RCW 28B.67.020 and for providing up to seventy-five thousand dollars per year for training, marketing, and facilitation services to increase the use of the program. The deposit of payments under this section from a participant ceases when the board specifies that the partici-

pant has met the monetary obligations of the program. During the 2013-2015 fiscal biennium, the legislature may transfer from the employment training finance account to the state general fund such amounts as reflect the excess fund balance in the account.

(2) All revenue solicited and received under the provisions of RCW 28B.67.020(4) must be deposited into the employment training finance account to provide training allowances.

(3) The definitions in RCW 28B.67.010 apply to this section. [2017 c 21 § 2; 2013 2nd sp.s. c 4 § 961; 2012 c 46 § 2; 2010 1st sp.s. c 26 § 4. Prior: 2009 c 564 § 1804; 2009 c 296 § 2; 2006 c 112 § 8.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2009 c 564: See note following RCW 2.68.020.

28B.67.902 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.67.903 Effective date—2017 c 21. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2017. [2017 c 21 § 4.]

Chapter 28B.76 RCW

OFFICE OF STUDENT FINANCIAL ASSISTANCE

(Formerly: Higher education coordinating board)

Sections

- 28B.76.502 Financial aid counseling curriculum for institutions with state need grant recipients—Financial education workshops.
28B.76.509 Highway worker memorial scholarship account.

28B.76.502 Financial aid counseling curriculum for institutions with state need grant recipients—Financial education workshops. (1) The office must provide a financial aid counseling curriculum to institutions of higher education with state need grant recipients. The curriculum must be available via a web site. The curriculum must include, but not be limited to:

(a) An explanation of the state need grant program rules, including maintaining satisfactory progress, repayment rules, and usage limits;

(b) Information on campus and private scholarships and work-study opportunities, including the application processes;

(c) An overview of student loan options with an emphasis on the repayment obligations a student borrower assumes regardless of program completion, including the likely consequences of default and sample monthly repayment amounts based on a range of student levels of indebtedness;

(d) An overview of personal finance, including basic money management skills such as living within a budget and handling credit and debt;

(e) Average salaries for a wide range of jobs;

(f) Financial education that meets the needs of, and includes perspectives from, a diverse group of students who are or were recipients of financial aid, including student loans, who may be trained by the financial education public-private partnership; and

(g) Contact information for local financial aid resources and the federal student aid ombuds' office.

(2) By the 2013-14 academic year, the institution of higher education must take reasonable steps to ensure that each state need grant recipient receives information outlined in subsection (1)(a) through (g) of this section by directly referencing or linking to the web site on the conditions of award statement provided to each recipient.

(3) By July 1, 2013, the office must disseminate the curriculum to all institutions of higher education participating in the state need grant program. The institutions of higher education may require nonstate need grant recipients to participate in all or portions of the financial aid counseling.

(4) Subject to the availability of amounts appropriated for this specific purpose, by the 2017-18 academic year, each institution of higher education must take reasonable steps to ensure that the institution presents, and each incoming student participates in, a financial education workshop. The scope of the workshop must include, but is not limited to, the information outlined in subsection (1)(b) through (g) of this section, and include recommendations by the financial education public-private partnership. The institutions are encouraged to present these workshops during student orientation or as early as possible in the academic year. [2017 c 177 § 1; 2013 c 23 § 59; 2012 c 31 § 1.]

28B.76.509 Highway worker memorial scholarship account. The highway worker memorial scholarship account is created in the custody of the state treasurer. Moneys received from legislative appropriations and transfers, private donations, public or private gifts and grants, conveyances, and other sources may be deposited into the account. Expenditures from the account may be made only for the purposes of providing scholarships to children and surviving spouses of highway workers who lost his or her life or became totally disabled while employed by a general contractor or subcontractor on a state transportation project. Children and surviving spouses must apply to the office of student financial assistance, and if found to be eligible, may receive a scholarship in an amount of the annual cost of tuition at the enrolled individual's institution of higher education or the cost of undergraduate tuition and state-mandated fees at the most expensive Washington state public university, whichever is less. Eligible individuals may receive up to four annual scholarships. Scholarships will be provided on a first-come, first-served basis subject to the availability of moneys in the account. Disbursements from the account may be authorized only by the office of student financial assistance or the Washington student achievement council. An appropriation is not required for expenditures, but the account is subject to allotment procedures under chapter 43.88 RCW. [2017 3rd sp.s. c 1 § 956.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Chapter 28B.77 RCW
STUDENT ACHIEVEMENT COUNCIL
(Formerly: Council for higher education)

Sections

28B.77.100 Data collection and research—Data-sharing agreements—Education data center as authorized representative for research purposes.

28B.77.100 Data collection and research—Data-sharing agreements—Education data center as authorized representative for research purposes. (1)(a) In consultation with the education data center, institutions of higher education, and state education agencies, the council shall identify the data needed to carry out its responsibilities for policy analysis and public information. The primary goals of the council's data collection and research are to describe how students and other beneficiaries of higher education are being served; to compare and contrast the state of Washington's higher education system with the rest of the nation; and to assist state policymakers and institutions in making policy decisions.

(b) For the council, assistance to state policymakers and institutions of higher education in making policy decisions includes but is not limited to annual reporting of a national comparison of tuition and fees.

(2) One of the goals of the education data center's data collection and research for higher education is to support higher education accountability. For the education data center, assistance to state policymakers and institutions of higher education in making policy decisions includes but is not limited to regular completion of:

(a) Educational cost study reports as provided in RCW 43.41.415 and information on state support received by students as provided in RCW 43.41.410; and

(b) Per-student funding at similar public institutions of higher education in the global challenge states.

(3) State-approved educator preparation programs must collect and provide data as required for approval by the professional educator standards board to the education data center.

(4) The education data center and the state-approved educator preparation programs as described in RCW 28A.410.210 shall enter data-sharing agreements to facilitate the transfer of data required by the professional educator standards board. The education data center must hold, analyze, and make available for research and monitoring by the professional educator standards board, state-approved educator preparation programs, and other researchers with appropriate data-sharing agreements, the data on the preparation of educators.

(5) The education data center shall be considered an authorized representative of the council and the office under applicable federal and state statutes for purposes of accessing and compiling student record data for research purposes. [2017 c 172 § 2; 2015 c 244 § 2; 2012 c 229 § 302; 2010 1st sp.s. c 7 § 58; 2004 c 275 § 12. Formerly RCW 28B.76.280.]

Finding—Intent—2017 c 172: "The legislature finds that the entities that are approved by the professional educator standards board collect and hold valuable information about candidates for educator certification. The education data center collects data for research purposes for the student achievement council and K-12 educational agencies. The training of effective teachers and understanding of the best practices of educator preparation

programs is valuable information for policymakers. The preparation programs currently approved are required to collect and hold this information, but due to federal privacy concerns, the submission of reports contains only aggregate data, and thus makes it impossible to follow the careers of state educators into the field. The education data center has legislative authority to collect this information and meets federal privacy requirements. Therefore, the legislature intends to require transfer to the entity charged with K-12 and higher education research, such data required and held by state-approved educator preparation programs, while fully respecting the privacy of students." [2017 c 172 § 1.]

Findings—2015 c 244: See note following RCW 28B.118.010.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Chapter 28B.95 RCW

WASHINGTON ADVANCED COLLEGE TUITION PAYMENT PROGRAM AND WASHINGTON COLLEGE SAVINGS PROGRAM

(Formerly: Advanced college tuition payment program)

Sections

28B.95.092 Advanced college tuition payment program—Reopening—Reinvigorating the program.

28B.95.092 Advanced college tuition payment program—Reopening—Reinvigorating the program. The governing body shall begin and continue to accept applications for new tuition unit contracts and authorize the sale of new tuition units by July 1, 2018. Upon reopening the advanced college tuition payment program, in any year in which the total annual sale of tuition units is below five hundred thousand, the governing body shall determine how to reinvigorate the advanced college tuition payment program to incentivize Washingtonians to enter into tuition unit contracts and purchase tuition units. [2017 3rd sp.s. c 1 § 957; 2016 c 69 § 11.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Chapter 28B.112 RCW

CAMPUS SEXUAL VIOLENCE

Sections

28B.112.030 Campus-affiliated advocates—Confidentiality of records.

28B.112.030 Campus-affiliated advocates—Confidentiality of records. (1) Survivor communications with, and records maintained by, campus-affiliated advocates, shall be confidential.

(2) Records maintained by a campus-affiliated advocate are not subject to public inspection and copying and are not subject to inspection or copying by an institution of higher education unless:

- (a) The survivor consents to inspection or copying;
- (b) There is a clear, imminent risk of serious physical injury or death of the survivor or another person;
- (c) Inspection or copying is required by federal law; or
- (d) A court of competent jurisdiction mandates that the record be available for inspection or copying.

(3) The definitions in this subsection apply throughout this section and RCW 42.56.240(16) unless the context clearly requires otherwise.

(a) "Campus-affiliated advocate" means a "sexual assault advocate" or "domestic violence advocate" as defined in RCW 5.60.060 or a victim advocate, employed by or volunteering for an institution of higher education.

(b) "Survivor" means any student, faculty, staff, or administrator at an institution of higher education that believes they were a victim of a sexual assault, dating or domestic violence, or stalking. [2017 c 72 § 2.]

Finding—Intent—2017 c 72: "The legislature finds that the state, along with the federal government and the state's public colleges and universities, plays an important role in protecting college students on and off campus from violence, including sexual assault. This role includes protecting students from repeat offenders and ensuring that survivors can trust that their college or university has education record protocols that prioritize their safety on and off campus.

The legislature commends the final report produced by the task force established by Substitute Senate Bill No. 5719 in 2015. The task force brought together experts across a range of fields to highlight ways in which both institutions of higher education and the state can enact stronger policies around the issue of campus sexual assault. As representatives of our state's public colleges and universities said two years ago, this subject needs to be a high priority for the state and existing state law has gaps that need to be fixed. Therefore, the legislature intends to enact changes based on several recommendations contained within the report to the legislature." [2017 c 72 § 1.]

Chapter 28B.115 RCW

HEALTH PROFESSIONAL CONDITIONAL SCHOLARSHIP PROGRAM

Sections

28B.115.070 Eligible credentialed health care professions—Health professional shortage areas.

28B.115.070 Eligible credentialed health care professions—Health professional shortage areas. (1) After June 1, 1992, the department, in consultation with the office and the department of social and health services, shall:

(a) Determine eligible credentialed health care professions for the purposes of the loan repayment and scholarship program authorized by this chapter. Eligibility shall be based upon an assessment that determines that there is a shortage or insufficient availability of a credentialed profession so as to jeopardize patient care and pose a threat to the public health and safety. The department shall consider the relative degree of shortages among professions when determining eligibility. The department may add or remove professions from eligibility based upon the determination that a profession is no longer in shortage. Should a profession no longer be eligible, participants or eligible students who have received scholarships shall be eligible to continue to receive scholarships or loan repayments until they are no longer eligible or until their service obligation has been completed;

(b) Determine health professional shortage areas for each of the eligible credentialed health care professions.

(2) For the 2017-2019 fiscal biennium, consideration for eligibility shall also be given to registered nursing students who have been accepted into an eligible nursing education program and have declared an intention to teach nursing upon completion of the nursing education program. [2017 3rd sp.s. c 1 § 958; 2015 3rd sp.s. c 4 § 947; 2011 1st sp.s. c 11 § 207; 2003 c 278 § 3; 1991 c 332 § 20.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—2003 c 278: See note following RCW 28C.18.120.

Chapter 28B.118 RCW

COLLEGE BOUND SCHOLARSHIP PROGRAM

Sections

28B.118.010 Program design.

28B.118.010 Program design. The office of student financial assistance shall design the Washington college bound scholarship program in accordance with this section and in alignment with the state need grant program in chapter 28B.92 RCW unless otherwise provided in this section.

(1) "Eligible students" are those students who:

(a) Qualify for free or reduced-price lunches. If a student qualifies in the seventh grade, the student remains eligible even if the student does not receive free or reduced-price lunches thereafter;

(b) Are dependent pursuant to chapter 13.34 RCW and:

(i) In grade seven through twelve; or

(ii) Are between the ages of eighteen and twenty-one and have not graduated from high school; or

(c) Were dependent pursuant to chapter 13.34 RCW and were adopted between the ages of fourteen and eighteen with a negotiated adoption agreement that includes continued eligibility for the Washington state college bound scholarship program pursuant to RCW 74.13A.025.

(2) Eligible students shall be notified of their eligibility for the Washington college bound scholarship program beginning in their seventh grade year. Students shall also be notified of the requirements for award of the scholarship.

(3)(a) To be eligible for a Washington college bound scholarship, a student eligible under subsection (1)(a) of this section must sign a pledge during seventh or eighth grade that includes a commitment to graduate from high school with at least a C average and with no felony convictions. The pledge must be witnessed by a parent or guardian and forwarded to the office of student financial assistance by mail or electronically, as indicated on the pledge form.

(b) A student eligible under subsection (1)(b) of this section shall be automatically enrolled, with no action necessary by the student or the student's family, and the enrollment form must be forwarded by the department of social and health services to the *higher education coordinating board or its successor by mail or electronically, as indicated on the form.

(4)(a) Scholarships shall be awarded to eligible students graduating from public high schools, approved private high schools under chapter 28A.195 RCW, or who received home-based instruction under chapter 28A.200 RCW.

(b)(i) To receive the Washington college bound scholarship, a student must graduate with at least a "C" average from a public high school or an approved private high school under chapter 28A.195 RCW in Washington or have received home-based instruction under chapter 28A.200 RCW, must

have no felony convictions, and must be a resident student as defined in RCW 28B.15.012(2) (a) through (d).

(ii) For eligible children as defined in subsection (1)(b) and (c) of this section, to receive the Washington college bound scholarship, a student must have received a high school equivalency certificate as provided in RCW 28B.50.536 or have graduated with at least a "C" average from a public high school or an approved private high school under chapter 28A.195 RCW in Washington or have received home-based instruction under chapter 28A.200 RCW, must have no felony convictions, and must be a resident student as defined in RCW 28B.15.012(2) (a) through (d).

For a student who does not meet the "C" average requirement, and who completes fewer than two quarters in the running start program, under chapter 28A.600 RCW, the student's first quarter of running start course grades must be excluded from the student's overall grade point average for purposes of determining their eligibility to receive the scholarship.

(5) A student's family income will be assessed upon graduation before awarding the scholarship.

(6) If at graduation from high school the student's family income does not exceed sixty-five percent of the state median family income, scholarship award amounts shall be as provided in this section.

(a) For students attending two or four-year institutions of higher education as defined in RCW 28B.10.016, the value of the award shall be (i) the difference between the student's tuition and required fees, less the value of any state-funded grant, scholarship, or waiver assistance the student receives; (ii) plus five hundred dollars for books and materials.

(b) For students attending private four-year institutions of higher education in Washington, the award amount shall be the representative average of awards granted to students in public research universities in Washington or the representative average of awards granted to students in public research universities in Washington in the 2014-15 academic year, whichever is greater.

(c) For students attending private vocational schools in Washington, the award amount shall be the representative average of awards granted to students in public community and technical colleges in Washington or the representative average of awards granted to students in public community and technical colleges in Washington in the 2014-15 academic year, whichever is greater.

(7) Recipients may receive no more than four full-time years' worth of scholarship awards.

(8) Institutions of higher education shall award the student all need-based and merit-based financial aid for which the student would otherwise qualify. The Washington college bound scholarship is intended to replace unmet need, loans, and, at the student's option, work-study award before any other grants or scholarships are reduced.

(9) The first scholarships shall be awarded to students graduating in 2012.

(10) The state of Washington retains legal ownership of tuition units awarded as scholarships under this chapter until the tuition units are redeemed. These tuition units shall remain separately held from any tuition units owned under chapter 28B.95 RCW by a Washington college bound scholarship recipient.

(11) The scholarship award must be used within five years of receipt. Any unused scholarship tuition units revert to the Washington college bound scholarship account.

(12) Should the recipient terminate his or her enrollment for any reason during the academic year, the unused portion of the scholarship tuition units shall revert to the Washington college bound scholarship account. [2017 3rd sp.s. c 20 § 11; 2015 3rd sp.s. c 36 § 8; 2015 c 244 § 3. Prior: 2012 c 229 § 402; 2012 c 163 § 8; 2011 1st sp.s. c 11 § 226; 2008 c 321 § 9; 2007 c 405 § 2.]

***Reviser's note:** The higher education coordinating board was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

Short title—2015 3rd sp.s. c 36: See note following RCW 28B.15.031.

Findings—2015 c 244: "The legislature finds that the college bound scholarship program has demonstrated that an early promise of financial aid results in increased high school graduation rates for low-income students. The promise of state financial aid to students from low-income families who work to graduate with sufficient grades and no felony convictions provides them with a path toward greater educational attainment and upward mobility. The scholarship program has the potential to move Washington toward its long-term goal of a better trained and educated workforce. Among the first two cohorts, college bound enrollees were fifteen percent and nineteen percent more likely to graduate from high school in 2012 and 2013 compared to low-income peers who were not part of the program.

The legislature also finds that a comprehensive review of the college bound scholarship program in 2014 resulted in unanimous recommendations to improve and enhance certain components of the program, including data collection, outreach, and program outcomes." [2015 c 244 § 1.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Legislative recommendation—2012 c 163: "The legislature strongly recommends that the entities with which the department of social and health services contracts or collaborates to provide educational support services and educational outcomes for students who are dependent under chapter 13.34 RCW and the private agency under contract with the *higher education coordinating board or its successor to perform outreach for the passport to college promise program under chapter 28B.117 RCW and the college bound scholarship program under chapter 28B.118 RCW explore models for harnessing technology to keep in constant touch with the students they serve and keep these students engaged." [2012 c 163 § 12.]

***Reviser's note:** The higher education coordinating board was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

Findings—Effective date—2012 c 163: See notes following RCW 28B.117.010.

Short title—2012 c 163: See RCW 28B.117.902.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—2008 c 321: See note following RCW 28A.655.061.

Chapter 28B.122 RCW AEROSPACE TRAINING STUDENT LOAN PROGRAM

Sections

28B.122.050 Aerospace training student loan account.

28B.122.050 Aerospace training student loan account. (1) The aerospace training student loan account is created in the custody of the state treasurer. No appropriation is required for expenditures of funds from the account for student loans. An appropriation is required for expenditures of

funds from the account for costs associated with program administration by the office. The account is not subject to allotment procedures under chapter 43.88 RCW.

(2) The office shall deposit into the account all moneys received for the program. The account shall be self-sustaining and consist of moneys received for the program by the office, and receipts from participant repayments, including principal and interest.

(3) Expenditures from the account may be used solely for student loans to participants in the program established by this chapter and costs associated with program administration by the office.

(4) Disbursements from the account may be made only on the authorization of the office.

(5) During the 2015-2017 and 2017-2019 fiscal biennia, the legislature may transfer from the aerospace training student loan account to the state general fund such amounts as reflect the excess fund balance of the account. [2017 3rd sp.s. c 1 § 959; 2016 sp.s. c 36 § 917; 2012 c 50 § 7; 2011 c 8 § 5.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

Effective date—2012 c 50 §§ 4-8: See note following RCW 28B.122.010.

Finding—Intent—2012 c 50: See note following RCW 28B.50.903.

Title 28C

VOCATIONAL EDUCATION

Chapters

28C.04 Vocational education.

28C.18 Workforce training and education.

Chapter 28C.04 RCW

VOCATIONAL EDUCATION

Sections

28C.04.410 Job skills program—Definitions.

28C.04.535 Washington award for vocational excellence—Granted annually—Notice—Presentation.

28C.04.410 Job skills program—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28C.04.390 and 28C.04.420.

(1) "Applicant" means an educational institution which has made application for a job skills grant under RCW 28C.04.390 and 28C.04.420.

(2) "Business and industry" means a private corporation, institution, firm, person, group, or association concerned with commerce, trades, manufacturing, or the provision of services within the state, or a public or nonprofit hospital licensed by the department of social and health services.

(3) "College board" means the state board for community and technical colleges under chapter 28B.50 RCW.

(4) "Dislocated worker" means an individual who meets the definition of dislocated worker contained in P.L. 113-128 Sec. 3.

(5) "Educational institution" means a public secondary or postsecondary institution, an independent institution, or a private career school or college within the state authorized by law to provide a program of skills training or education beyond the secondary school level. Any educational institu-

tion receiving a job skills grant under RCW 28C.04.420 shall be free of sectarian control or influence as set forth in Article IX, section 4 of the state Constitution.

(6) "Equipment" means tangible personal property which will further the objectives of the supported program and for which a definite value and evidence in support of the value have been provided by the donor.

(7) "Financial support" means any thing of value which is contributed by business, industry, and others to an educational institution which is reasonably calculated to support directly the development and expansion of a particular program under RCW 28C.04.390 and 28C.04.420 and represents an addition to any financial support previously or customarily provided to such educational institutions by the donor. "Financial support" includes, but is not limited to, funds, equipment, facilities, faculty, and scholarships for matriculating students and trainees.

(8) "Job skills grant" means funding that is provided to an educational institution by the college board for the development or significant expansion of a program under RCW 28C.04.390 and 28C.04.420.

(9) "Job skills program" means a program of skills training or education separate from and in addition to existing vocational education programs and which:

(a) Provides short-term training which has been designated for specific industries;

(b) Provides training for prospective employees before a new plant opens or when existing industry expands;

(c) Includes training and retraining for workers already employed by an existing industry or business where necessary to avoid dislocation or where upgrading of existing employees would create new vacancies for unemployed persons;

(d) Serves areas with high concentrations of economically disadvantaged persons and high unemployment;

(e) Promotes the growth of industry clusters;

(f) Serves areas where there is a shortage of skilled labor to meet job demands; or

(g) Promotes the location of new industry in areas affected by economic dislocation.

(10) "Technical assistance" means professional and any other assistance provided by business and industry to an educational institution, which is reasonably calculated to support directly the development and expansion of a particular program and which represents an addition to any technical assistance previously or customarily provided to the educational institutions by the donor. [2017 c 39 § 2. Prior: 2009 c 554 § 1; 1999 c 121 § 2; 1983 1st ex.s. c 21 § 2.]

Additional notes found at www.leg.wa.gov

28C.04.535 Washington award for vocational excellence—Granted annually—Notice—Presentation. Except for the 2017-18 and 2018-19 school years, the Washington award for vocational excellence shall be granted annually. It is the intent of the legislature to continue the policy of not granting the Washington award for vocational excellence in the 2019-20 and 2020-21 school years. The workforce training and education coordinating board shall notify the students receiving the award, their vocational instructors, local chambers of commerce, the legislators of their respective districts, and the governor, after final selections have been made. The

workforce training and education coordinating board, in conjunction with the governor's office, shall prepare appropriate certificates to be presented to the selected students. Awards shall be presented in public ceremonies at times and places determined by the workforce training and education coordinating board in cooperation with the office of the governor. [2017 3rd sp.s. c 1 § 960; 2015 3rd sp.s. c 4 § 948; 2013 2nd sp.s. c 4 § 964; 2011 1st sp.s. c 50 § 930; 1995 1st sp.s. c 7 § 4; 1984 c 267 § 4.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Additional notes found at www.leg.wa.gov

Chapter 28C.18 RCW

WORKFORCE TRAINING AND EDUCATION

Sections

28C.18.010 Definitions.

28C.18.060 Board's duties.

28C.18.150 Local unified plan for the workforce development system—Strategic plan.

28C.18.164 Opportunity internship program—Opportunity internship consortia—Contracts—Federal funds.

28C.18.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1) "Adult basic education" means instruction designed to achieve mastery of skills in reading, writing, oral communication, and computation at a level sufficient to allow the individual to function effectively as a parent, worker, and citizen in the United States, commensurate with that individual's actual ability level, and includes English as a second language and preparation and testing services for a high school equivalency certificate as provided in RCW 28B.50.536.

(2) "Board" means the workforce training and education coordinating board.

(3) "Director" means the director of the workforce training and education coordinating board.

(4) "Industry skill panel" means a regional partnership of business, labor, and education leaders that identifies skill gaps in a key economic cluster and enables the industry and public partners to respond to and be proactive in addressing workforce skill needs.

(5) "Training system" means programs and courses of secondary vocational education, technical college programs and courses, community college vocational programs and courses, private career school and college programs and courses, employer-sponsored training, adult basic education programs and courses, programs and courses funded by the federal workforce innovation and opportunity act, programs and courses funded by the federal vocational act, programs and courses funded under the federal adult education act, publicly funded programs and courses for adult literacy education, and apprenticeships, and programs and courses

offered by private and public nonprofit organizations that are representative of communities or significant segments of communities and provide job training or adult literacy services.

(6) "Vocational education" means organized educational programs offering a sequence of courses which are directly related to the preparation or retraining of individuals in paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. Such programs shall include competency-based applied learning which contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence as a productive and contributing member of society. Such term also includes applied technology education.

(7) "Workforce development council" means a local workforce development board as established in P.L. 113-128 Sec. 107.

(8) "Workforce skills" means skills developed through applied learning that strengthen and reinforce an individual's academic knowledge, critical thinking, problem solving, and work ethic and, thereby, develop the employability, occupational skills, and management of home and work responsibilities necessary for economic independence. [2017 c 39 § 3; 2013 c 39 § 16. Prior: 2009 c 151 § 5; 2008 c 103 § 2; 1996 c 99 § 2; 1991 c 238 § 2.]

Findings—Intent—2008 c 103: "(1) The legislature finds that a skilled workforce is essential for employers and job seekers to compete in today's global economy. The engines of economic progress are fueled by education and training. The legislature further finds that industry skill panels are a critical and proven form of public-private partnership that harness the expertise of leaders in business, labor, and education to identify workforce development strategies for industries that drive Washington's regional economies. Industry skill panels foster innovation and enable industry leaders and public partners to be proactive, addressing changing needs for businesses quickly and strategically. Industry skill panels leverage small state investments with private sector investments to ensure that public resources are better aligned with industry needs.

(2) The legislature further finds that industry skill panels support other valuable initiatives such as the department of community, trade, and economic development's cluster-based economic development grants; the community and technical college centers of excellence, high-demand funds, and the job skills program; and the employment security department's incumbent worker training funds. Industry skill panels provide a framework for coordinating these and other investments in line with economic and workforce development strategies identified by industry leaders. It is the intent of the legislature to support the development and maintenance of industry skill panels in key sectors of the economy as an efficient and effective way to support regional economic development." [2008 c 103 § 1.]

28C.18.060 Board's duties. The board, in cooperation with the operating agencies of the state training system and private career schools and colleges, shall:

(1) Concentrate its major efforts on planning, coordination evaluation, policy analysis, and recommending improvements to the state's training system;

(2) Advocate for the state training system and for meeting the needs of employers and the workforce for workforce education and training;

(3) Establish and maintain an inventory of the programs of the state training system, and related state programs, and perform a biennial assessment of the vocational education, training, and adult basic education and literacy needs of the state; identify ongoing and strategic education needs; and

assess the extent to which employment, training, vocational and basic education, rehabilitation services, and public assistance services represent a consistent, integrated approach to meet such needs;

(4) Develop and maintain a state comprehensive plan for workforce training and education, including but not limited to, goals, objectives, and priorities for the state training system, and review the state training system for consistency with the state comprehensive plan. In developing the state comprehensive plan for workforce training and education, the board shall use, but shall not be limited to: Economic, labor market, and populations trends reports in office of financial management forecasts; joint office of financial management and employment security department labor force, industry employment, and occupational forecasts; the results of scientifically based outcome, net-impact and cost-benefit evaluations; the needs of employers as evidenced in formal employer surveys and other employer input; and the needs of program participants and workers as evidenced in formal surveys and other input from program participants and the labor community;

(5) In consultation with the student achievement council, review and make recommendations to the office of financial management and the legislature on operating and capital facilities budget requests for operating agencies of the state training system for purposes of consistency with the state comprehensive plan for workforce training and education;

(6) Provide for coordination among the different operating agencies and components of the state training system at the state level and at the regional level;

(7) Develop a consistent and reliable database on vocational education enrollments, costs, program activities, and job placements from publicly funded vocational education programs in this state;

(8)(a) Establish standards for data collection and maintenance for the operating agencies of the state training system in a format that is accessible to use by the board. The board shall require a minimum of common core data to be collected by each operating agency of the state training system;

(b) Develop requirements for minimum common core data in consultation with the office of financial management and the operating agencies of the training system;

(9) Establish minimum standards for program evaluation for the operating agencies of the state training system, including, but not limited to, the use of common survey instruments and procedures for measuring perceptions of program participants and employers of program participants, and monitor such program evaluation;

(10) Every two years administer scientifically based outcome evaluations of the state training system, including, but not limited to, surveys of program participants, surveys of employers of program participants, and matches with employment security department payroll and wage files. Every five years administer scientifically based net-impact and cost-benefit evaluations of the state training system;

(11) In cooperation with the employment security department, provide for the improvement and maintenance of quality and utility in occupational information and forecasts for use in training system planning and evaluation. Improvements shall include, but not be limited to, development of state-based occupational change factors involving input by

employers and employees, and delineation of skill and training requirements by education level associated with current and forecasted occupations;

(12) Provide for the development of common course description formats, common reporting requirements, and common definitions for operating agencies of the training system;

(13) Provide for effectiveness and efficiency reviews of the state training system;

(14) In cooperation with the student achievement council, facilitate transfer of credit policies and agreements between institutions of the state training system, and encourage articulation agreements for programs encompassing two years of secondary workforce education and two years of postsecondary workforce education;

(15) In cooperation with the student achievement council, facilitate transfer of credit policies and agreements between private training institutions and institutions of the state training system;

(16) Develop policy objectives for the workforce innovation and opportunity act, P.L. 113-128, or its successor; develop coordination criteria for activities under the act with related programs and services provided by state and local education and training agencies; and ensure that entrepreneurial training opportunities are available through programs of each local workforce development board in the state;

(17) Make recommendations to the commission of student assessment, the state board of education, and the superintendent of public instruction, concerning basic skill competencies and essential core competencies for K-12 education. Basic skills for this purpose shall be reading, writing, computation, speaking, and critical thinking, essential core competencies for this purpose shall be English, math, science/technology, history, geography, and critical thinking. The board shall monitor the development of and provide advice concerning secondary curriculum which integrates vocational and academic education;

(18) Establish and administer programs for marketing and outreach to businesses and potential program participants;

(19) Facilitate the location of support services, including but not limited to, child care, financial aid, career counseling, and job placement services, for students and trainees at institutions in the state training system, and advocate for support services for trainees and students in the state training system;

(20) Facilitate private sector assistance for the state training system, including but not limited to: Financial assistance, rotation of private and public personnel, and vocational counseling;

(21) Facilitate the development of programs for school-to-work transition that combine classroom education and on-the-job training, including entrepreneurial education and training, in industries and occupations without a significant number of apprenticeship programs;

(22) Include in the planning requirements for local workforce development boards a requirement that the local workforce development boards specify how entrepreneurial training is to be offered through the one-stop system required under the workforce innovation and opportunity act, P.L. 113-128, or its successor;

(23) Encourage and assess progress for the equitable representation of racial and ethnic minorities, women, and people with disabilities among the students, teachers, and administrators of the state training system. Equitable, for this purpose, shall mean substantially proportional to their percentage of the state population in the geographic area served. This function of the board shall in no way lessen more stringent state or federal requirements for representation of racial and ethnic minorities, women, and people with disabilities;

(24) Participate in the planning and policy development of governor set-aside grants under P.L. 97-300, as amended;

(25) Administer veterans' programs, licensure of private vocational schools, the job skills program, and the Washington award for vocational excellence;

(26) Allocate funding from the state job training trust fund;

(27) Work with the director of commerce to ensure coordination among workforce training priorities and economic development and entrepreneurial development efforts, including but not limited to assistance to industry clusters;

(28) Conduct research into workforce development programs designed to reduce the high unemployment rate among young people between approximately eighteen and twenty-four years of age. In consultation with the operating agencies, the board shall advise the governor and legislature on policies and programs to alleviate the high unemployment rate among young people. The research shall include disaggregated demographic information and, to the extent possible, income data for adult youth. The research shall also include a comparison of the effectiveness of programs examined as a part of the research conducted in this subsection in relation to the public investment made in these programs in reducing unemployment of young adults. The board shall report to the appropriate committees of the legislature by November 15, 2008, and every two years thereafter. Where possible, the data reported to the legislative committees should be reported in numbers and in percentages;

(29) Adopt rules as necessary to implement this chapter.

The board may delegate to the director any of the functions of this section. [2017 c 39 § 4; 2014 c 112 § 103; 2012 c 229 § 579; 2009 c 151 § 6; 2008 c 212 § 2; 2007 c 149 § 1; 1996 c 99 § 4; 1993 c 280 § 17; 1991 c 238 § 7.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Finding—Intent—2008 c 212: "The legislature finds that there is a persistent and unacceptable high rate of unemployment among young people in Washington. The unemployment rate among those between eighteen and twenty-four years of age is seventeen percent, about four times the unemployment rate among the general population. It is the legislature's intent that the workforce training and education coordinating board examine programs to help young people be more successful in the workforce and make recommendations to improve policies and programs in Washington." [2008 c 212 § 1.]

Additional notes found at www.leg.wa.gov

28C.18.150 Local unified plan for the workforce development system—Strategic plan. (1) Workforce development councils, in partnership with local elected officials, shall develop and maintain a local unified plan for the workforce development system including, but not limited to, the local plan required by P.L. 113-128 Sec. 108. The unified

plan shall include a strategic plan that assesses local employment opportunities and skill needs, the present and future workforce, the current workforce development system, information on financial resources, diversity, goals, objectives, and strategies for the local workforce development system, and a system-wide financial strategy for implementing the plan. Local workforce development councils shall submit their strategic plans to the board for review and to the governor for approval.

(2) The strategic plan shall clearly articulate the connection between workforce and economic development efforts in the local area including the area industry clusters and the strategic clusters the community is targeting for growth. The plan shall include, but is not limited to:

(a) Data on current and projected employment opportunities in the local area;

(b) Identification of workforce investment needs of existing businesses and businesses considering location in the region, with special attention to industry clusters;

(c) Identification of educational, training, employment, and support service needs of job seekers and workers in the local area, including individuals with disabilities and other underrepresented talent sources;

(d) Analysis of the industry demand, potential labor force supply, and educational, employment, and workforce support available to businesses and job seekers in the region; and

(e) Collaboration with associate development organizations in regional planning efforts involving combined strategies around workforce development and economic development policies and programs. Combined planning efforts shall include, but not be limited to, assistance to industry clusters in the area.

(3) The board shall work with workforce development councils to develop implementation and funding strategies for purposes of this section. [2017 c 39 § 5; 2009 c 151 § 8.]

28C.18.164 Opportunity internship program—Opportunity internship consortia—Contracts—Federal funds. (1) Opportunity internship consortia may apply to the board to offer an opportunity internship program.

(a) The board, in consultation with the Washington state apprenticeship and training council, may select those consortia that demonstrate the strongest commitment and readiness to implement a high quality opportunity internship program for low-income high school students. The board shall place a priority on consortia with demonstrated experience working with similar populations of students and demonstrated capacity to assist a large number of students through the progression of internship or preapprenticeship, high school graduation, postsecondary education, and retention in a high-demand occupation. The board shall place a priority on programs that emphasize secondary career and technical education and nonbaccalaureate postsecondary education; however, programs that target four-year postsecondary degrees are eligible to participate.

(b)(i) Except as provided in (b)(ii) of this subsection (1), the board shall enter into a contract with each consortium selected to participate in the program. No more than ten consortia per year shall be selected to participate in the program, and to the extent possible, the board shall assure a geographic

distribution of consortia in regions across the state emphasizing a variety of targeted industries. Each consortium may select no more than one hundred low-income high school students per year to participate in the program.

(ii) For fiscal years 2011 through 2013, the board shall enter into a contract with each consortium selected to participate in the program. No more than twelve consortia per year shall be selected to participate in the program, and to the extent possible, the board shall assure a geographic distribution of consortia in regions across the state emphasizing a variety of targeted industries. No more than five thousand low-income high school students per year may be selected to participate in the program.

(2) Under the terms of an opportunity internship program contract, an opportunity internship consortium shall commit to the following activities which shall be conducted using existing federal, state, local, or private funds available to the consortium:

(a) Identify high-demand occupations in targeted industries for which opportunity internships or preapprenticeships shall be developed and provided;

(b) Develop and implement the components of opportunity internships, including paid or unpaid internships or pre-apprenticeships of at least ninety hours in length in high-demand occupations with employers in the consortium, mentoring and guidance for students who participate in the program, assistance with applications for postsecondary programs and financial aid, and a guarantee of a job interview with a participating employer for all opportunity internship graduates who successfully complete a postsecondary program of study;

(c) Once the internship or preapprenticeship components have been developed, conduct outreach efforts to inform low-income high school students about high-demand occupations, the opportunity internship program, options for postsecondary programs of study, and the incentives and opportunities provided to students who participate in the program;

(d) Obtain appropriate documentation of the low-income status of students who participate in the program;

(e) Maintain communication with opportunity internship graduates of the consortium who enroll in postsecondary programs of study; and

(f) Submit an annual report to the board on the progress of and participation in the opportunity internship program of the consortium.

(3) Opportunity internship consortia are encouraged to:

(a) Provide paid opportunity internships or preapprenticeships, including during the summer months to encourage students to stay enrolled in high school;

(b) Work with high schools to offer opportunity internships as approved worksite learning experiences where students can earn high school credit;

(c) Designate the local workforce development council as fiscal agent for the opportunity internship program contract;

(d) Work with area high schools to incorporate the opportunity internship program into comprehensive guidance and counseling programs such as the navigation 101 program; and

(e) Coordinate the opportunity internship program with other workforce development and postsecondary education

programs, including opportunity grants, the college bound scholarship program, federal workforce innovation and opportunity act initiatives, and college access challenge grants.

(4) The board shall seek federal funds that may be used to support the opportunity internship program, including providing the incentive payments under RCW 28C.18.168. [2017 c 39 § 6; 2010 1st sp.s. c 24 § 4; 2009 c 238 § 4.]

Findings—Intent—2010 1st sp.s. c 24: See note following RCW 28C.04.390.

Findings—Intent—2009 c 238: See note following RCW 28C.18.160.

Title 29A ELECTIONS

Chapters

29A.04	General provisions.
29A.05	Government of, by, and for the people act.
29A.36	Ballots and other voting forms.
29A.40	Elections by mail.
29A.60	Canvassing.
29A.84	Crimes and penalties.

Chapter 29A.04 RCW GENERAL PROVISIONS

Sections

29A.04.510	Election administration and certification board—Generally.
29A.04.903	Decodified.
29A.04.905	Decodified.

29A.04.510 Election administration and certification board—Generally. (1) The Washington state election administration and certification board is established and has the responsibilities and authorities prescribed by this chapter. The board is composed of the following members:

- (a) The secretary of state or the secretary's designee;
- (b) The state director of elections or the director's designee;
- (c) Four county auditors appointed by the Washington state association of county auditors or their alternates who are county auditors designated by the association to serve as such alternates, each appointee and alternate to serve at the pleasure of the association;
- (d) One member from each of the two largest political party caucuses of the house of representatives designated by and serving at the pleasure of the legislative leader of the respective caucus;
- (e) One member from each of the two largest political party caucuses of the senate designated by and serving at the pleasure of the legislative leader of the respective caucus; and
- (f) One representative from each major political party, designated by and serving at the pleasure of the chair of the party's state central committee.

(2) The board shall elect a chair from among its number; however, neither the secretary of state nor the state director of elections nor their designees may serve as the chair of the board. A majority of the members appointed to the board constitutes a quorum for conducting the business of the board. Chapter 42.30 RCW, the Open Public Meetings Act, and RCW 42.30.035 regarding minutes of meetings, apply to the meetings of the board.

[2017 RCW Supp—page 318]

(3) Members of the board shall serve without compensation. The secretary of state shall reimburse members of the board, other than those who are members of the legislature, for travel expenses in accordance with RCW 43.03.050 and 43.03.060. Members of the board who are members of the legislature shall be reimbursed as provided in chapter 44.04 RCW. [2017 3rd sp.s. c 25 § 31; 2003 c 111 § 149; 1992 c 163 § 3. Formerly RCW 29.60.010.]

29A.04.903 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.04.905 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 29A.05 RCW GOVERNMENT OF, BY, AND FOR THE PEOPLE ACT

Sections

29A.05.010	Short title—2017 c 1 (Initiative Measure No. 735).
29A.05.020	Intent.
29A.05.030	Findings.
29A.05.040	Joint resolution for amendment to United States Constitution.
29A.05.050	Recommendation to congress.
29A.05.060	Recommendation to state legislature.
29A.05.070	Secretary of state to deliver copies.
29A.05.900	Construction—2017 c 1 (Initiative Measure No. 735).

29A.05.010 Short title—2017 c 1 (Initiative Measure No. 735). Chapter 1, Laws of 2017 is known and may be cited as the "government of, by, and for the people act." [2017 c 1 § 9 (Initiative Measure No. 735, approved November 8, 2016).]

29A.05.020 Intent. Chapter 1, Laws of 2017 declares that the people of Washington state support amending the Constitution of the United States to eliminate the undue influence of concentrated money and political power on elections and governmental policy. The amendment would overturn decisions by the supreme court of the United States extending constitutional rights to corporations and other artificial legal entities as well as those decisions equating the spending of money with free speech. It also provides for the regulation and disclosure of political contributions and spending. [2017 c 1 § 1 (Initiative Measure No. 735, approved November 8, 2016).]

29A.05.030 Findings. (1) Free and fair elections, as well as honest representation, are essential to self-determination and self-governance as described in the Declaration of Independence and established in the Constitution of the United States.

(2) The American people have lost faith in the political process because their voices are not heard and their interests are not represented. Thus, an ever smaller percentage of Americans is motivated to vote.

(3) The U.S. Constitution makes no mention of corporations or other artificial entities; there are no provisions extending rights to such entities. However, through a series of decisions equating a "corporation" with a "person," the U.S. supreme court extended to corporations the constitutional rights and protections intended for people only.

(4) Unlike human beings, corporations can exist in perpetuity and in many countries at the same time. As a result many large corporations, both foreign and domestic, invest in campaigns to invalidate or bypass regulatory law intended to protect the public. Thus, corporate participation in the political process often conflicts with the public interest.

(5) Money is property; it is not speech. Nowhere in the U.S. Constitution is money equated with speech. Because advertising is limited and costly, equating the spending of money with free speech gives those with the most money the most speech.

(6) Whenever special interests, including very wealthy individuals, are able to spend unlimited amounts of money on political speech, candidates and officeholders can be corrupted and intimidated, and the free speech of most citizens is drowned out and denied. Monopolizing public speech neither promotes nor protects free speech.

(7) Anonymous contributions and spending for political gain promote dishonesty and corruption, preventing voters from assessing the motives of the speaker. The public must be able to hold funders of political speech accountable when their messages prove false or misleading. Full and prompt disclosure of funding sources is essential to an informed electorate, fair elections, and effective governance.

(8) Article V of the U.S. Constitution empowers the people and the states to use the amendment process to correct egregious decisions by the U.S. supreme court that subvert our representative government. [2017 c 1 § 2 (Initiative Measure No. 735, approved November 8, 2016).]

29A.05.040 Joint resolution for amendment to United States Constitution. The voters of the state of Washington urge immediate action by the current and future Washington state congressional delegations to propose a joint resolution for an amendment to the Constitution of the United States clarifying that:

(1) The rights listed and acknowledged in the Constitution of the United States are the rights of individual human beings only.

(2) The judiciary shall not construe the spending of money to be free speech under the First Amendment of the Constitution of the United States. Federal, state, and local governments shall be fully empowered to regulate political contributions and expenditures to ensure that no person or artificial legal entity gains undue influence over government and the political process.

(3) All political contributions and expenditures shall be disclosed promptly and in a manner accessible to voters prior to elections.

(4) Chapter 1, Laws of 2017 does not limit the people's rights to freedom of speech, freedom of the press, free exercise of religion, or freedom of association. [2017 c 1 § 3 (Initiative Measure No. 735, approved November 8, 2016).]

29A.05.050 Recommendation to congress. In accordance with the U.S. Constitution, the voters of the state of Washington urge the Washington state congressional delegation, and the U.S. congress generally, to include an amendment ratification method which will best ensure that the people are heard and represented during the ratification process.

[2017 c 1 § 4 (Initiative Measure No. 735, approved November 8, 2016).]

29A.05.060 Recommendation to state legislature.

The voters of the state of Washington urge our current and future Washington state legislatures to ratify such an amendment when passed by congress and delivered to the states for ratification. [2017 c 1 § 5 (Initiative Measure No. 735, approved November 8, 2016).]

29A.05.070 Secretary of state to deliver copies.

The Washington secretary of state is authorized and directed to immediately deliver copies of this initiative, when enacted, to the following persons: The governor of the state of Washington, all current members of the Washington state legislature, all current members of the United States congress, and the president of the United States. [2017 c 1 § 6 (Initiative Measure No. 735, approved November 8, 2016).]

29A.05.900 Construction—2017 c 1 (Initiative Measure No. 735). The provisions of chapter 1, Laws of 2017 are to be liberally construed to effectuate the intent, policies, and purposes of chapter 1, Laws of 2017. [2017 c 1 § 7 (Initiative Measure No. 735, approved November 8, 2016).]

Chapter 29A.36 RCW

BALLOTS AND OTHER VOTING FORMS

Sections

29A.36.071 Local measures—Ballot title—Formulation—Advertising.

29A.36.071 Local measures—Ballot title—Formulation—Advertising. (1) Except as provided to the contrary in RCW 82.14.036, 82.46.021, or 82.80.090, the ballot title of any referendum filed on an enactment or portion of an enactment of a local government and any other question submitted to the voters of a local government consists of three elements: (a) An identification of the enacting legislative body and a statement of the subject matter; (b) a concise description of the measure; and (c) a question. The ballot title must conform with the requirements and be displayed substantially as provided under RCW 29A.72.050, except that the concise description must not exceed seventy-five words; however, a concise description submitted on behalf of a proposed or existing regional transportation investment district or a proposed fire protection district, as provided in RCW 52.02.160, may exceed seventy-five words. If the local governmental unit is a city or a town, or if the ballot title is for a referendum under RCW 35.13A.115, the concise statement must be prepared by the city or town attorney. If the local governmental unit is a county, the concise statement must be prepared by the prosecuting attorney of the county. If the unit is a unit of local government other than a city, town, or county, the concise statement must be prepared by the prosecuting attorney of the county within which the majority area of the unit is located.

(2) A referendum measure on the enactment of a unit of local government must be advertised in the manner provided for nominees for elective office.

(3) Subsection (1) of this section does not apply if another provision of law specifies the ballot title for a specific

type of ballot question or proposition. [2017 c 328 § 4; 2015 c 172 § 3; 2006 c 311 § 9; 2004 c 271 § 169.]

Findings—2006 c 311: See note following RCW 36.120.020.

Chapter 29A.40 RCW ELECTIONS BY MAIL

Sections

29A.40.160 Voting centers.

29A.40.160 Voting centers. (1) Each county auditor shall open a voting center each primary, special election, and general election. The voting center shall be open during business hours during the voting period, which begins eighteen days before, and ends at 8:00 p.m. on the day of, the primary, special election, or general election.

(2) The voting center must provide voter registration materials, ballots, provisional ballots, disability access voting units, sample ballots, instructions on how to properly vote the ballot, a ballot drop box, and voters' pamphlets, if a voters' pamphlet has been published.

(3) The voting center must be accessible to persons with disabilities. Each state agency and entity of local government shall permit the use of any of its accessible facilities as voting centers when requested by a county auditor.

(4) The voting center must provide at least one voting unit certified by the secretary of state that provides access to individuals who are blind or visually impaired, enabling them to vote with privacy and independence.

(5) No person may interfere with a voter attempting to vote in a voting center. Interfering with a voter attempting to vote is a violation of RCW 29A.84.510.

(6) Before opening the voting center, the voting equipment shall be inspected to determine if it has been properly prepared for voting. If the voting equipment is capable of direct tabulation of each voter's choices, the county auditor shall verify that no votes have been registered for any issue or office, and that the device has been sealed with a unique numbered seal at the time of final preparation and logic and accuracy testing. A log must be made of all device numbers and seal numbers.

(7) The county auditor shall require any person desiring to vote at a voting center to either sign a ballot declaration or provide identification.

(a) The signature on the declaration must be compared to the signature on the voter registration record before the ballot may be counted. If the voter registered using a mark, or can no longer sign his or her name, the election officers shall require the voter to be identified by another registered voter.

(b) The identification must be valid photo identification, such as a driver's license, state identification card, student identification card, tribal identification card, or employer identification card. Any individual who desires to vote in person but cannot provide identification shall be issued a provisional ballot, which shall be accepted if the signature on the declaration matches the signature on the voter's registration record.

(8) Provisional ballots must be accompanied by a declaration and security envelope, as required by RCW 29A.40.091, and space for the voter's name, date of birth, cur-

[2017 RCW Supp—page 320]

rent and former registered address, reason for the provisional ballot, and disposition of the provisional ballot. The voter shall vote and return the provisional ballot at the voting center. The voter must be provided information on how to ascertain whether the provisional ballot was counted and, if applicable, the reason why the vote was not counted.

(9) Any voter may take printed or written material into the voting device to assist in casting his or her vote. The voter shall not use this material to electioneer and shall remove it when he or she leaves the voting center.

(10) If any voter states that he or she is unable to cast his or her votes due to a disability, the voter may designate a person of his or her choice, or two election officers, to enter the voting booth and record the votes as he or she directs.

(11) No voter is entitled to vote more than once at a primary, special election, or general election. If a voter incorrectly marks a ballot, he or she may be issued a replacement ballot.

(12) A voter who has already returned a ballot but requests to vote at a voting center shall be issued a provisional ballot. The canvassing board shall not count the provisional ballot if it finds that the voter has also voted a regular ballot in that primary, special election, or general election.

(13) The county auditor must prevent overflow of each ballot drop box to allow a voter to deposit his or her ballot securely. Ballots must be removed from a ballot drop box by at least two people, with a record kept of the date and time ballots were removed, and the names of people removing them. Ballots from drop boxes must be returned to the counting center in secured transport containers. A copy of the record must be placed in the container, and one copy must be transported with the ballots to the counting center, where the seal number must be verified by the county auditor or a designated representative. All ballot drop boxes must be secured at 8:00 p.m. on the day of the primary, special election, or general election.

(14) Any voter who is inside or in line at the voting center at 8:00 p.m. on the day of the primary, special election, or general election must be allowed to vote.

(15) For each primary, special election, and general election, the county auditor may provide election services at locations in addition to the voting center. The county auditor has discretion to establish which services will be provided at the additional locations, and which days and hours the locations will be open, except that the county auditor must establish a minimum of one ballot drop box per fifteen thousand registered voters in the county and a minimum of one ballot drop box in each city, town, and census-designated place in the county with a post office. [2017 c 327 § 1; 2011 c 10 § 43.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Chapter 29A.60 RCW CANVASSING

Sections

29A.60.235 Reconciliation reports.

29A.60.235 Reconciliation reports. (1) The county auditor shall prepare at the time of certification an election reconciliation report that discloses the following information:

- (a) The number of registered voters;
 - (b) The number of ballots issued;
 - (c) The number of ballots received;
 - (d) The number of ballots counted;
 - (e) The number of ballots rejected;
 - (f) The number of provisional ballots issued;
 - (g) The number of provisional ballots received;
 - (h) The number of provisional ballots counted;
 - (i) The number of provisional ballots rejected;
 - (j) The number of federal write-in ballots received;
 - (k) The number of federal write-in ballots counted;
 - (l) The number of federal write-in ballots rejected;
 - (m) The number of overseas and service ballots issued by mail, email, web site link, or facsimile;
 - (n) The number of overseas and service ballots received by mail, email, or facsimile;
 - (o) The number of overseas and service ballots counted by mail, email, or facsimile;
 - (p) The number of overseas and service ballots rejected by mail, email, or facsimile;
 - (q) The number of nonoverseas and nonservice ballots sent by email, web site link, or facsimile;
 - (r) The number of nonoverseas and nonservice ballots received by email or facsimile;
 - (s) The number of nonoverseas and nonservice ballots that were rejected for:
 - (i) Failing to send an original or hard copy of the ballot by the certification deadline; or
 - (ii) Any other reason, including the reason for rejection;
 - (t) The number of voters credited with voting; and
 - (u) Any other information the auditor or secretary of state deems necessary to reconcile the number of ballots counted with the number of voters credited with voting.
- (2) The county auditor must make the report available to the public at the auditor's office and must publish the report on the auditor's web site at the time of certification. The county auditor must submit the report to the secretary of state at the time of certification in any form determined by the secretary of state.
- (3)(a) The secretary of state must collect the reconciliation reports from each county auditor and prepare a statewide reconciliation report for each state primary and general election. The report may be produced in a form determined by the secretary that includes the information as described in this subsection (3). The report must be prepared and published on the secretary of state's web site within two months after the last county's election results have been certified.
- (b) The state report must include a comparison among counties on rates of votes received, counted, and rejected, including provisional, write-in, overseas ballots, and ballots transmitted electronically. The comparison information may be in the form of rankings, percentages, or other relevant quantifiable data that can be used to measure performance and trends.
- (c) The state report must also include an analysis of the data that can be used to develop a better understanding of election administration and policy. The analysis must combine data, as available, over multiple years to provide broader comparisons and trends regarding voter registration and turnout and ballot counting. The analysis must incorporate national election statistics to the extent such information is

available. [2017 c 300 § 1; 2011 c 10 § 62; 2009 c 369 § 41; 2005 c 243 § 11.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Chapter 29A.84 RCW CRIMES AND PENALTIES

Sections

29A.84.540 Ballots—Removing from voting center or ballot drop location.

29A.84.540 Ballots—Removing from voting center or ballot drop location. Any person who, without lawful authority, removes a ballot from a voting center or ballot drop location is guilty of a class C felony punishable to the same extent as a class C felony that is punishable under RCW 9A.20.021. [2017 c 283 § 3; 2011 c 10 § 72; 2003 c 111 § 2124. Prior: 1991 c 81 § 1; 1965 c 9 § 29.85.010; prior: 1893 c 115 § 2; RRS § 5396. Formerly RCW 29.85.010.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Additional notes found at www.leg.wa.gov

Title 30A

WASHINGTON COMMERCIAL BANK ACT

Chapters

30A.24 Investment of trust funds.

Chapter 30A.24 RCW

INVESTMENT OF TRUST FUNDS

Sections

30A.24.080 Repealed.

30A.24.080 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Title 31

MISCELLANEOUS LOAN AGENCIES

Chapters

- 31.04 Consumer loan act.**
- 31.12 Washington state credit union act.**
- 31.45 Check cashers and sellers.**

Chapter 31.04 RCW CONSUMER LOAN ACT

Sections

- 31.04.185 Repealed.
- 31.04.501 Repealed.

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

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

Chapter 31.12 RCW

WASHINGTON STATE CREDIT UNION ACT

Sections

31.12.005	Definitions.
31.12.055	Manner of organizing—Articles of incorporation—Submission to director.
31.12.065	Bylaws—Submission to director.
31.12.195	Special membership meetings.
31.12.246	Removal of directors and supervisory committee members—Interim directors and supervisory committee members.
31.12.267	Officials—Fiduciary duty—Information relied on—Definition.
31.12.326	Supervisory committee—Membership—Terms—Vacancies—Operating officers and employees may not serve—Audit committee alternative.
31.12.335	Supervisory committee—Duties.
31.12.386	Voting rights—Methods—Proxy—Under eighteen years of age.
31.12.404	Additional powers—Powers conferred on federal credit union—Authority of director.
31.12.413	Low-income credit unions—Director's approval required—Powers—Rules.
31.12.436	Investment of funds—When investment later becomes impermissible.

31.12.005 Definitions. Unless the context clearly requires otherwise, as used in this chapter:

(1) "Board" means the board of directors of a credit union.

(2) "Board officer" means an officer of the board elected under RCW 31.12.265(1).

(3) "Branch" of a credit union, out-of-state credit union, or foreign credit union means any facility that meets all of the following criteria:

(a) The facility is a staffed physical facility;

(b) The facility is owned or leased in whole or part by the credit union or its credit union service organization; and

(c) Deposits and withdrawals may be made at the facility.

(4) "Capital" means a credit union's reserves, undivided earnings, and allowance for loan and lease losses, and other items that may be included under RCW 31.12.413 or by rule or order of the director.

(5) "Credit union" means a credit union organized and operating under this chapter.

(6) "Credit union service organization" means an organization that a credit union has invested in pursuant to RCW 31.12.436(1)(h), or a credit union service organization invested in by an out-of-state, federal, or foreign credit union.

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

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

(9) "Federal credit union" means a credit union organized and operating under the laws of the United States.

(10) "Financial institution" means any commercial bank, trust company, savings bank, or savings and loan association, whether state or federally chartered, and any credit union, out-of-state credit union, or federal credit union.

(11) "Foreign credit union" means a credit union organized and operating under the laws of another country or other foreign jurisdiction.

(12) "Insolvency" means:

(a) If, under United States generally accepted accounting principles, the recorded value of the credit union's assets are

less than its obligations to its share account holders, depositors, creditors, and others; or

(b) If it is likely that the credit union will be unable to pay its obligations or meet its share account holders' and depositors' demands in the normal course of business.

(13) "Loan" means any loan, overdraft line of credit, extension of credit, or lease, in whole or in part.

(14) "Low-income member" means a member whose family income is not more than eighty percent of the median family income for the metropolitan statistical area where the member lives or for the national metropolitan area where the member lives, whichever is greater, or a member or potential member who earns not more than eighty percent of the total median earnings for individuals for the metropolitan statistical area where the member lives or for the national metropolitan area where the member lives, whichever is greater. For members living outside of a metropolitan statistical area, the department must apply the statewide or national nonmetropolitan area median family income or total median earnings for individuals.

(15) "Material violation of law" means:

(a) If the credit union or person has violated a material provision of:

(i) Law;

(ii) Any cease and desist order issued by the director;

(iii) Any condition imposed in writing by the director in connection with the approval of any application or other request of the credit union; or

(iv) Any supervisory agreement, or any other written agreement entered into with the director;

(b) If the credit union or person has concealed any of the credit union's books, papers, records, or assets, or refused to submit the credit union's books, papers, records, or affairs for inspection to any examiner of the state or, as appropriate, to any examiner of the national credit union administration; or

(c) If a member of a credit union board of directors or supervisory committee, or an officer of a credit union, has breached his or her fiduciary duty to the credit union.

(16) "Net worth" means a credit union's capital, less the allowance for loan and lease losses.

(17) "Operating officer" means an employee of a credit union designated as an officer pursuant to RCW 31.12.265(2).

(18) "Organization" means a corporation, partnership, association, limited liability company, trust, or other organization or entity.

(19) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or United States territory or possession.

(20) "Person" means an organization or a natural person including, but not limited to, a sole proprietorship.

(21) "Principally" or "primarily" means more than one-half.

(22) "Senior operating officer" includes:

(a) An operating officer who is a vice president or above; and

(b) Any employee who has policy-making authority.

(23) "Significantly undercapitalized" means a net worth to total assets ratio of less than four percent.

(24) "Small credit union" means a credit union with up to ten million dollars in total assets.

(25) "Unsafe or unsound condition" means, but is not limited to:

- (a) If the credit union is insolvent;
- (b) If the credit union has incurred or is likely to incur losses that will deplete all or substantially all of its net worth;
- (c) If the credit union is in imminent danger of losing its share and deposit insurance or guarantee; or
- (d) If the credit union is significantly undercapitalized.

(26) "Unsafe or unsound practice" means any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the likely consequences of which, if continued, would be abnormal risk of loss or danger to a credit union, its members, or an organization insuring or guaranteeing its shares and deposits. [2017 c 61 § 1. Prior: 2015 c 114 § 1; 2013 c 34 § 1; 2010 c 87 § 1; 2001 c 83 § 1; 1997 c 397 § 2; prior: 1994 c 256 § 68; 1994 c 92 § 175; 1984 c 31 § 2.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.055 Manner of organizing—Articles of incorporation—Submission to director. (1) Persons applying for the organization of a credit union shall execute articles of incorporation stating:

- (a) The initial name and location of the credit union;
- (b) That the duration of the credit union is perpetual;
- (c) That the purpose of the credit union is to engage in the business of a credit union and any other lawful activities permitted to a credit union by applicable law;
- (d) The number of its directors, which must not be less than five or greater than fifteen, and the names of the persons who are to serve as the initial directors;
- (e) The names of the incorporators;
- (f) The extent, if any, to which personal liability of directors is limited;
- (g) The extent, if any, to which directors, supervisory committee members, officers, employees, and others will be indemnified by the credit union; and
- (h) Any other provision which is not inconsistent with this chapter.

(2) Applicants shall submit the articles of incorporation in triplicate to the director. [2017 c 61 § 2; 1997 c 397 § 6. Prior: 1994 c 256 § 71; 1994 c 92 § 179; 1984 c 31 § 7.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.065 Bylaws—Submission to director. (1) Persons applying for the organization of a credit union shall adopt bylaws that prescribe the manner in which the business of the credit union shall be conducted. The bylaws shall include:

- (a) The name of the credit union;
- (b) The field of membership of the credit union;
- (c) Reasonable qualifications for admission as a member of the credit union, and the procedures for expelling a member;
- (d) The number of directors and supervisory committee members, and the length of terms they serve and the permissible term length of any interim director or supervisory committee member;
- (e) Any qualification for eligibility to serve on the credit union's board or supervisory committee;

(f) The number of credit union employees that may serve on the board, if any;

(g) The frequency of regular meetings of the board and the supervisory committee, and the manner in which members of the board or supervisory committee will be notified of meetings;

(h) The timing of the annual membership meeting;

(i) The manner in which members may call a special membership meeting;

(j) The manner in which members will be notified of membership meetings;

(k) The number of members constituting a quorum at a membership meeting;

(l) Provisions, if any, for the indemnification of directors, supervisory committee members, officers, employees, and others by the credit union, if not included in the articles of incorporation; and

(m) Any other provision which is not inconsistent with this chapter.

(2) Applicants shall submit the bylaws in duplicate to the director. [2017 c 61 § 3; 2001 c 83 § 2; 1997 c 397 § 7. Prior: 1994 c 256 § 72; 1994 c 92 § 180; 1984 c 31 § 8.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.195 Special membership meetings. (1) A special membership meeting of a credit union may be called by:

(a) A majority vote of the board;

(b) Written petition signed or similarly authenticated by at least ten percent or two thousand of the members of a credit union, whichever is less;

(c) A unanimous vote of the supervisory committee for the purpose of presenting and discussing a special report by the supervisory committee regarding the failure of the board to adequately respond within a reasonable time frame to findings or recommendations previously provided to the board by the supervisory committee pursuant to RCW 31.12.335; or

(d) Unanimous vote of the supervisory committee to suspend a director for cause pursuant to RCW 31.12.345 if the supervisory committee has provided the director and the board with written notice of such cause and a statement of reasons why cause was found, and the board and the director have failed to act within a reasonable period to rectify the activity that constitutes cause.

(2) A call of a special membership meeting of a credit union shall be in writing submitted to the secretary of the credit union by the board, the petitioners, or the supervisory committee as applicable, and shall state specifically the purpose or purposes for which the meeting is called and the agenda item or items for consideration by the members at the meeting. If the special membership meeting is called for the removal of one or more directors or supervisory committee members, the call shall state the name of each individual whose removal is sought.

(3)(a) Upon receipt of a call for a special membership meeting, the secretary of the credit union shall determine whether the call satisfies the requirements of this section. If so, the secretary shall determine the date, time, and place at which the special membership meeting will be held, and provide notice of the special membership meeting in accordance with the requirements of this subsection. The special membership meeting must be held at a reasonable location within

the county in which the principal place of business of the credit union is located, unless provided otherwise by the bylaws. The special membership meeting must be held no later than ninety days after the date on which the call is received by the secretary.

(b) The secretary shall give notice of the special membership meeting at least thirty days before the date of the meeting, or within such other reasonable time period as may be provided by the bylaws. The notice must state the purpose or purposes for which the special membership meeting is called, and the agenda items for the meeting. If the special membership meeting is called for the removal of one or more directors or supervisory committee members, the notice must state the name of each individual whose removal is sought.

(4) Except as provided in this subsection, the chairperson of the board shall preside over special membership meetings. If the purpose of the special membership meeting includes the removal of the chairperson, the next highest ranking board officer whose removal is not sought shall preside over the meeting. If the removal of all board officers is sought, the chairperson of the supervisory committee shall preside over the special membership meeting.

(5) At the special membership meeting, only those agenda items that are stated in the notice for the meeting may be considered.

(6) Special membership meetings shall be conducted according to the rules of procedure approved by the board. [2017 c 61 § 4; 2015 c 114 § 2; 2013 c 34 § 2; 1997 c 397 § 13. Prior: 1994 c 256 § 77; 1994 c 92 § 188; 1987 c 338 § 3; 1984 c 31 § 21.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.246 Removal of directors and supervisory committee members—Interim directors and supervisory committee members. (1) The members of a credit union may remove a director of the credit union at a special membership meeting held in accordance with RCW 31.12.195 and called for that purpose. If the members remove a director, the members may at the same special membership meeting elect an interim director to complete the remainder of the former director's term of office or authorize the board to appoint an interim director as provided in RCW 31.12.225.

(2) The members of a credit union may remove a supervisory committee member at a special membership meeting held in accordance with RCW 31.12.195 and called for that purpose. If the members remove a supervisory committee member, the members may at the same special membership meeting elect an interim supervisory committee member to complete the remainder of the former supervisory committee member's term of office or authorize the supervisory committee to appoint an interim supervisory committee member as provided in RCW 31.12.326. [2017 c 61 § 5; 1997 c 397 § 16; 1984 c 31 § 26.]

31.12.267 Officials—Fiduciary duty—Information relied on—Definition. (1) Officials owe a fiduciary duty to the credit union, and must discharge the duties of their positions:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the official reasonably believes to be in the best interests of the credit union.

(2) In discharging the duties of an official, the official is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the credit union whom the official reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the official reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors or supervisory committee of which the official is not a member if the official reasonably believes the committee merits confidence.

(3) An official is not acting in good faith if the official has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) An official is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section.

(5) As used in this section, "official" means a director, board officer, supervisory committee member, or senior operating officer of the credit union. [2017 c 61 § 6; 2010 c 87 § 3; 2001 c 83 § 9; 1997 c 397 § 19.]

31.12.326 Supervisory committee—Membership—Terms—Vacancies—Operating officers and employees may not serve—Audit committee alternative. (1) A supervisory committee of at least three members must be elected at the annual membership meeting of the credit union. Members of the supervisory committee shall serve a term of three years, unless sooner removed under this chapter or until their successors are qualified and elected or appointed. The members of the supervisory committee shall be divided into classes so that as equal a number as is possible is elected each year.

(2) At least one supervisory committee member may attend each regular meeting of the board. However, supervisory committee members may be excluded from executive sessions of board meetings.

(3)(a) If a supervisory committee member is absent from more than one-third of the committee meetings in any twelve-month period in a term without being reasonably excused by the committee, the member shall no longer serve as a member of the committee for the period remaining in the term.

(b) The supervisory committee shall promptly notify the member that he or she shall no longer serve as a committee member. Failure to provide notice does not affect the termination of the member's service under (a) of this subsection.

(4) A supervisory committee member must be a natural person and a member of the credit union. If a member of the supervisory committee ceases to be a member of the credit union, the member shall no longer serve as a committee member. The chairperson of the supervisory committee may not serve as a board officer.

(5) Except as provided in subsection (6) of this section, any vacancy on the committee must be filled by an interim

member appointed by the committee, unless the interim member would serve a term of fewer than ninety days. Interim members appointed to fill vacancies created by expansion of the committee will serve until the next annual meeting of members. Other interim members may serve out the unexpired term of the former member, unless provided otherwise by the credit union's bylaws. However, if all positions on the committee are vacant at the same time, the board may appoint interim members to serve until the next annual membership meeting.

(6) In the case of a merger between two credit unions pursuant to RCW 31.12.461, a supervisory committee member of the merging credit union may continue to serve as a supervisory committee member of the continuing credit union for a period not to exceed the equivalent of the duration of his or her unexpired term on the supervisory committee of the merging credit union, provided that the approved plan of merger or other agreement approved by the director provides for such service on the continuing credit union's supervisory committee with a corresponding expansion in the size of the continuing credit union's supervisory committee.

(7) No operating officer or employee of a credit union may serve on the credit union's supervisory committee. No more than one director may be a member of the supervisory committee at the same time, unless provided otherwise by the credit union's bylaws. No member of the supervisory committee may serve on the credit committee or investment committee of the credit union while serving on the supervisory committee.

(8) A credit union may establish an audit committee in lieu of a supervisory committee. An audit committee and its members possess the same duties and powers, and are subject to the same limitations as a supervisory committee and its members pursuant to this chapter. [2017 c 61 § 7; 2015 c 114 § 5; 2001 c 83 § 10; 1997 c 397 § 22; 1984 c 31 § 34.]

31.12.335 Supervisory committee—Duties. (1) The supervisory committee of a credit union shall:

(a) Keep informed as to the financial condition of the credit union and the decisions of the credit union's board;

(b) Perform or arrange for a complete annual audit of the credit union and a verification of its members' accounts and provide any related findings and recommendations to the board;

(c) Provide an annual report to members at each annual membership meeting;

(d) Perform or arrange for additional audits as requested by the board or management or as deemed necessary by the supervisory committee and provide any related findings and recommendations to management or the board as deemed appropriate by the supervisory committee;

(e) Monitor the implementation of management responses to material adverse findings in audits and regulatory examinations;

(f) Implement a process for the supervisory committee to receive and respond to whistleblower complaints; and

(g) Perform any additional duties as specified by the board or in the credit union's bylaws.

(2) The supervisory committee may in its sole discretion retain, at the credit union's expense, independent counsel or other professional advisors or consultants as necessary to per-

form the duties under this section. [2017 c 61 § 8; 2001 c 83 § 11; 1997 c 397 § 23. Prior: 1994 c 256 § 82; 1994 c 92 § 192; 1984 c 31 § 35.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.386 Voting rights—Methods—Proxy—Under eighteen years of age. (1) No member may have more than one vote. A natural person may not hold more than one membership in a credit union on behalf of himself or herself. An organization having membership in a credit union may cast one vote through a natural person agent duly authorized in writing.

(2) Members may vote, as prescribed in the credit union's bylaws, by mail ballot, absentee ballot, or other method. However, no member may vote by proxy.

(3) A member who is not at least eighteen years of age is not eligible to vote as a member unless otherwise provided in the credit union's bylaws. [2017 c 61 § 9; 1997 c 397 § 28; 1994 c 256 § 76; 1984 c 31 § 17. Formerly RCW 31.12.155.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.404 Additional powers—Powers conferred on federal credit union—Authority of director. (1) Notwithstanding any other provision of law, and in addition to all powers and authorities, express or implied, that a credit union has under the laws of this state, a credit union has the powers and authorities that a federal credit union had on December 31, 1993, or a subsequent date not later than July 23, 2017.

(2) Notwithstanding any other provision of law, and in addition to the powers and authorities, express or implied, that a credit union has under subsection (1) of this section, a credit union has the powers and authorities that a federal credit union has, and an out-of-state credit union operating a branch in Washington has, subsequent to July 23, 2017, if the director finds that the exercise of the power and authority serves the convenience and advantage of members of credit unions, and maintains the fairness of competition and parity between credit unions and federal or out-of-state credit unions. However, a credit union:

(a) Must still comply with RCW 31.12.408; and

(b) Is not granted the field of membership powers or authorities of any out-of-state credit union operating a branch in Washington.

(3) The restrictions, limitations, and requirements applicable to specific powers or authorities of federal or out-of-state credit unions apply to credit unions exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to the specific exercise of the powers or authorities granted credit unions solely under this section.

(4) As used in this section, "powers and authorities" include, but are not limited to, powers and authorities in corporate governance matters. [2017 c 61 § 10; 2015 c 114 § 9; 2001 c 83 § 15; 1997 c 397 § 31. Prior: 1994 c 256 § 75; 1994 c 92 § 187; 1987 c 338 § 1; 1984 c 31 § 15. Formerly RCW 31.12.136.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

31.12.413 Low-income credit unions—Director's approval required—Powers—Rules. (1) A credit union may apply in writing to the director for designation as a low-

income credit union. To qualify for approval of this designation, the credit union must provide evidence satisfactory to the director that at least fifty percent of a substantial and well-defined segment of the credit union's members or potential primary members are low-income members.

(2) Among other powers and authorities, a low-income credit union may:

(a) Issue secondary capital accounts approved in advance by the director upon application of the credit union; and

(b) Accept and maintain shares and deposits from non-members.

(3) The director may adopt rules for the organization and operation of low-income credit unions including, but not limited to, rules concerning secondary capital accounts and requiring disclosures to the purchasers of the accounts. [2017 c 61 § 11; 2015 c 114 § 10; 2001 c 83 § 16.]

31.12.436 Investment of funds—When investment later becomes impermissible. (1) A credit union may invest its funds in any of the following, as long as the investments are deemed prudent by the board:

(a) Loans held by credit unions, out-of-state credit unions, or federal credit unions; loans to members held by other lenders; and loans to nonmembers held by other lenders, with the approval of the director;

(b) Bonds, securities, or other investments that are fully guaranteed as to principal and interest by the United States government, and general obligations of this state and its political subdivisions;

(c) Obligations issued by corporations designated under 31 U.S.C. Sec. 9101, or obligations, participations or other instruments issued and guaranteed by the federal national mortgage association, federal home loan mortgage corporation, government national mortgage association, or other government-sponsored enterprise;

(d) Participations or obligations which have been subjected by one or more government agencies to a trust or trusts for which an executive department, agency, or instrumentality of the United States has been named to act as trustee;

(e) Share or deposit accounts of other financial institutions, the accounts of which are federally insured or insured or guaranteed by another insurer or guarantor approved by the director. The shares and deposits made by a credit union under this subsection (1)(e) may exceed the insurance or guarantee limits established by the organization insuring or guaranteeing the institution into which the shares or deposits are made;

(f) Common trust or mutual funds whose investment portfolios consist of securities issued or guaranteed by the federal government or an agency of the government;

(g) Up to five percent of the capital of the credit union, in debt or equity issued by an organization owned by the Northwest credit union association or its successor credit union association;

(h) Shares, stocks, loans, or other obligations of organizations whose primary purpose is to strengthen, advance, or provide services to the credit union industry or credit union members. A credit union may invest in or make loans to organizations under this subsection (1)(h) in an aggregate amount

not to exceed five percent of its assets. This limit does not apply to investments in, and loans to, an organization:

(i) That is wholly owned by one or more credit unions or federal or out-of-state credit unions; and

(ii) Whose activities are limited exclusively to those authorized by this chapter for a credit union;

(i) Loans to credit unions, out-of-state credit unions, or federal credit unions. However, the aggregate of loans issued under this subsection (1)(i) is limited to twenty-five percent of the total shares and deposits of the credit union making the loans;

(j) Key person insurance policies and investment products related to employee benefits, the proceeds of which inure exclusively to the benefit of the credit union;

(k) A registered investment company or collective investment fund, as long as the prospectus of the company or fund restricts the investment portfolio to investments and investment transactions that are permissible for credit unions; or

(l) Other investments approved by the director upon written application.

(2) If a credit union has lawfully made an investment that later becomes impermissible because of a change in circumstances or law, and the director finds that this investment will have an adverse effect on the safety and soundness of the credit union, then the director may require that the credit union develop a reasonable plan for the divestiture of the investment. [2017 c 61 § 12. Prior: 2015 c 123 § 4; 2015 c 114 § 11; 2013 c 34 § 8; 2001 c 83 § 19; 1997 c 397 § 36; prior: 1994 c 256 § 86; 1994 c 92 § 197; 1987 c 338 § 7; 1984 c 31 § 44. Formerly RCW 31.12.425.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Chapter 31.45 RCW CHECK CASHERS AND SELLERS

Sections

31.45.095 Repealed.

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

Title 34 ADMINISTRATIVE LAW

Chapters

34.05 Administrative procedure act.

Chapter 34.05 RCW ADMINISTRATIVE PROCEDURE ACT

Sections

34.05.514 Petition for review—Where filed.

34.05.514 Petition for review—Where filed. (1) Except as provided in subsections (2) through (4) of this section, proceedings for review under this chapter shall be instituted by paying the fee required under RCW 36.18.020 and filing a petition in the superior court, at the petitioner's option, for (a) Thurston county, (b) the county of the petitioner's residence or principal place of business, or (c) in any

county where the property owned by the petitioner and affected by the contested decision is located.

(2) For proceedings involving institutions of higher education, the petition shall be filed either in the county in which the principal office of the institution involved is located or in the county of an institution's campus if the action involves such campus.

(3) For proceedings conducted by the pollution control hearings board pursuant to chapter 43.21B RCW or as otherwise provided in RCW 90.03.210(2) involving decisions of the department of ecology on applications for changes or transfers of water rights that are the subject of a general adjudication of water rights that is being litigated actively under chapter 90.03 or 90.44 RCW, the petition must be filed with the superior court conducting the adjudication, to be consolidated by the court with the general adjudication. A party to the adjudication shall be a party to the appeal under this chapter only if the party files or is served with a petition for review to the extent required by this chapter.

(4) For proceedings involving appeals of examinations or evaluation exercises of the board of pilotage commissioners under chapter 88.16 RCW, the petition must be filed either in Thurston county or in the county in which the board maintains its principal office. [2017 c 52 § 12; 2008 c 128 § 16; 2001 c 220 § 3. Prior: 1995 c 347 § 113; 1995 c 292 § 9; 1994 c 257 § 23; 1988 c 288 § 502.]

Intent—Construction—Effective date—2001 c 220: See notes following RCW 43.21B.110.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

Title 35

CITIES AND TOWNS

Chapters

- 35.13A** Water or sewer districts—Assumption of jurisdiction.
- 35.21** Miscellaneous provisions.
- 35.61** Metropolitan park districts.
- 35.90** Municipal business licensing.
- 35.98** Construction.
- 35.102** Municipal business and occupation tax.

Chapter 35.13A RCW

WATER OR SEWER DISTRICTS—ASSUMPTION OF JURISDICTION

Sections

35.13A.0301 Repealed.

35.13A.0301 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 35.21 RCW

MISCELLANEOUS PROVISIONS

Sections

- 35.21.920 State and federal background checks of license applicants and licensees of occupations under local licensing authority.
- 35.21.930 Community assistance referral and education services program.
- 35.21.960 Removal of restrictive covenants—Hearing, notice.

35.21.920 State and federal background checks of license applicants and licensees of occupations under local licensing authority. (1) For the purpose of receiving criminal history record information by city or town officials, cities or towns may:

(a) By ordinance, require a state and federal background investigation of license applicants or licensees in occupations specified by ordinance;

(b) By ordinance, require a federal background investigation of city or town employees, applicants for employment, volunteers, vendors, and independent contractors, who, in the course of their work or volunteer activity with the city or town, may have unsupervised access to children, persons with developmental disabilities, or vulnerable adults;

(c) Require a state criminal background investigation of city or town employees, applicants for employment, volunteers, vendors, and independent contractors, who, in the course of their work or volunteer activity with the city or town, may have unsupervised access to children, persons with developmental disabilities, or vulnerable adults; and

(d) Require a criminal background investigation conducted through a private organization of city or town employees, applicants for employment, volunteers, vendors, and independent contractors, who, in the course of their work or volunteer activity with the city or town, may have unsupervised access to children, persons with developmental disabilities, or vulnerable adults.

(2) The investigation conducted under subsection (1)(a) through (c) of this section shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050, the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the federal bureau of investigation.

(3) The background checks conducted under subsection (1)(a) through (c) of this section must be done through the Washington state patrol identification and criminal history section and may include a national check from the federal bureau of investigation, which shall be through the submission of fingerprints. The Washington state patrol shall serve as the sole source for receipt of fingerprint submissions and the responses to the submissions from the federal bureau of investigation, which must be disseminated to the city or town.

(4) For a criminal background check conducted under subsection (1)(a) through (c) of this section, the city or town shall transmit appropriate fees for a state and national criminal history check to the Washington state patrol, unless alternately arranged. The cost of investigations conducted under this section shall be borne by the city or town.

(5) The authority for background checks outlined in this section is in addition to any other authority for such checks provided by law. [2017 c 332 § 1; 2010 c 47 § 2.]

35.21.930 Community assistance referral and education services program. (1) Any fire department may develop a community assistance referral and education services program to provide community outreach and assistance to residents of its jurisdiction in order to improve population health and advance injury and illness prevention within its community. The program should identify members of the community who use the 911 system or emergency depart-

ment for low acuity assistance calls (calls that are nonemergency or nonurgent) and connect them to their primary care providers, other health care professionals, low-cost medication programs, and other social services. The program may partner with hospitals to reduce readmissions. The program may also provide nonemergency contact information in order to provide an alternative resource to the 911 system. The program may hire or contract with health care professionals as needed to provide these services, including emergency medical technicians certified under chapter 18.73 RCW and advanced emergency medical technicians and paramedics certified under chapter 18.71 RCW. The services provided by emergency medical technicians, advanced emergency medical technicians, and paramedics must be under the responsible supervision and direction of an approved medical program director. Nothing in this section authorizes an emergency medical technician, advanced emergency medical technician, or paramedic to perform medical procedures they are not trained and certified to perform.

(2) In order to support its community assistance referral and education services program, a participating fire department may seek grant opportunities and private gifts, and, by resolution or ordinance, establish and collect reasonable charges for these services.

(3) In developing a community assistance referral and education services program, a fire department may consult with the health workforce council to identify health care professionals capable of working in a nontraditional setting and providing assistance, referral, and education services.

(4) Community assistance referral and education services programs implemented under this section must, at least annually, measure any reduction of repeated use of the 911 emergency system and any reduction in avoidable emergency room trips attributable to implementation of the program. Results of findings under this subsection must be reportable to the legislature or other local governments upon request. Findings should include estimated amounts of medicaid dollars that would have been spent on emergency room visits had the program not been in existence.

(5) For purposes of this section, "fire department" includes city and town fire departments, fire protection districts organized under Title 52 RCW, regional fire protection service authorities organized under chapter 52.26 RCW, providers of emergency medical services eligible to levy a tax under RCW 84.52.069, and federally recognized Indian tribes. [2017 c 273 § 2; 2015 c 93 § 1; 2013 c 247 § 1.]

35.21.960 Removal of restrictive covenants—Hearing, notice. Any city, town, or municipal corporation must hold a public hearing upon a proposal to remove, vacate, or extinguish a restrictive covenant from property owned by the city, town, or municipal corporation before the action is finalized. The public hearing must allow individuals to provide testimony regarding the proposed action. The city, town, or municipal corporation must provide notice of the public hearing at least ten days before the hearing at its usual place of business and issue a press release to local media providing the date, time, location, and reason for the public hearing. The notice must be posted on the city, town, or municipal corporation's web site if it is updated for any reason before the hearing date. The notice must also identify the property

and provide a brief explanation of the restrictive covenant to be removed, vacated, or extinguished. Any member of the public, in person or by counsel, may submit testimony at the public hearing. [2017 c 119 § 3.]

Short title—2017 c 119: "This act may be known and cited as the land covenant preservation and transparency act." [2017 c 119 § 1.]

Finding—2017 c 119: "The legislature finds that many pieces of property are provided to government agencies as part of agreements in which the land includes restrictive covenants. There is a desire that government agencies become more transparent when they want to change the use of property that has covenants that restrict what can be done with property, especially if the property was a gift to be used for parks, open space, habitat, or environmental mitigation and conservation. The legislature declares that any local government agency that intends to remove restrictive covenants from real property owned by the agency must do so through an open process in which citizens are made aware of the agency's intent to remove or modify the restrictive covenant before the legal action occurs." [2017 c 119 § 2.]

Chapter 35.61 RCW

METROPOLITAN PARK DISTRICTS

Sections

35.61.020	Election—Resolution or petition—Area—Limitations.
35.61.040	Election—Creation of district—Bridge loan, line of credit.
35.61.100	Indebtedness limit—Without popular vote.
35.61.120	Park commissioners as officers of district—Organization.
35.61.130	Eminent domain—Park commissioners' authority, generally—Prospective staff screening.
35.61.180	Designation of district treasurer.
35.61.210	Park district tax levy—Metropolitan park district fund.
35.61.290	Transfer of property by city, county, or other municipal corporation—Emergency grant or loan of funds by city.

35.61.020 Election—Resolution or petition—Area—Limitations. (1) When proposed by citizen petition or by local government resolution as provided in this section, a ballot proposition authorizing the creation of a metropolitan park district must be submitted by resolution to the voters of the area proposed to be included in the district at any general election, or at any special election which may be called for that purpose.

(2) The ballot proposition must be submitted if the governing body of each city in which all or a portion of the proposed district is located, and the legislative authority of each county in which all or a portion of the proposed district is located within the unincorporated portion of the county, each adopts a resolution submitting the proposition to create a metropolitan park district.

(3) As an alternative to the method provided under subsection (2) of this section, the ballot proposition must be submitted if a petition proposing creation of a metropolitan park district is submitted to the county auditor of each county in which all or a portion of the proposed district is located that is signed by at least fifteen percent of the registered voters residing in the area to be included within the proposed district. Where the petition is for creation of a district in more than one county, the petition must be filed with the county auditor of the county having the greater area of the proposed district, and a copy filed with each other county auditor of the other counties covering the proposed district.

(4) Territory by virtue of its annexation to any city whose territory lies entirely within a park district are deemed to be within the limits of the metropolitan park district. Such an extension of a park district's boundaries is not subject to

review by a boundary review board independent of the board's review of the city annexation of territory.

(5) A city, county, or contiguous group of cities or counties proposing or approving a petition regarding formation of a metropolitan park district may limit the purpose and may limit the taxing powers of such proposed metropolitan park district in its resolution in cases where the metropolitan park district is being formed for specifically identified facilities referenced in (a) of this subsection. The ballot proposition must reflect such limitations as follows:

(a) A city, county, or contiguous group of cities or counties may limit the proposed district's purposes to providing the funds necessary to acquire, construct, renovate, expand, operate, maintain, and provide programming for specifically identified public parks or recreational facilities that are otherwise authorized by law for metropolitan park districts. The ballot proposition must specifically identify those public parks or recreational facilities to be funded, which identification may be made by referencing a metropolitan park district plan that has been approved by the legislative authority of the city, county, or contiguous group of cities or counties proposing the formation of the district;

(b) A city, county, or contiguous group of cities or counties may limit the maximum levy rate that is available to such metropolitan park district to any levy rate that does not exceed the aggregate rate set forth under RCW 35.61.210(1). The ballot proposition must state the maximum regular levy rate.

(6) Nothing herein prevents a city, county, or contiguous group of cities or counties from proposing formation of a metropolitan park district that is not limited under subsection (5) of this section. [2017 c 215 § 1; 2002 c 88 § 2; 1965 c 7 § 35.61.020. Prior: 1943 c 264 § 2, part; Rem. Supp. 1943 § 6741-2, part; prior: 1909 c 131 § 1; 1907 c 98 § 2, part; RRS § 6721, part.]

35.61.040 Election—Creation of district—Bridge loan, line of credit. If a majority of the voters voting on the ballot proposition authorizing the creation of the metropolitan park district vote in favor of the formation of a metropolitan park district, the metropolitan park district must be created as a municipal corporation effective immediately upon certification of the election results and its name must be that designated in the ballot proposition. When an ex officio treasurer of a metropolitan park district is a city or county treasurer, the treasurer may provide a bridge loan or line of credit to the newly formed metropolitan park district until such time as the district has received sufficient levy proceeds to pay for the maintenance and operations of the metropolitan park district. [2017 c 215 § 6; 2002 c 88 § 4; 1965 c 7 § 35.61.040. Prior: 1943 c 264 § 3, part; Rem. Supp. 1943 § 6741-3, part; prior: 1909 c 131 § 2; 1907 c 98 § 3, part; RRS § 6722, part.]

35.61.100 Indebtedness limit—Without popular vote. Every metropolitan park district through its board of commissioners may contract indebtedness and evidence such indebtedness by the issuance and sale of warrants, short-term obligations as provided by chapter 39.50 RCW, or general obligation bonds, for any purposes authorized for such metropolitan park district and the extension and maintenance thereof, not exceeding, together with all other outstanding

nonvoter approved general indebtedness, one-quarter of one percent of the value of the taxable property in such metropolitan park district, as the term "value of the taxable property" is defined in RCW 39.36.015. General obligation bonds may not be issued with a maximum term in excess of the maximum term set forth in chapter 39.46 RCW. Such general obligation bonds must be issued and sold in accordance with chapter 39.46 RCW. [2017 c 215 § 2; 1993 c 247 § 1; 1989 c 319 § 2; 1984 c 186 § 21; 1983 c 61 § 1; 1970 ex.s. c 42 § 14; 1965 c 7 § 35.61.100. Prior: 1943 c 264 § 6; Rem. Supp. 1943 § 6741-6; prior: 1927 c 268 § 1; 1907 c 98 § 6; RRS § 6725.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Additional notes found at www.leg.wa.gov

35.61.120 Park commissioners as officers of district—Organization. (1) The officers of a metropolitan park district must be a board of park commissioners consisting of five members. The board must annually elect one of their number as president and another of their number as clerk of the board.

(2) Notwithstanding the foregoing, when the boundaries of any metropolitan park district are coterminous with the boundaries of a city, and if the governing body of a city is designated to serve in an ex officio capacity as the board, the number of members of the board of park commissioners must be equal to the number of positions on the relevant city governing body as it may be constituted from time to time. [2017 c 215 § 3; 1965 c 7 § 35.61.120. Prior: 1943 c 264 § 4, part; Rem. Supp. 1943 § 6741-4, part; prior: 1919 c 135 § 1, part; 1907 c 98 § 4; RRS § 6723, part.]

35.61.130 Eminent domain—Park commissioners' authority, generally—Prospective staff screening. (1) A metropolitan park district has the right of eminent domain, and may purchase, acquire and condemn lands lying within or without the boundaries of said park district, for public parks, parkways, boulevards, aviation landings and playgrounds, and may condemn such lands to widen, alter and extend streets, avenues, boulevards, parkways, aviation landings and playgrounds, to enlarge and extend existing parks, and to acquire lands for the establishment of new parks, boulevards, parkways, aviation landings and playgrounds. The right of eminent domain shall be exercised and instituted pursuant to resolution of the board of park commissioners and conducted in the same manner and under the same procedure as is or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: PROVIDED, HOWEVER, Funds to pay for condemnation allowed by this section shall be raised only as specified in this chapter.

(2) The board of park commissioners shall have power to employ counsel, and to regulate, manage and control the parks, parkways, boulevards, streets, avenues, aviation landings and playgrounds under its control, and to provide for park police, for a secretary of the board of park commissioners and for all necessary employees, to fix their salaries and duties.

(3) The board of park commissioners shall have power to improve, acquire, extend and maintain, open and lay out, parks, parkways, boulevards, avenues, aviation landings and

playgrounds, within or without the park district, and to authorize, conduct and manage the letting of boats, or other amusement apparatus, the operation of bath houses, the purchase and sale of foodstuffs or other merchandise, the giving of vocal or instrumental concerts or other entertainments, the establishment and maintenance of aviation landings and playgrounds, and generally the management and conduct of such forms of recreation or business as it shall judge desirable or beneficial for the public, or for the production of revenue for expenditure for park purposes; and may pay out moneys for the maintenance and improvement of any such parks, parkways, boulevards, avenues, aviation landings and playgrounds as now exist, or may hereafter be acquired, within or without the limits of said city and for the purchase of lands within or without the limits of said city, whenever it deems the purchase to be for the benefit of the public and for the interest of the park district, and for the maintenance and improvement thereof and for all expenses incidental to its duties: PROVIDED, That all parks, boulevards, parkways, aviation landings and playgrounds shall be subject to the police regulations of the city within whose limits they lie.

(4)(a) For the purpose of receiving criminal history record information by metropolitan park districts, metropolitan park districts:

(i) Shall establish by resolution the requirements for a state and federal record check of park district employees, applicants for employment, volunteers, vendors, and independent contractors, who, in the course of their work or volunteer activity with the park district, may:

(A) Have unsupervised access to children, persons with developmental disabilities, or vulnerable adults; or

(B) Be responsible for collecting or disbursing cash or processing credit/debit card transactions; and

(ii) May require a criminal background check conducted through a private organization of park district employees, applicants for employment, volunteers, vendors, and independent contractors, who, in the course of their work or volunteer activity with the park district, may have unsupervised access to children, persons with developmental disabilities, or vulnerable adults. A background check conducted through a private organization under this subsection is not required in addition to the requirement under (a)(i) of this subsection.

(b) The investigation under (a)(i) of this subsection shall consist of a background check as allowed through the Washington state patrol criminal identification system under RCW 43.43.830 through 43.43.834, the Washington state criminal records act under RCW 10.97.030 and 10.97.050, and the federal bureau of investigation.

(c) The background checks conducted under (a)(i) of this subsection must be done through the Washington state patrol identification and criminal history section and may include a national check from the federal bureau of investigation, which shall be through the submission of fingerprints. The Washington state patrol shall serve as the sole source for receipt of fingerprint submissions and the responses to the submissions from the federal bureau of investigation, which must be disseminated to the metropolitan park district.

(d) The park district shall provide a copy of the record report to the employee, prospective employee, volunteer, vendor, or independent contractor.

(e) When necessary, as determined by the park district, prospective employees, volunteers, vendors, or independent contractors may be employed on a conditional basis pending completion of the investigation.

(f) If the employee, prospective employee, volunteer, vendor, or independent contractor has had a record check within the previous twelve months, the park district may waive the requirement upon receiving a copy of the record.

(g) For background checks conducted pursuant to (c) of this subsection, the metropolitan park district must transmit appropriate fees, as the Washington state patrol may require under RCW 10.97.100 and 43.43.838, to the Washington state patrol, unless alternately arranged.

(h) The authority for background checks outlined in this section is in addition to any other authority for such checks provided by law. [2017 c 332 § 4; 2006 c 222 § 1; 1969 c 54 § 1; 1965 c 7 § 35.61.130. Prior: (i) 1943 c 264 § 4, part; Rem. Supp. 1943 § 6741-4, part; prior: 1919 c 135 § 1, part; 1907 c 98 § 4; RRS § 6723, part. (ii) 1943 c 264 § 14; Rem. Supp. 1943 § 6741-14; prior: 1919 c 135 § 2; 1907 c 98 § 14; RRS § 6733.]

Outdoor recreation land acquisition or improvement under marine recreation land act: Chapter 79A.25 RCW.

35.61.180 Designation of district treasurer. (1) The county treasurer of the county within which all, or the major portion, of the district lies must be the ex officio treasurer of a metropolitan park district, but may receive no compensation other than his or her regular salary for receiving and disbursing the funds of a metropolitan park district.

(2) A metropolitan park district may designate someone other than the county treasurer who has experience in financial or fiscal affairs to act as the district treasurer if the board has received the approval of the county treasurer to designate this person; or if the district boundaries are coterminous with the boundaries of a city, the city may act as the district treasurer. If the board designates someone other than a county or city treasurer to act as the district treasurer, the board must purchase a bond from a surety company operating in the state that is sufficient to protect the district from loss. [2017 c 215 § 7; 1987 c 203 § 1; 1983 c 167 § 55; 1965 c 7 § 35.61.180. Prior: 1943 c 264 § 13; Rem. Supp. 1943 § 6741-13; prior: 1907 c 98 § 13; RRS § 6732.]

Additional notes found at www.leg.wa.gov

35.61.210 Park district tax levy—Metropolitan park district fund. (1) The board of park commissioners may levy or cause to be levied a general tax on all the property located in said park district each year not to exceed fifty cents per thousand dollars of assessed value of the property in such park district. In addition, the board of park commissioners may levy or cause to be levied a general tax on all property located in said park district each year not to exceed twenty-five cents per thousand dollars of assessed valuation. Although park districts are authorized to impose two separate regular property tax levies, the levies are considered to be a single levy for purposes of the limitation provided for in chapter 84.55 RCW.

(2) The maximum levy rate of a metropolitan park district formed subject to the limitations set forth in RCW 35.61.020(5) must be the levy rate set forth in the ballot prop-

osition. At any time after the initial formation of a district subject to a limitation under RCW 35.61.020(5), the board of metropolitan park commissioners may submit to the voters of the district at a general or special election a proposition to alter such maximum regular levy rate, which proposition becomes effective only upon approval by a majority of the votes cast on the proposition. The limitations provided in chapter 84.55 RCW do not apply in the first year after the approval of any proposition under this subsection.

(3) The board is hereby authorized to levy a general tax in excess of its regular property tax levy or levies when authorized so to do at a special election conducted in accordance with and subject to all the requirements of the Constitution and laws of the state now in force or hereafter enacted governing the limitation of tax levies. The board is hereby authorized to call a special election for the purpose of submitting to the qualified voters of the park district a proposition to levy a tax in excess of the regular levy rates authorized for the district under subsection (1) or (2) of this section. The manner of submitting any such proposition, of certifying the same, and of giving or publishing notice thereof, must be as provided by law for the submission of propositions by cities, towns, or counties.

(4) The board must include in its general tax levy for each year a sufficient sum to pay the interest on all outstanding bonds and may include a sufficient amount to create a sinking fund for the redemption of all outstanding bonds. The levy must be certified to the proper county officials for collection the same as other general taxes and, for any metropolitan park district for which the county treasurer serves as the ex officio treasurer, when collected, the general tax must be placed in a separate fund in the office of the county treasurer to be known as the "metropolitan park district fund" and disbursed under RCW 36.29.010(1) and 39.58.750. [2017 c 215 § 4; 2007 c 295 § 1; 1997 c 3 § 205 (Referendum Bill No. 47, approved November 4, 1997); 1990 c 234 § 3; 1973 1st ex.s. c 195 § 25; 1965 c 7 § 35.61.210. Prior: 1951 c 179 § 1; prior: (i) 1943 c 264 § 10, part; Rem. Supp. 1943 § 6741-10, part; prior: 1909 c 131 § 4; 1907 c 98 § 10; RRS § 6729. (ii) 1947 c 117 § 1; 1943 c 264 § 5; Rem. Supp. 1947 § 6741-5; prior: 1925 ex.s. c 97 § 1; 1907 c 98 § 5; RRS § 6724.]

Intent—1997 c 3 §§ 201-207: See note following RCW 84.55.010.

Limitation on levies: State Constitution Art. 7 § 2 (Amendments 55, 59), RCW 84.52.050.

Additional notes found at www.leg.wa.gov

35.61.290 Transfer of property by city, county, or other municipal corporation—Emergency grant or loan of funds by city. (1) Any city within or comprising any metropolitan park district may turn over to the park district any lands that it may own, or any street, avenue, or public place within the city for playground, park, or other purposes authorized for such district, and thereafter its control and management must vest in the board of park commissioners. However, the police regulations of such city apply to all such premises.

(2) At any time that any such metropolitan park district is unable, through lack of sufficient funds, to provide for the continuous operation, maintenance and improvement of the parks and playgrounds and other properties or facilities owned by it or under its control, and the legislative body of

any city within or comprising such metropolitan park district must determine that an emergency exists requiring the financial aid of such city to be extended in order to provide for such continuous operation, maintenance and/or improvement of parks, playgrounds facilities, other properties, and programs of such park district within its limits, such city may grant or loan to such metropolitan park district such of its available funds, or such funds that it may lawfully procure and make available, as it finds necessary to provide for such continuous operation and maintenance and, pursuant thereto, any such city and the board of park commissioners of such district are authorized and empowered to enter into an agreement embodying such terms and conditions of any such grant or loan as may be mutually agreed upon.

(3) The board of metropolitan park commissioners may accept public streets of the city and grounds for public purposes when donated for park, playground, boulevard, and other park purposes authorized for such district.

(4) Counties, cities, and other municipal corporations, including but not limited to park and recreation districts operating under chapter 36.69 RCW, may enter into agreements with metropolitan park districts to transfer to one another, with or without consideration therefor, any lands, facilities, equipment, other interests in real or personal property, or interests under contracts, leases, or similar agreements. The board of metropolitan park commissioners may accept and may make, for metropolitan park district purposes, such transfers of lands, facilities, equipment, other interests in real or personal property, and interests under contracts, leases, or similar agreements. [2017 c 215 § 5; 2005 c 226 § 1; 1985 c 416 § 5; 1965 c 7 § 35.61.290. Prior: 1953 c 194 § 1. Formerly: (i) 1943 c 264 § 18; Rem. Supp. 1943 § 6741-18; prior: 1907 c 98 § 16; RRS § 6735. (ii) 1943 c 264 § 19; Rem. Supp. 1943 § 6741-19; prior: 1907 c 98 § 19; RRS § 6738.]

Additional notes found at www.leg.wa.gov

Chapter 35.90 RCW

MUNICIPAL BUSINESS LICENSING

Sections

35.90.010	Definitions.
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35.90.030	Licenses issued under business license act—Fee structures—License renewal—Penalty accommodation—Inconsistent ordinances.
35.90.040	Department enforcement of licensing laws.
35.90.050	Authority retained by cities.
35.90.060	Geographic restrictions on license requirement.
35.90.070	License change—When effective.
35.90.080	Adoption of model ordinance—Development committee—Mandatory provisions—City registration.
35.90.090	Adoption of mandatory provisions of model ordinance.
35.90.100	Report.

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

(1) "Business licensing service," "business licensing system," and "business license" have the same meaning as in RCW 19.02.020.

(2) "City" means a city, town, or code city.

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

(4) "General business license" means a license, not including a regulatory license or a temporary license, that a city requires all or most businesses to obtain to conduct business within that city.

(5) "Partner" means the relationship between a city and the department under which general business licenses are issued and renewed through the business licensing service in accordance with chapter 19.02 RCW.

(6) "Regulatory business license" means a license, other than a general business license, required for certain types of businesses that a city has determined warrants additional regulation, such as taxicab or other for-hire vehicle operators, adult entertainment businesses, amusement device operators, massage parlors, debt collectors, door-to-door sales persons, trade-show operators, and home-based businesses. [2017 c 209 § 1.]

35.90.020 Licensing as partnership with department—Partnership priority—Biennial plan—Exception—Report. (1) Except as otherwise provided in subsection (7) of this section, a city that requires a general business license of any person that engages in business activities within that city must partner with the department to have such license issued, and renewed if the city requires renewal, through the business licensing service in accordance with chapter 19.02 RCW.

(a) Except as otherwise provided in subsection (3) of this section, the department must phase in the issuance and renewal of general business licenses of cities that required a general business license as of July 1, 2017, and are not already partnering with the department, as follows:

(i) Between January 1, 2018, and December 31, 2021, the department must partner with at least six cities per year;

(ii) Between January 1, 2022, and December 31, 2027, the department must partner with the remaining cities; or

(iii) Between July 1, 2017 and December 31, 2022, the department must partner with all cities requiring a general business license if specific funding for the purposes of this subsection [(1)(a)](iii) is appropriated in the omnibus appropriations act.

(b) A city that imposes a general business license requirement and does not partner with the department as of January 1, 2018, may continue to issue and renew its general business licenses until the city partners with the department as provided in subsection (4) of this section.

(2)(a) A city that did not require a general business license as of July 1, 2017, but imposes a new general business license requirement after that date must advise the department in writing of its intent to do so at least ninety days before the requirement takes effect.

(b) If a city subject to (a) of this subsection (2) imposes a new general business license requirement after July 1, 2017, the department, in its sole discretion, may adjust resources to partner with the imposing city as of the date that the new general business licensing requirement takes effect. If the department cannot reallocate resources, the city may issue and renew its general business license until the department is able to partner with the city.

(3) The department may delay assuming the duties of issuing and renewing general business licenses beyond the dates provided in subsection (1)(a) of this section if:

(a) Insufficient funds are appropriated for this specific purpose;

(b) The department cannot ensure the business licensing system is adequately prepared to handle all general business licenses due to unforeseen circumstances;

(c) The department determines that a delay is necessary to ensure that the transition to mandatory department issuance and renewal of general business licenses is as seamless as possible; or

(d) The department receives a written notice from a city within sixty days of the date that the city appears on the department's biennial partnership plan, which includes an explanation of the fiscal or technical challenges causing the city to delay joining the system. A delay under this subsection (3)(d) may be for no more than three years.

(4)(a) In consultation with affected cities and in accordance with the priorities established in subsection (5) of this section, the department must establish a biennial plan for partnering with cities to assume the issuance and renewal of general business licenses as required by this section. The plan must identify the cities that the department will partner with and the dates targeted for the department to assume the duties of issuing and renewing general business licenses.

(b) By January 1, 2018, and January 1st of each even-numbered year thereafter, the department must submit the partnering plan required in (a) of this subsection (4) to the governor; legislative fiscal committees; house local government committee; senate agriculture, water, trade and economic development committee; senate local government committee; affected cities; association of Washington cities; association of Washington business; national federation of independent business; and Washington retail association.

(c) The department may, in its sole discretion, alter the plan required in (a) of this subsection (4) with a minimum notice of thirty days to affected cities.

(5) When determining the plan to partner with cities for the issuance and renewal of general business licenses as required in subsection (4) of this section, cities that notified the department of their wish to partner with the department before January 1, 2017, must be allowed to partner before other cities.

(6) A city that partners with the department for the issuance and renewal of general business licenses through the business licensing service in accordance with chapter 19.02 RCW may not issue and renew those licenses.

(7) A city may decline to partner with the department for the issuance and renewal of a general business license as provided in subsection (1) of this section if the city participates in the online local business license and tax filing portal known as "FileLocal" as of July 1, 2020. For the purposes of this subsection (7), a city is considered to be a FileLocal participant as of the date that a business may access FileLocal for purposes of applying for or renewing that city's general business license and reporting and paying that city's local business and occupation taxes. A city that ceases participation in FileLocal after July 1, 2020, must partner with the department for the issuance and renewal of its general business license as provided in subsection (1) of this section.

(8) By January 1, 2019, and each January 1st thereafter through January 1, 2028, the department must submit a progress report to the legislature. The report required by this sub-

section must provide information about the progress of the department's efforts to partner with all cities that impose a general business license requirement and include:

- (a) A list of cities that have partnered with the department as required in subsection (1) of this section;
- (b) A list of cities that have not partnered with the department;
- (c) A list of cities that are scheduled to partner with the department during the upcoming calendar year;
- (d) A list of cities that have declined to partner with the department as provided in subsection (7) of this section;
- (e) An explanation of lessons learned and any process efficiencies incorporated by the department;
- (f) Any recommendations to further simplify the issuance and renewal of general business licenses by the department; and
- (g) Any other information the department considers relevant. [2017 c 209 § 2.]

35.90.030 Licenses issued under business license act—Fee structures—License renewal—Penalty accommodation—Inconsistent ordinances. (1) A general business license that must be issued and renewed through the business licensing service in accordance with chapter 19.02 RCW is subject to the provisions of this section.

(2)(a) A city has broad authority to impose a fee structure as provided by RCW 35.22.280, 35.23.440, and 35A.82.020. However, any fee structure selected by a city must be within the department's technical ability to administer. The department has the sole discretion to determine if it can administer a city's fee structure.

(b) If the department is unable to administer a city's fee structure, the city must work with the department to adopt a fee structure that is administrable by the department. If a city fails to comply with this subsection (2)(b), it may not enforce its general business licensing requirements on any person until the effective date of a fee structure that is administrable by the department.

(3) A general business license may not be renewed more frequently than once per year except that the department may require a more frequent renewal date as may be necessary to synchronize the renewal date for the general business license with the business's business license expiration date.

(4) The business licensing system need not accommodate any monetary penalty imposed by a city for failing to obtain or renew a general business license. The penalty imposed in RCW 19.02.085 applies to general business licenses that are not renewed by their expiration date.

(5) The department may refuse to administer any provision of a city business license ordinance that is inconsistent with this chapter. [2017 c 209 § 3.]

35.90.040 Department enforcement of licensing laws. The department is not authorized to enforce a city's licensing laws except to the extent of issuing or renewing a license in accordance with this chapter and chapter 19.02 RCW or refusing to issue a license due to an incomplete application, nonpayment of the appropriate fees as indicated by the license application or renewal application, or the nonpayment of any applicable penalty for late renewal. [2017 c 209 § 4.]

35.90.050 Authority retained by cities. Cities whose general business licenses are issued through the business licensing system retain the authority to set license fees, provide exemptions and thresholds for these licenses, approve or deny license applicants, and take appropriate administrative actions against licensees. [2017 c 209 § 5.]

35.90.060 Geographic restrictions on license requirement. Cities may not require a person to obtain or renew a general business license unless the person engages in business within its respective city. For the purposes of this section, a person may not be considered to be engaging in business within a city unless the person is subject to the taxing jurisdiction of a city under the standards established for interstate commerce under the commerce clause of the United States Constitution. [2017 c 209 § 6.]

35.90.070 License change—When effective. A general business license change enacted by a city whose general business license is issued through the business licensing system takes effect no sooner than seventy-five days after the department receives notice of the change if the change affects in any way who must obtain a license, who is exempt from obtaining a license, or the amount or method of determining any fee for the issuance or renewal of a license. [2017 c 209 § 7.]

35.90.080 Adoption of model ordinance—Development committee—Mandatory provisions—City registration. (1)(a) The cities, working through the association of Washington cities, must form a model ordinance development committee made up of a representative sampling of cities that impose a general business license requirement. This committee must work through the association of Washington cities to adopt a model ordinance on general business license requirements by July 1, 2018. The model ordinance and subsequent amendments developed by the committee must be adopted using a process that includes opportunity for substantial input from business stakeholders and other members of the public. Input must be solicited from statewide business associations and from local chambers of commerce and downtown business associations in cities that require a person that conducts business in the city to obtain a general business license.

(b) The department, association of Washington cities, and municipal research and services center must post copies of, or links to, the model ordinance on their internet web sites. Additionally, a city that imposes a general business license requirement must make copies of its general business license ordinance or ordinances available for inspection and copying as provided in chapter 42.56 RCW.

(c) The definitions in the model ordinance may not be amended more frequently than once every four years, except that the model ordinance may be amended at any time to comply with changes in state law or court decisions. Any amendment to a mandatory provision of the model ordinance must be adopted with the same effective date by all cities.

(2) A city that imposes a general business license requirement must adopt the mandatory provisions of the model ordinance by January 1, 2019. The following provisions are mandatory:

(a) A definition of "engaging in business within the city" for purposes of delineating the circumstances under which a general business license is required;

(b) A uniform minimum licensing threshold under which a person would be relieved of the requirement to obtain a city's general business license. A city retains the authority to create a higher threshold for the requirement to obtain a general business license but must not deviate lower than the level required by the model ordinance.

(3)(a) A city may require a person that is under the uniform minimum licensing threshold as provided in subsection (2) of this section to obtain a city registration with no fee due to the city.

(b) A city that requires a city registration as provided in (a) of this subsection must partner with the department to have such registration issued through the business licensing service in accordance with chapter 19.02 RCW. This subsection (3)(b) does not apply to a city that is excluded from the requirement to partner with the department for the issuance and renewal of general business licenses as provided in RCW 35.90.020. [2017 c 209 § 8.]

35.90.090 Adoption of mandatory provisions of model ordinance. Cities that impose a general business license must adopt the mandatory provisions of the model ordinance as provided in RCW 35.90.080 by January 1, 2019. A city that has not complied with the requirements of this section by January 1, 2019, may not enforce its general business licensing requirements on any person until the date that the mandatory provisions of the model ordinance take effect within the city. [2017 c 209 § 9.]

35.90.100 Report. Cities must coordinate with the association of Washington cities to submit a report to the governor; legislative fiscal committees; house local government committee; and the senate agriculture, water, trade and economic development committee by January 1, 2019. The report must:

(1) Provide information about the model ordinance adopted by the cities as required in RCW 35.90.080;

(2) Identify cities that have and have not adopted the mandatory provisions of the model ordinance; and

(3) Incorporate comments from statewide business organizations concerning the process and substance of the model ordinance. Statewide business organizations must be allowed thirty days to submit comments for inclusion in the report. [2017 c 209 § 10.]

Chapter 35.98 RCW CONSTRUCTION

Sections

35.98.020 Decodified.
35.98.050 Decodified.

35.98.020 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

35.98.050 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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Chapter 35.102 RCW

MUNICIPAL BUSINESS AND OCCUPATION TAX

Sections

35.102.130 Allocation and apportionment of income.

35.102.130 Allocation and apportionment of income.

A city that imposes a business and occupation tax must provide for the allocation and apportionment of a person's gross income, other than persons subject to the provisions of chapter 82.14A RCW, as follows:

(1) Gross income derived from all activities other than those taxed as service or royalties must be allocated to the location where the activity takes place.

(a) In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

(b)(i) In the case of sales of digital products, the activity takes place where delivery to the buyer occurs. The delivery of digital products will be deemed to occur at:

(A) The seller's place of business if the purchaser receives the digital product at the seller's place of business;

(B) If not received at the seller's place of business, the location where the purchaser or the purchaser's donee, designated as such by the purchaser, receives the digital product, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

(C) If the location where the purchaser or the purchaser's donee receives the digital product is not known, the purchaser's address maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(D) If no address for the purchaser is maintained in the ordinary course of the seller's business, the purchaser's address obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and

(E) If no address for the purchaser is obtained during the consummation of the sale, the address where the digital good or digital code is first made available for transmission by the seller or the address from which the digital automated service or service described in RCW 82.04.050 (2)(g) or (6)(c) was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(ii) If none of the methods in (b)(i) of this subsection (1) for determining where the delivery of digital products occurs are available after a good faith effort by the taxpayer to apply the methods provided in (b)(i)(A) through (E) of this subsection (1), then the city and the taxpayer may mutually agree to employ any other method to effectuate an equitable allocation of income from the sale of digital products. The taxpayer will be responsible for petitioning the city to use an alternative method under this subsection (1)(b)(ii). The city may employ an alternative method for allocating the income from the sale of digital products if the methods provided in (b)(i)(A) through (E) of this subsection (1) are not available and the taxpayer and the city are unable to mutually agree on an alternative method to effectuate an equitable allocation of income from the sale of digital products.

(iii) For purposes of this subsection (1)(b), the following definitions apply:

(A) "Digital automated services," "digital codes," and "digital goods" have the same meaning as in RCW 82.04.192;

(B) "Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050 (2)(g) and (6)(c); and

(C) "Receive" has the same meaning as in RCW 82.32.730.

(c) If a business activity allocated under this subsection (1) takes place in more than one city and all cities impose a gross receipts tax, a credit must be allowed as provided in RCW 35.102.060; if not all of the cities impose a gross receipts tax, the affected cities must allow another credit or allocation system as they and the taxpayer agree.

(2) Gross income derived as royalties from the granting of intangible rights must be allocated to the commercial domicile of the taxpayer.

(3) Gross income derived from activities taxed as services shall be apportioned to a city by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service-income factor and the denominator of which is two.

(a) The payroll factor is a fraction, the numerator of which is the total amount paid in the city during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the city if:

(i) The individual is primarily assigned within the city;

(ii) The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent or more of his or her service for the tax period in the city; or

(iii) The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent or more of his or her service in any city, and the employee resides in the city.

(b) The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the city during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the city if:

(i) The customer location is in the city; or

(ii) The income-producing activity is performed in more than one location and a greater proportion of the service-income-producing activity is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or

(iii) The service-income-producing activity is performed within the city, and the taxpayer is not taxable in the customer location.

(c) If the allocation and apportionment provisions of this subsection do not fairly represent the extent of the taxpayer's business activity in the city or cities in which the taxpayer does business, the taxpayer may petition for or the tax administrators may jointly require, in respect to all or any part of the taxpayer's business activity, that one of the following methods be used jointly by the cities to allocate or apportion gross income, if reasonable:

(i) Separate accounting;

(ii) The use of a single factor;

(ii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or

(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(4) The definitions in this subsection apply throughout this section.

(a) "Apportionable income" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.

(b) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal internal revenue code.

(c) "Individual" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(d) "Customer location" means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.

(e) "Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.

(f) "Service-taxable income" or "service income" means gross income of the business subject to tax under either the service or royalty classification.

(g) "Tax period" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

(h) "Taxable in the customer location" means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so. [2017 c 323 § 511; 2010 c 111 § 305; 2003 c 79 § 13.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Purpose—Retroactive application—Effective date—2010 c 111: See notes following RCW 82.04.050.

Additional notes found at www.leg.wa.gov

Title 35A

OPTIONAL MUNICIPAL CODE

Chapters

35A.21 Provisions affecting all code cities.

35A.39 Public documents and records.

35A.90 Construction.

Chapter 35A.21 RCW

PROVISIONS AFFECTING ALL CODE CITIES

Sections

- 35A.21.370 State and federal background checks of license applicants and licensees of occupations under local licensing authority.
 35A.21.410 Removal of restrictive covenants—Hearing, notice.

35A.21.370 State and federal background checks of license applicants and licensees of occupations under local licensing authority. (1) For the purpose of receiving criminal history record information by code city officials, code cities may:

(a) By ordinance, require a state and federal background investigation of license applicants or licensees in occupations specified by ordinance;

(b) By ordinance, require a federal background investigation of code city employees, applicants for employment, volunteers, vendors, and independent contractors, who, in the course of their work or volunteer activity with the code city, may have unsupervised access to children, persons with developmental disabilities, or vulnerable adults;

(c) Require a state criminal background investigation of code city employees, applicants for employment, volunteers, vendors, and independent contractors, who, in the course of their work or volunteer activity with the code city, may have unsupervised access to children, persons with developmental disabilities, or vulnerable adults; and

(d) Require a criminal background investigation conducted through a private organization of code city employees, applicants for employment, volunteers, vendors, and independent contractors, who, in the course of their work or volunteer activity with the code city, may have unsupervised access to children, persons with developmental disabilities, or vulnerable adults.

(2) The investigation conducted under subsection (1)(a) through (c) of this section shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050, the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the federal bureau of investigation.

(3) The background checks conducted under subsection (1)(a) through (c) of this section must be done through the Washington state patrol identification and criminal history section and may include a national check from the federal bureau of investigation, which shall be through the submission of fingerprints. The Washington state patrol shall serve as the sole source for receipt of fingerprint submissions and the responses to the submissions from the federal bureau of investigation, which must be disseminated to the code city.

(4) For a criminal background check conducted under subsection (1)(a) through (c) of this section, the code city shall transmit appropriate fees for a state and national criminal history check to the Washington state patrol, unless alternately arranged. The cost of investigations conducted under this section shall be borne by the code city.

(5) The authority for background checks outlined in this section is in addition to any other authority for such checks provided by law. [2017 c 332 § 2; 2010 c 47 § 3.]

35A.21.410 Removal of restrictive covenants—Hearing, notice. Any code city must hold a public hearing upon a

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proposal to remove, vacate, or extinguish a restrictive covenant from property owned by the code city before the action is finalized. The public hearing must allow individuals to provide testimony regarding the proposed action. The code city must provide notice of the public hearing at least ten days before the hearing at its usual place of business and issue a press release to local media providing the date, time, location, and reason for the public hearing. The notice must be posted on the code city's web site if it is updated for any reason prior to the hearing date. The notice must also identify the property and provide a brief explanation of the restrictive covenant to be removed, vacated, or extinguished. Any member of the public, in person or by counsel, may submit testimony regarding the proposed action at the public hearing. [2017 c 119 § 4.]

Short title—Finding—2017 c 119: See notes following RCW 35.21.960.

Chapter 35A.39 RCW

PUBLIC DOCUMENTS AND RECORDS

Sections

- 35A.39.010 Legislative and administrative records.

35A.39.010 Legislative and administrative records. Every code city shall keep a journal of minutes of its legislative meetings with orders, resolutions and ordinances passed, and records of the proceedings of any city department, division or commission performing quasi-judicial functions as required by ordinances of the city and general laws of the state and shall keep such records open to the public as required by RCW 42.30.035 and shall keep and preserve all public records and publications or reproduce and destroy the same as provided by Title 40 RCW. Each code city may duplicate and sell copies of its ordinances at fees reasonably calculated to defray the cost of such duplication and handling. [2017 3rd sp.s. c 25 § 32; 1995 c 21 § 2; 1967 ex.s. c 119 § 35A.39.010.]

Chapter 35A.90 RCW

CONSTRUCTION

Sections

- 35A.90.030 Decodified.
 35A.90.040 Decodified.

35A.90.030 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

35A.90.040 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Title 36
COUNTIES

Chapters

- 36.01** General provisions.
36.18 Fees of county officers.
36.22 County auditor.
36.28A Association of sheriffs and police chiefs.
36.32 County commissioners.

- 36.70A Growth management—Planning by selected counties and cities.
- 36.71 Peddlers' and hawkers' licenses.
- 36.72 Printing.
- 36.86 Roads and bridges—Standards.

**Chapter 36.01 RCW
GENERAL PROVISIONS**

Sections

- 36.01.300 State and federal background checks of license applicants and licensees of occupations under local licensing authority.
- 36.01.350 Removal of restrictive covenants—Hearing, notice.

36.01.300 State and federal background checks of license applicants and licensees of occupations under local licensing authority. (1) For the purpose of receiving criminal history record information by county officials, counties may:

(a) By ordinance, require a state and federal background investigation of license applicants or licensees in occupations specified by ordinance;

(b) By ordinance, require a federal background investigation of county employees, applicants for employment, volunteers, vendors, and independent contractors, who, in the course of their work or volunteer activity with the county, may have unsupervised access to children, persons with developmental disabilities, or vulnerable adults;

(c) Require a state background investigation of county employees, applicants for employment, volunteers, vendors, and independent contractors, who, in the course of their work or volunteer activity with the county, may have unsupervised access to children, persons with developmental disabilities, or vulnerable adults; and

(d) Require a criminal background investigation conducted through a private organization of county employees, applicants for employment, volunteers, vendors, and independent contractors, who, in the course of their work or volunteer activity with the county, may have unsupervised access to children, persons with developmental disabilities, or vulnerable adults.

(2) The investigation conducted under subsection (1)(a) through (c) of this section shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050, the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the federal bureau of investigation.

(3) The background checks conducted under subsection (1)(a) through (c) of this section must be done through the Washington state patrol identification and criminal history section and may include a national check from the federal bureau of investigation, which shall be through the submission of fingerprints. The Washington state patrol shall serve as the sole source for receipt of fingerprint submissions and the responses to the submissions from the federal bureau of investigation, which must be disseminated to the county.

(4) For a criminal background check conducted under subsection (1)(a) through (c) of this section, the county shall transmit appropriate fees for a state and national criminal history check to the Washington state patrol, unless alternately arranged. The cost of investigations conducted under this section shall be borne by the county.

(5) The authority for background checks outlined in this section is in addition to any other authority for such checks provided by law. [2017 c 332 § 3; 2010 c 47 § 1.]

36.01.350 Removal of restrictive covenants—Hearing, notice. Any county must hold a public hearing upon a proposal to remove, vacate, or extinguish a restrictive covenant from property owned by the county before the action is finalized. The public hearing must allow individuals to provide testimony regarding the proposed action. The county must provide notice of the public hearing at least ten days before the hearing at its usual place of business and issue a press release to local media providing the date, time, location, and reason for the public hearing. The notice must be posted on the county's web site if it is updated for any reason before the hearing. The notice must also identify the property and provide a brief explanation of the restrictive covenant to be removed, vacated, or extinguished. Any member of the public, in person or by counsel, may submit testimony regarding the proposed action at the public hearing. [2017 c 119 § 5.]

Short title—Finding—2017 c 119: See notes following RCW 35.21.960.

**Chapter 36.18 RCW
FEES OF COUNTY OFFICERS**

Sections

- 36.18.018 Fees to state court, administrative office of the courts—Appellate review fee and surcharge—Variable fee for copies and reports.
- 36.18.020 Clerk's fees, surcharges.

36.18.018 Fees to state court, administrative office of the courts—Appellate review fee and surcharge—Variable fee for copies and reports. (1) State revenue collected by county clerks under subsection (2) of this section must be transmitted to the appropriate state court. The administrative office of the courts shall retain fees collected under subsection (3) of this section.

(2) For appellate review under RAP 5.1(b), two hundred fifty dollars must be charged.

(3) For all copies and reports produced by the administrative office of the courts as permitted under RCW 2.68.020 and supreme court policy, a variable fee must be charged.

(4) Until July 1, 2021, in addition to the fee established under subsection (2) of this section, a surcharge of forty dollars is established for appellate review. The county clerk shall transmit seventy-five percent of this surcharge to the state treasurer for deposit in the judicial stabilization trust account and twenty-five percent must be retained by the county. [2017 3rd sp.s. c 2 § 2; 2013 2nd sp.s. c 7 § 2; 2012 c 199 § 2; 2011 1st sp.s. c 44 § 3; 2009 c 572 § 3; 2005 c 282 § 43; 1995 c 292 § 15.]

Effective date—2017 3rd sp.s. c 2: See note following RCW 3.62.060.

Effective date—2013 2nd sp.s. c 7: See note following RCW 3.62.060.

Effective date—2011 1st sp.s. c 44: See note following RCW 3.62.020.

Effective date—2009 c 572: See note following RCW 43.79.505.

36.18.020 Clerk's fees, surcharges. (1) Revenue collected under this section is subject to division with the state under RCW 36.18.025 and with the county or regional law

library fund under RCW 27.24.070, except as provided in subsection (5) of this section.

(2) Clerks of superior courts shall collect the following fees for their official services:

(a) In addition to any other fee required by law, the party filing the first or initial document in any civil action, including, but not limited to an action for restitution, adoption, or change of name, and any party filing a counterclaim, cross-claim, or third-party claim in any such civil action, shall pay, at the time the document is filed, a fee of two hundred dollars except, in an unlawful detainer action under chapter 59.18 or 59.20 RCW for which the plaintiff shall pay a case initiating filing fee of forty-five dollars, or in proceedings filed under RCW 28A.225.030 alleging a violation of the compulsory attendance laws where the petitioner shall not pay a filing fee. The forty-five dollar filing fee under this subsection for an unlawful detainer action shall not include an order to show cause or any other order or judgment except a default order or default judgment in an unlawful detainer action.

(b) Any party, except a defendant in a criminal case, filing the first or initial document on an appeal from a court of limited jurisdiction or any party on any civil appeal, shall pay, when the document is filed, a fee of two hundred dollars.

(c) For filing of a petition for judicial review as required under RCW 34.05.514 a filing fee of two hundred dollars.

(d) For filing of a petition for unlawful harassment under RCW 10.14.040 a filing fee of fifty-three dollars.

(e) For filing the notice of debt due for the compensation of a crime victim under RCW 7.68.120(2)(a) a fee of two hundred dollars.

(f) In probate proceedings, the party instituting such proceedings, shall pay at the time of filing the first document therein, a fee of two hundred dollars.

(g) For filing any petition to contest a will admitted to probate or a petition to admit a will which has been rejected, or a petition objecting to a written agreement or memorandum as provided in RCW 11.96A.220, there shall be paid a fee of two hundred dollars.

(h) Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, an adult defendant in a criminal case shall be liable for a fee of two hundred dollars.

(i) With the exception of demands for jury hereafter made and garnishments hereafter issued, civil actions and probate proceedings filed prior to midnight, July 1, 1972, shall be completed and governed by the fee schedule in effect as of January 1, 1972. However, no fee shall be assessed if an order of dismissal on the clerk's record be filed as provided by rule of the supreme court.

(3) No fee shall be collected when a petition for relinquishment of parental rights is filed pursuant to RCW 26.33.080 or for forms and instructional brochures provided under RCW 26.50.030.

(4) No fee shall be collected when an abstract of judgment is filed by the county clerk of another county for the purposes of collection of legal financial obligations.

(5)(a) Until July 1, 2021, in addition to the fees required to be collected under this section, clerks of the superior courts must collect surcharges as provided in this subsection (5) of which seventy-five percent must be remitted to the state trea-

surer for deposit in the judicial stabilization trust account and twenty-five percent must be retained by the county.

(b) On filing fees required to be collected under subsection (2)(b) of this section, a surcharge of thirty dollars must be collected.

(c) On all filing fees required to be collected under this section, except for fees required under subsection (2)(b), (d), and (h) of this section, a surcharge of forty dollars must be collected. [2017 3rd sp.s. c 2 § 3; 2015 c 265 § 28; 2013 2nd sp.s. c 7 § 3; 2012 c 199 § 3; 2011 1st sp.s. c 44 § 5. Prior: 2009 c 572 § 4; 2009 c 479 § 21; 2009 c 417 § 3; prior: 2005 c 457 § 19; 2005 c 374 § 5; 2000 c 9 § 1; 1999 c 42 § 635; 1996 c 211 § 2; prior: 1995 c 312 § 70; 1995 c 292 § 10; 1993 c 435 § 1; 1992 c 54 § 1; 1989 c 342 § 1; prior: 1987 c 382 § 3; 1987 c 202 § 201; 1987 c 56 § 3; prior: 1985 c 24 § 1; 1985 c 7 § 104; 1984 c 263 § 29; 1981 c 330 § 5; 1980 c 70 § 1; 1977 ex.s. c 107 § 1; 1975 c 30 § 1; 1973 c 16 § 1; 1973 c 38 § 1; prior: 1972 ex.s. c 57 § 5; 1972 ex.s. c 20 § 1; 1970 ex.s. c 32 § 1; 1967 c 26 § 9; 1963 c 4 § 36.18.020; prior: 1961 c 304 § 1; 1961 c 41 § 1; 1951 c 51 § 5; 1907 c 56 § 1, part, p 89; 1903 c 151 § 1, part, p 294; 1893 c 130 § 1, part, p 421; Code 1881 § 2086, part, p 355; 1869 p 364 § 1, part; 1863 p 391 § 1, part; 1861 p 34 § 1, part; 1854 p 368 § 1, part; RRS § 497, part.]

Rules of court: *Cf. RAP 14.3, 18.22.*

Effective date—2017 3rd sp.s. c 2: See note following RCW 3.62.060.

Finding—Intent—2015 c 265: See note following RCW 13.50.010.

Effective date—2013 2nd sp.s. c 7: See note following RCW 3.62.060.

Effective date—2011 1st sp.s. c 44: See note following RCW 3.62.020.

Effective date—2009 c 572: See note following RCW 43.79.505.

Effective date—2009 c 479: See note following RCW 2.56.030.

Intent—2005 c 457: See note following RCW 43.08.250.

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

Additional notes found at www.leg.wa.gov

Chapter 36.22 RCW COUNTY AUDITOR

Sections

- 36.22.175 Surcharge for local government archives and records management—Records management training—Eastern Washington regional facility—Surcharge for competitive grant program, consultation program, and archivist's training services. (*Effective until June 30, 2020.*)
- 36.22.175 Surcharge for local government archives and records management—Records management training—Eastern Washington regional facility. (*Effective June 30, 2020.*)
- 36.22.179 Surcharge for local homeless housing and assistance—Use.

36.22.175 Surcharge for local government archives and records management—Records management training—Eastern Washington regional facility—Surcharge for competitive grant program, consultation program, and archivist's training services. (*Effective until June 30, 2020.*) (1)(a) In addition to any other charge authorized by law, the county auditor shall charge a surcharge of one dollar per instrument for each document recorded. Revenue generated through this surcharge shall be transmitted monthly to the state treasurer for deposit in the local government archives account under RCW 40.14.024. These funds shall be used solely for providing records schedule compliance, security microfilm inspection and storage, archival preservation,

cataloging, and indexing for local government records and digital data and access to those records and data through the regional branch archives of the division of archives and records management.

(b) The division of archives and records management within the office of the secretary of state shall provide records management training for local governments and shall establish a competitive grant program to solicit and prioritize project proposals from local governments for potential funding to be paid for by funds from the auditor surcharge and tax warrant surcharge revenues. Application for specific projects may be made by local government agencies only. The state archivist in consultation with the advisory committee established under RCW 40.14.027 shall adopt rules governing project eligibility, evaluation, awarding of grants, and other criteria including requirements for records management training for grant recipients.

(2) The advisory committee established under RCW 40.14.027 shall review grant proposals and establish a prioritized list of projects to be considered for funding by January 1st of each even-numbered year, beginning in 2002. The evaluation of proposals and development of the prioritized list must be developed through open public meetings. Funding for projects shall be granted according to the ranking of each application on the prioritized list and projects will be funded only to the extent that funds are available. A grant award may have an effective date other than the date the project is placed on the prioritized list.

(3)(a) In addition to any other surcharge authorized by law, the county auditor shall charge a surcharge of one dollar per instrument for every document recorded after January 1, 2002. Revenue generated through this surcharge shall be transmitted to the state treasurer monthly for deposit in the local government archives account under RCW 40.14.024 to be used exclusively for: (i) The construction and improvement of a specialized regional facility located in eastern Washington designed to serve the archives, records management, and digital data management needs of local government; and (ii) payment of the certificate of participation issued for the Washington state heritage center to the extent there is an excess fund balance in the account and fees generated under RCW 36.18.010 and 43.07.128 are insufficient to meet debt service payments on the certificate of participation.

(b) To the extent the facilities are used for the storage and retrieval of state agency records and digital data, that portion of the construction of such facilities used for state government records and data shall be supported by other charges and fees paid by state agencies and shall not be supported by the surcharge authorized in this subsection, except that to the extent there is an excess fund balance in the account and fees generated under RCW 36.18.010 and 43.07.128 are insufficient to meet debt service payments for the Washington state heritage center, the local government archives account under RCW 40.14.024 may be used for the Washington state heritage center.

(c) At such time that all debt service from construction of the specialized regional archive facility located in eastern Washington has been paid, fifty percent of the surcharge authorized by this subsection shall be reverted to the centennial document preservation and modernization account as prescribed in RCW 36.22.170 and fifty percent of the sur-

charge authorized by this section shall be reverted to the state treasurer for deposit in the public records efficiency, preservation, and access account to serve the archives, records management, and digital data management needs of local government, except that the state treasurer shall not revert funds to the centennial document preservation and modernization account and to the public records efficiency, preservation, and access account if fees generated under RCW 36.18.010 and 43.07.128 are insufficient to meet debt service payments on the Washington state heritage center.

(4) In addition to any other surcharge authorized by law, the county auditor shall charge a surcharge of one dollar per instrument for every document recorded. Revenue generated through this surcharge shall be transmitted to the state treasurer monthly for deposit in the local government archives account under RCW 40.14.024 to be used exclusively for the competitive grant program in RCW 40.14.026, and for the attorney general's consultation program and state archivist's training services authorized in RCW 42.56.570. [2017 c 303 § 7; 2011 1st sp.s. c 50 § 931; 2008 c 328 § 6006; 2003 c 163 § 5; 2001 2nd sp.s. c 13 § 1; 1996 c 245 § 1.]

Expiration date—2017 c 303 § 7: "Section 7 of this act expires June 30, 2020." [2017 c 303 § 10.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

Additional notes found at www.leg.wa.gov

36.22.175 Surcharge for local government archives and records management—Records management training—Eastern Washington regional facility. (Effective June 30, 2020.) (1)(a) In addition to any other charge authorized by law, the county auditor shall charge a surcharge of one dollar per instrument for each document recorded. Revenue generated through this surcharge shall be transmitted monthly to the state treasurer for deposit in the local government archives account under RCW 40.14.024. These funds shall be used solely for providing records scheduling, security microfilm inspection and storage, archival preservation, cataloging, and indexing for local government records and digital data and access to those records and data through the regional branch archives of the division of archives and records management.

(b) The division of archives and records management within the office of the secretary of state shall provide records management training for local governments and shall establish a competitive grant program to solicit and prioritize project proposals from local governments for potential funding to be paid for by funds from the auditor surcharge and tax warrant surcharge revenues. Application for specific projects may be made by local government agencies only. The state archivist in consultation with the advisory committee established under RCW 40.14.027 shall adopt rules governing project eligibility, evaluation, awarding of grants, and other criteria including requirements for records management training for grant recipients.

(2) The advisory committee established under RCW 40.14.027 shall review grant proposals and establish a prioritized list of projects to be considered for funding by January 1st of each even-numbered year, beginning in 2002. The

evaluation of proposals and development of the prioritized list must be developed through open public meetings. Funding for projects shall be granted according to the ranking of each application on the prioritized list and projects will be funded only to the extent that funds are available. A grant award may have an effective date other than the date the project is placed on the prioritized list.

(3)(a) In addition to any other surcharge authorized by law, the county auditor shall charge a surcharge of one dollar per instrument for every document recorded after January 1, 2002. Revenue generated through this surcharge shall be transmitted to the state treasurer monthly for deposit in the local government archives account under RCW 40.14.024 to be used exclusively for: (i) The construction and improvement of a specialized regional facility located in eastern Washington designed to serve the archives, records management, and digital data management needs of local government; and (ii) payment of the certificate of participation issued for the Washington state heritage center to the extent there is an excess fund balance in the account and fees generated under RCW 36.18.010 and 43.07.128 are insufficient to meet debt service payments on the certificate of participation.

(b) To the extent the facilities are used for the storage and retrieval of state agency records and digital data, that portion of the construction of such facilities used for state government records and data shall be supported by other charges and fees paid by state agencies and shall not be supported by the surcharge authorized in this subsection, except that to the extent there is an excess fund balance in the account and fees generated under RCW 36.18.010 and 43.07.128 are insufficient to meet debt service payments for the Washington state heritage center, the local government archives account under RCW 40.14.024 may be used for the Washington state heritage center.

(c) At such time that all debt service from construction of the specialized regional archive facility located in eastern Washington has been paid, fifty percent of the surcharge authorized by this subsection shall be reverted to the centennial document preservation and modernization account as prescribed in RCW 36.22.170 and fifty percent of the surcharge authorized by this section shall be reverted to the state treasurer for deposit in the public records efficiency, preservation, and access account to serve the archives, records management, and digital data management needs of local government, except that the state treasurer shall not revert funds to the centennial document preservation and modernization account and to the public records efficiency, preservation, and access account if fees generated under RCW 36.18.010 and 43.07.128 are insufficient to meet debt service payments on the Washington state heritage center. [2011 1st sp.s. c 50 § 931; 2008 c 328 § 6006; 2003 c 163 § 5; 2001 2nd sp.s. c 13 § 1; 1996 c 245 § 1.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

Additional notes found at www.leg.wa.gov

36.22.179 Surcharge for local homeless housing and assistance—Use. (1) In addition to the surcharge authorized in RCW 36.22.178, and except as provided in subsection (2)

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of this section, an additional surcharge of ten dollars shall be charged by the county auditor for each document recorded, which will be in addition to any other charge allowed by law. From September 1, 2012, through June 30, 2023, the surcharge shall be forty dollars. The funds collected pursuant to this section are to be distributed and used as follows:

(a) The auditor shall retain two percent for collection of the fee, and of the remainder shall remit sixty percent to the county to be deposited into a fund that must be used by the county and its cities and towns to accomplish the purposes of chapter 484, Laws of 2005, six percent of which may be used by the county for the collection and local distribution of these funds and administrative costs related to its homeless housing plan, and the remainder for programs which directly accomplish the goals of the county's local homeless housing plan, except that for each city in the county which elects as authorized in RCW 43.185C.080 to operate its own local homeless housing program, a percentage of the surcharge assessed under this section equal to the percentage of the city's local portion of the real estate excise tax collected by the county shall be transmitted at least quarterly to the city treasurer, without any deduction for county administrative costs, for use by the city for program costs which directly contribute to the goals of the city's local homeless housing plan; of the funds received by the city, it may use six percent for administrative costs for its homeless housing program.

(b) The auditor shall remit the remaining funds to the state treasurer for deposit in the home security fund account. The department may use twelve and one-half percent of this amount for administration of the program established in RCW 43.185C.020, including the costs of creating the statewide homeless housing strategic plan, measuring performance, providing technical assistance to local governments, and managing the homeless housing grant program. Of the remaining eighty-seven and one-half percent, at least forty-five percent must be set aside for the use of private rental housing payments, and the remainder is to be used by the department to:

(i) Provide housing and shelter for homeless people including, but not limited to: Grants to operate, repair, and staff shelters; grants to operate transitional housing; partial payments for rental assistance; consolidated emergency assistance; overnight youth shelters; grants and vouchers designated for victims of human trafficking and their families; and emergency shelter assistance; and

(ii) Fund the homeless housing grant program.

(2) The surcharge imposed in this section does not apply to (a) assignments or substitutions of previously recorded deeds of trust, (b) documents recording a birth, marriage, divorce, or death, (c) any recorded documents otherwise exempted from a recording fee or additional surcharges under state law, (d) marriage licenses issued by the county auditor, (e) documents recording a state, county, or city lien or satisfaction of lien, or (f) documents recording a water-sewer district lien or satisfaction of a lien for delinquent utility payments. [2017 3rd sp.s. c 16 § 5; 2014 c 200 § 1; 2012 c 90 § 1; 2011 c 110 § 2; 2009 c 462 § 1; 2007 c 427 § 4; 2005 c 484 § 9.]

Findings—Conflict with federal requirements—Effective date—2005 c 484: See RCW 43.185C.005, 43.185C.901, and 43.185C.902.

Chapter 36.28A RCW

ASSOCIATION OF SHERIFFS AND POLICE CHIEFS

Sections

- 36.28A.370 24/7 sobriety account—Distribution of funds.
 36.28A.400 Denied firearm transaction reporting system—Purge of denial records upon subsequent approval—Public disclosure exemption—Destruction of information.
 36.28A.405 Denied firearm transaction information—Annual report.
 36.28A.410 Statewide automated protected person notification system—Notification requirements—Immunity from civil liability—Public disclosure exemption.
 36.28A.420 Illegal firearm transaction investigation grant program—Requirements—Public disclosure exemption.
 36.28A.430 Sexual assault kit initiative project—Definitions.
 36.28A.435 Sexual assault prevention and response account.

36.28A.370 24/7 sobriety account—Distribution of funds. (1) Any daily user fee, installation fee, deactivation fee, enrollment fee, or monitoring fee must be collected by the participating agency and used to defray the participating agency's costs of the 24/7 sobriety program.

(2) Any participation fee must be collected by the participating agency and deposited in the state 24/7 sobriety account to cover 24/7 sobriety program administration costs incurred by the Washington association of sheriffs and police chiefs.

(3) All applicable fees shall be paid by the participant contemporaneously or in advance of the time when the fee becomes due; however, cities and counties may subsidize or pay any applicable fees.

(4) A city or county may accept for deposit, donations, gifts, grants, local account fund transfers, and other assistance into its local 24/7 sobriety account to defray the participating agency's costs of the 24/7 sobriety program. [2017 c 336 § 12; 2015 2nd sp.s. c 3 § 18; 2013 2nd sp.s. c 35 § 30.]

Finding—2017 c 336: See note following RCW 9.96.060.

Finding—Intent—2015 2nd sp.s. c 3: See note following RCW 10.21.055.

Effective date—2013 2nd sp.s. c 35 §§ 27, 28, and 30-32: See note following RCW 36.28A.340.

36.28A.400 Denied firearm transaction reporting system—Purge of denial records upon subsequent approval—Public disclosure exemption—Destruction of information. (1) Subject to the availability of amounts appropriated for this specific purpose, the Washington association of sheriffs and police chiefs must create and maintain an electronic portal for a dealer, as defined in RCW 9.41.010, to report the information as required pursuant to RCW 9.41.114 pertaining to persons who have applied for the purchase or transfer of a firearm and were denied as the result of a background check or completed and submitted firearm purchase or transfer application that indicates the applicant is ineligible to possess a firearm under state or federal law.

(2) Upon receipt of information from a dealer pursuant to RCW 9.41.114 that a person originally denied the purchase or transfer of a firearm as the result of a background check that indicates the applicant is ineligible to possess a firearm has subsequently been approved for the purchase or transfer, the Washington association of sheriffs and police chiefs must purge any record of the person's denial in its possession and inform the Washington state patrol and any local law enforcement agency participating in the grant program cre-

ated in RCW 36.28A.420 of the subsequent approval of the purchase or transfer.

(3) Information and records prepared, owned, used, or retained by the Washington state patrol or the Washington association of sheriffs and police chiefs pursuant to chapter 261, Laws of 2017 are exempt from public inspection and copying under chapter 42.56 RCW.

(4) The Washington association of sheriffs and police chiefs must destroy the information and data reported by a dealer pursuant to chapter 261, Laws of 2017 upon its satisfaction that the information and data is no longer necessary to carry out its duties pursuant to chapter 261, Laws of 2017. [2017 c 261 § 2.]

36.28A.405 Denied firearm transaction information—Annual report. Subject to the availability of amounts appropriated for this specific purpose, the Washington association of sheriffs and police chiefs shall prepare an annual report on the number of denied firearms sales or transfers reported pursuant to chapter 261, Laws of 2017. The report shall indicate the number of cases in which a person was denied a firearms sale or transfer, the number of cases where the denied sale or transfer was investigated for potential criminal prosecution, and the number of cases where an arrest was made, the case was referred for prosecution, and a conviction was obtained. The Washington state patrol shall submit the report to the appropriate committees of the legislature on or before December 31st of each year. [2017 c 261 § 4.]

36.28A.410 Statewide automated protected person notification system—Notification requirements—Immunity from civil liability—Public disclosure exemption. (1)(a) Subject to the availability of amounts appropriated for this specific purpose, the Washington association of sheriffs and police chiefs shall create and operate a statewide automated protected person notification system to automatically notify a registered person via the registered person's choice of telephone or email when a respondent subject to a court order specified in (b) of this subsection has attempted to purchase or acquire a firearm and been denied based on a background check or completed and submitted firearm purchase or transfer application that indicates the respondent is ineligible to possess a firearm under state or federal law. The system must permit a person to register for notification, or a registered person to update the person's registration information, for the statewide automated protected person notification system by calling a toll-free telephone number or by accessing a public web site.

(b) The notification requirements of this section apply to any court order issued under chapter 7.92 RCW and RCW 7.90.090, 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.26.590, 26.50.060, or 26.50.070, and any foreign protection order filed with a Washington court pursuant to chapter 26.52 RCW, where the order prohibits the respondent from possessing firearms or where by operation of law the respondent is ineligible to possess firearms during the term of the order. The notification requirements of this section apply even if the respondent has notified the Washington state patrol that he or she has appealed a background check denial under RCW 43.43.823.

(2) An appointed or elected official, public employee, or public agency as defined in RCW 4.24.470, or combination of units of government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for any release of information or the failure to release information related to the statewide automated protected person notification system in this section, so long as the release or failure to release was without gross negligence. The immunity provided under this subsection applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the general public.

(3) Information and records prepared, owned, used, or retained by the Washington association of sheriffs and police chiefs pursuant to chapter 261, Laws of 2017, including information a person submits to register and participate in the statewide automated protected person notification system, are exempt from public inspection and copying under chapter 42.56 RCW. [2017 c 261 § 5.]

36.28A.420 Illegal firearm transaction investigation grant program—Requirements—Public disclosure exemption. (1) Subject to the availability of amounts appropriated for this specific purpose, the Washington association of sheriffs and police chiefs shall establish a grant program for local law enforcement agencies to conduct criminal investigations regarding persons who illegally attempted to purchase or transfer a firearm within their jurisdiction.

(2) Each grant applicant must be required to submit reports to the Washington association of sheriffs and police chiefs that indicate the number of cases in which a person was denied a firearms sale or transfer, the number of cases where the denied sale or transfer was investigated for potential criminal prosecution, and the number of cases where an arrest was made, the case was referred for prosecution, and a conviction was obtained.

(3) Information and records prepared, owned, used, or retained by the Washington association of sheriffs and police chiefs pursuant to chapter 261, Laws of 2017 are exempt from public inspection and copying under chapter 42.56 RCW. [2017 c 261 § 6.]

36.28A.430 Sexual assault kit initiative project—Definitions. (1) Subject to the availability of amounts appropriated for this specific purpose, the Washington association of sheriffs and police chiefs shall establish and administer the Washington sexual assault kit initiative project.

(2) The project is created for the purpose of providing funding through a competitive grant program to support multidisciplinary community response teams engaged in seeking a just resolution to sexual assault cases resulting from evidence found in previously unsubmitted sexual assault kits.

(3) In administering the project, the Washington association of sheriffs and police chiefs has the following powers and duties:

(a) Design and implement the grant project with the elements included in this section;

(b) Screen and select eligible applicants to receive grants;

(c) Award grants and disburse funds to at least two eligible applicants, at least one located in western Washington and at least one located in eastern Washington;

(d) Adopt necessary policies and procedures to implement and administer the program;

(e) Monitor use of grant funds and compliance with the grant requirements;

(f) Create and implement reporting requirements for grant recipients;

(g) Facilitate the hosting of a sexual assault kit summit in the state of Washington through a grant recipient or directly through the Washington association of sheriffs and police chiefs, subject to the availability of funds, which may include a combination of public and private dollars allocated for the particular purpose; and

(h) Report to the appropriate committees of the legislature, the joint legislative task force on sexual assault forensic examination best practices, and the governor by December 1, 2017, and each December 1st of each subsequent year the project is funded and operating, regarding the status of grant awards, the progress of the grant recipients toward the identified goals in this section, the data required by subsection (4) of this section, and any other relevant information or recommendations related to the project or sexual assault kit policies.

(4) Grant recipients must:

(a) Perform an inventory of all unsubmitted sexual assault kits in the jurisdiction's possession regardless of where they are stored and submit those sexual assault kits for forensic analysis through the Washington state patrol or another laboratory with the permission of the Washington state patrol;

(b) Establish a multidisciplinary cold case or sexual assault investigation team or teams for follow-up investigations and prosecutions resulting from evidence from the testing of previously unsubmitted sexual assault kits. Cold case or sexual assault investigative teams must: Include prosecutors, law enforcement, and victim advocates for the duration of the project; use victim-centered, trauma-informed protocols, including for victim notification; and use protocols and policies established by the Washington association of sheriffs and police chiefs. The grant funds may support personnel costs, including hiring and overtime, to allow for adequate follow-up investigations and prosecutions. Grant awards must be prioritized for eligible applicants with a commitment to colocate assigned prosecutors, law enforcement, and victim advocates for the duration of the grant program;

(c) Require participants in the multidisciplinary cold case or sexual assault investigation team or teams to participate in and complete specialized training for victim-centered, trauma-informed investigation and prosecutions;

(d) Identify and address individual level, organizational level, and systemic factors that lead to unsubmitted sexual assault kits in the jurisdiction and development of a comprehensive strategy to address the issues, including effecting changes in practice, protocol, and organizational culture, and implementing evidence-based, victim-centered, trauma-informed practices and protocols;

(e) Appoint an informed representative to attend meetings of and provide information and assistance to the joint

legislative task force on sexual assault forensic examination best practices;

(f) Identify and maintain consistent, experienced, and committed leadership of their sexual assault kit initiative; and

(g) Track and report the following data to the Washington association of sheriffs and police chiefs, in addition to any data required by the Washington association of sheriffs and police chiefs: The number of kits inventoried; the dates collected and submitted for testing; the number of kits tested; the number of kits with information eligible for entry into the combined DNA index system; the number of combined DNA index system hits; the number of identified suspects; including serial perpetrators; the number of investigations conducted and cases reviewed; the number of charges filed; and the number of convictions.

(5) Subject to the availability of amounts appropriated for this specific purpose, the project may also allocate funds for grant recipients to:

(a) Create and employ training in relation to sexual assault evidence, victimization and trauma response, and other related topics to improve the quality and outcomes of sexual assault investigations and prosecutions;

(b) Enhance victim services and support for past and current victims of sexual assault; or

(c) Develop evidence collection, retention, victim notification, and other protocols needed to optimize data sharing, case investigation, prosecution, and victim support.

(6) For the purposes of this section:

(a) "Eligible applicants" include: Law enforcement agencies, units of local government, or combination of units of local government, prosecutor's offices, or a governmental nonlaw enforcement agency acting as fiscal agent for one of the previously listed types of eligible applicants. A combination of jurisdictions, including contiguous jurisdictions of multiple towns, cities, or counties, may create a task force or other entity for the purposes of applying for and receiving a grant, provided that the relevant prosecutors and law enforcement agencies are acting in partnership in complying with the grant requirements.

(b) "Project" means the Washington sexual assault kit initiative project created in this section.

(c) "Unsubmitted sexual assault kit" are sexual assault kits that have not been submitted to a forensic laboratory for testing with the combined DNA index system-eligible DNA methodologies as of the effective date of the mandatory testing law in RCW 70.125.090. Unsubmitted sexual assault kits includes partially tested sexual assault kits, which are sexual assault kits that have only been subjected to serological testing, or that have previously been tested only with noncombined DNA index system-eligible DNA methodologies. The project does not include untested sexual assault kits that have been submitted to forensic labs for testing with combined DNA index system-eligible DNA methodologies but are delayed for testing as a result of a backlog of work in the laboratory. [2017 c 290 § 1.]

36.28A.435 Sexual assault prevention and response account. (1) The sexual assault prevention and response account is created in the state treasury. All legislative appropriations and transfers; gifts, grants, and other donations; and all other revenues directed to the account must be deposited

into the sexual assault prevention and response account. Moneys in the account may only be spent after appropriation.

(2) The legislature must prioritize appropriations from the account for: The Washington sexual assault kit initiative project created in RCW 36.28A.430; the office of crime victims advocacy for the purpose of providing support and services, including educational and vocational training, to victims of sexual assault and trafficking; victim-centered, trauma-informed training for prosecutors, law enforcement, and victim advocates including, but not limited to, the training in RCW 43.101.272, 43.101.274, and 43.101.276; the Washington state patrol for the purpose of funding the statewide sexual assault kit tracking system and funding the forensic analysis of sexual assault kits. [2017 c 290 § 6.]

Chapter 36.32 RCW COUNTY COMMISSIONERS

Sections

36.32.210	Inventory of county capitalized assets.
36.32.310	Repealed.

36.32.210 Inventory of county capitalized assets.

Each board of county commissioners of the several counties of the state of Washington shall file with the auditor of the county a full and complete inventory of all capitalized assets kept in accordance with standards established by the state auditor. [2017 c 37 § 1; 2003 c 53 § 204; 1997 c 245 § 3; 1995 c 194 § 5; 1969 ex.s. c 182 § 2; 1963 c 108 § 1; 1963 c 4 § 36.32.210. Prior: 1931 c 95 § 1; RRS § 4056-1. FORMER PARTS OF SECTION: (i) 1931 c 95 § 2; RRS § 4056-2, now codified as RCW 36.32.213. (ii) 1931 c 95 § 3; RRS § 4056-3, now codified as RCW 36.32.215.]

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

State building code: Chapter 19.27 RCW.

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

Chapter 36.70A RCW GROWTH MANAGEMENT—PLANNING BY SELECTED COUNTIES AND CITIES

Sections

36.70A.030	Definitions.
36.70A.060	Natural resource lands and critical areas—Development regulations.
36.70A.070	Comprehensive plans—Mandatory elements.
36.70A.108	Comprehensive plans—Transportation element—Multimodal transportation improvements and strategies.
36.70A.110	Comprehensive plans—Urban growth areas.
36.70A.115	Comprehensive plans and development regulations must provide sufficient land capacity for development.
36.70A.211	Siting of schools—Rural areas, when authorized—Impact fees. (<i>Expires June 30, 2031.</i>)
36.70A.212	Siting of schools—Periodic updates.
36.70A.213	Extension of public facilities and utilities to serve school sited in a rural area authorized—Requirements for authorization—Report.
36.70A.215	Review and evaluation program. (<i>Effective until January 1, 2030.</i>)
36.70A.215	Review and evaluation program. (<i>Effective January 1, 2030.</i>)
36.70A.217	Guidance for local governments on the review and evaluation program—Public participation—Analysis and recommendations.
36.70A.690	On-site sewage system self-inspection.

36.70A.725 Technical review of work plan—Time frame for action by director.

36.70A.030 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

(3) "City" means any city or town, including a code city.

(4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(5) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

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

(7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(8) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses.

(9) "Freight rail dependent uses" means buildings and other infrastructure that are used in the fabrication, processing, storage, and transport of goods where the use is dependent on and makes use of an adjacent short line railroad. Such facilities are both urban and rural development for purposes of this chapter. "Freight rail dependent uses" does not include buildings and other infrastructure that are used in the fabrication, processing, storage, and transport of coal, liquefied natural gas, or "crude oil" as defined in RCW 90.56.010.

(10) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(11) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

(12) "Minerals" include gravel, sand, and valuable metallic substances.

(13) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(14) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(15) "Recreational land" means land so designated under **RCW 36.70A.1701 and that, immediately prior to this designation, was designated as agricultural land of long-term commercial significance under RCW 36.70A.170. Recreational land must have playing fields and supporting facilities existing before July 1, 2004, for sports played on grass playing fields.

(16) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

(17) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preserva-

tion of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(18) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

(19) "Short line railroad" means those railroad lines designated class II or class III by the United States surface transportation board.

(20) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

(21) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(22) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

(23) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands. [2017 3rd sp.s. c 18 § 2; 2012 c 21 § 1. Prior: 2009 c 565 § 22; 2005 c 423 § 2; 1997 c 429 § 3; 1995 c 382 § 9; prior: 1994 c 307 § 2; 1994 c 257 § 5; 1990 1st ex.s. c 17 § 3.]

Reviser's note: *(1) RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

** (2) RCW 36.70A.1701 expired June 30, 2006.

Finding—2017 3rd sp.s. c 18: "The legislature recognizes that it enacted the rail preservation program because railroads provide benefits to state and local jurisdictions that are valuable to economic development, highway safety, and the environment. The Washington state freight mobility plan includes the goal of supporting rural economies farm-to-market, manufacturing, and resource industry sectors. The plan makes clear that ensuring the availability of rail capacity is vital to meeting the future needs of the Puget Sound region. Rail-served industrial sites are a necessary part of a thriving freight mobility system, and are a key means of assuring that food and goods from rural areas are able to make it to people living in urban areas and international markets. Planned and effective access to railroad services is a pivotal aspect of transportation planning. The legislature affirms that it is in the public interest to allow economic development infrastructure to occur near rail lines as a means to alleviate strains on government infrastructure elsewhere. Therefore, the legislature finds that there is a need for counties and cities to improve their planning under the growth management act to provide much needed infrastructure for freight rail dependent uses adjacent to railroad lines." [2017 3rd sp.s. c 18 § 1.]

Intent—2005 c 423: "The legislature recognizes the need for playing fields and supporting facilities for sports played on grass as well as the need to preserve agricultural land of long-term commercial significance. With thoughtful and deliberate planning, and adherence to the goals and requirements of the growth management act, both needs can be met.

The legislature acknowledges the state's interest in preserving the agricultural industry and family farms, and recognizes that the state's rich and productive lands enable agricultural production. Because of its unique qualities and limited quantities, designated agricultural land of long-term commercial significance is best suited for agricultural and farm uses, not recreational uses.

The legislature acknowledges also that certain local governments have either failed or neglected to properly plan for population growth and the sufficient number of playing fields and supporting facilities needed to accommodate this growth. The legislature recognizes that citizens responded to this lack of planning, fields, and supporting facilities by constructing nonconforming fields and facilities on agricultural lands of long-term commercial significance. It is the intent of the legislature to permit the continued existence and use of these fields and facilities in very limited circumstances if specific criteria are satisfied within a limited time frame. It is also the intent of the legislature to grant this authorization without diminishing the designation and preservation requirements of the growth management act pertaining to Washington's invaluable farmland." [2005 c 423 § 1.]

Finding—Intent—1994 c 307: "The legislature finds that it is in the public interest to identify and provide long-term conservation of those productive natural resource lands that are critical to and can be managed economically and practically for long-term commercial production of food, fiber, and minerals. Successful achievement of the natural resource industries' goal set forth in RCW 36.70A.020 requires the conservation of a land base sufficient in size and quality to maintain and enhance those industries and the development and use of land use techniques that discourage uses incompatible to the management of designated lands. The 1994 amendment to RCW 36.70A.030(8) (section 2(8), chapter 307, Laws of 1994) is intended to clarify legislative intent regarding the designation of forestlands and is not intended to require every county that has already complied with the interim forestland designation requirement of RCW 36.70A.170 to review its actions until the adoption of its comprehensive plans and development regulations as provided in RCW 36.70A.060(3)." [1994 c 307 § 1.]

Additional notes found at www.leg.wa.gov

36.70A.060 Natural resource lands and critical areas—Development regulations. (1)(a) Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accus-

tomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals. Any county located to the west of the crest of the Cascade mountains that has both a population of at least four hundred thousand and a border that touches another state, and any city in such county, may adopt development regulations to assure that agriculture, forest, and mineral resource lands adjacent to short line railroads may be developed for freight rail dependent uses.

(b) Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for mineral resource lands shall also inform that an application might be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

(c) Each county that adopts a resolution of partial planning under RCW 36.70A.040(2)(b), and each city within such county, shall adopt development regulations within one year after the adoption of the resolution of partial planning to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection (1)(c) must comply with the requirements governing regulations adopted under (a) of this subsection.

(d)(i) A county that adopts a resolution of partial planning under RCW 36.70A.040(2)(b) and that is not in compliance with the planning requirements of this section, RCW 36.70A.040(4), 36.70A.070(5), 36.70A.170, and 36.70A.172 at the time the resolution is adopted must, by January 30, 2017, apply for a determination of compliance from the department finding that the county's development regulations, including development regulations adopted to protect critical areas, and comprehensive plans are in compliance with the requirements of this section, RCW 36.70A.040(4), 36.70A.070(5), 36.70A.170, and 36.70A.172. The department must approve or deny the application for a determination of compliance within one hundred twenty days of its receipt or by June 30, 2017, whichever date is earlier.

(ii) If the department denies an application under (d)(i) of this subsection, the county and each city within is obligated to comply with all requirements of this chapter and the resolution for partial planning adopted under RCW 36.70A.040(2)(b) is no longer in effect.

(iii) A petition for review of a determination of compliance under (d)(i) of this subsection may only be appealed to the growth management hearings board within sixty days of the issuance of the decision by the department.

(iv) In the event of a filing of a petition in accordance with (d)(iii) of this subsection, the county and the department must equally share the costs incurred by the department for defending an approval of determination of compliance that is before the growth management hearings board.

(v) The department may implement this subsection (1)(d) by adopting rules related to determinations of compliance. The rules may address, but are not limited to: The requirements for applications for a determination of compliance; charging of costs under (d)(iv) of this subsection; procedures for processing applications; criteria for the evaluation of applications; issuance and notice of department decisions; and applicable timelines.

(e) Any county that borders both the Cascade mountains and another country and has a population of less than fifty thousand people, and any city in such county, may adopt development regulations to assure that agriculture, forest, and mineral resource lands adjacent to short line railroads may be developed for freight rail dependent uses.

(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170. For counties and cities that are required or choose to plan under RCW 36.70A.040, such development regulations shall be adopted on or before September 1, 1991. For the remainder of the counties and cities, such development regulations shall be adopted on or before March 1, 1992.

(3) Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may alter such designations and development regulations to insure consistency.

(4) Forest land and agricultural land located within urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights. [2017 3rd sp.s. c 18 § 3; 2014 c 147 § 2; 2005 c 423 § 3; 1998 c 286 § 5; 1991 sp.s. c 32 § 21; 1990 1st ex.s. c 17 § 6.]

Finding—2017 3rd sp.s. c 18: See note following RCW 36.70A.030.

Intent—Effective date—2005 c 423: See notes following RCW 36.70A.030.

36.70A.070 Comprehensive plans—Mandatory elements. The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140. Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of groundwater used for public water supplies. Wherever possible, the land use ele-

ment should consider utilizing urban planning approaches that promote physical activity. Where applicable, the land use element shall review drainage, flooding, and storm water runoff in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community. In counties and cities subject to the review and evaluation requirements of RCW 36.70A.215, any revision to the housing element shall include consideration of prior review and evaluation reports and any reasonable measures identified.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may

provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural economic advancement, densities, and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and groundwater resources; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) A commercial, industrial, residential, shoreline, or mixed-use area are subject to the requirements of (d)(iv) of this subsection, but are not subject to the requirements of (c)(ii) and (iii) of this subsection.

(B) Any development or redevelopment other than an industrial area or an industrial use within a mixed-use area or an industrial area under this subsection (5)(d)(i) must be principally designed to serve the existing and projected rural population.

(C) Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of this subsection (5);

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of iso-

lated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(16). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030(16). Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary, the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries, such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county's jurisdictional boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the office of financial management's ten-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection;

(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(E) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the ten-year investment program developed by the office of financial management as required by RCW 47.05.030;

(C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies;

(vii) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that

address and encourage enhanced community access and promote healthy lifestyles.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride-sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6), "concurrent with the development" means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years. If the collection of impact fees is delayed under RCW 82.02.050(3), the six-year period required by this subsection (6)(b) must begin after full payment of all impact fees is due to the county or city.

(c) The transportation element described in this subsection (6), the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems, and the ten-year investment program required by RCW 47.05.030 for the state, must be consistent.

(7) An economic development element establishing local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(9) It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130. [2017 3rd sp.s. c 18 § 4; 2017 3rd sp.s. c 16 § 4; 2017 c 331 § 2; 2015 c 241 § 2; 2010 1st sp.s. c 26 § 6; 2005 c 360 § 2; (2005 c 477 § 1 expired August 31, 2005); 2004 c 196 § 1; 2003 c 152 § 1. Prior: 2002 c 212 § 2; 2002 c 154 § 2; 1998 c 171 § 2; 1997 c 429 § 7; 1996 c 239 § 1; prior: 1995 c 400 § 3; 1995 c 377 § 1; 1990 1st ex.s. c 17 § 7.]

Reviser's note: This section was amended by 2017 3rd sp.s. c 16 § 4 and by 2017 3rd sp.s. c 18 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—2017 3rd sp.s. c 18: See note following RCW 36.70A.030.

Short title—2017 c 331: "This act may be known and cited as the economic revitalization act." [2017 c 331 § 1.]

Effective date—2015 c 241: See note following RCW 44.28.812.

Findings—Intent—2005 c 360: "The legislature finds that regular physical activity is essential to maintaining good health and reducing the rates of chronic disease. The legislature further finds that providing opportunities for walking, biking, horseback riding, and other regular forms of exercise is best accomplished through collaboration between the private sector and local, state, and institutional policymakers. This collaboration can build communities where people find it easy and safe to be physically active. It is the intent of the legislature to promote policy and planning efforts that increase access to inexpensive or free opportunities for regular exercise in all communities around the state." [2005 c 360 § 1.]

Additional notes found at www.leg.wa.gov

36.70A.108 Comprehensive plans—Transportation element—Multimodal transportation improvements and strategies. (1) The transportation element required by RCW 36.70A.070 may include, in addition to improvements or strategies to accommodate the impacts of development authorized under RCW 36.70A.070(6)(b), multimodal transportation improvements or strategies that are made concurrent with the development. These transportation improvements or strategies may include, but are not limited to, measures implementing or evaluating:

(a) Multiple modes of transportation with peak and non-peak hour capacity performance standards for locally owned transportation facilities; and

(b) Modal performance standards meeting the peak and nonpeak hour capacity performance standards.

(2) Any county located to the west of the crest of the Cascade mountains that has both a population of at least four hundred thousand and a border that touches another state, and any city in such county, may include development of freight rail dependent uses on land adjacent to a short line railroad in the transportation element required by RCW 36.70A.070. Such counties and cities may also modify development regulations to include development of freight rail dependent uses that do not require urban governmental services in rural lands.

(3) Nothing in this section or RCW 36.70A.070(6)(b) shall be construed as prohibiting a county or city planning under RCW 36.70A.040 from exercising existing authority to develop multimodal improvements or strategies to satisfy the concurrency requirements of this chapter.

(4) Nothing in this section is intended to affect or otherwise modify the authority of jurisdictions planning under RCW 36.70A.040. [2017 3rd sp.s. c 18 § 5; 2005 c 328 § 1.]

Finding—2017 3rd sp.s. c 18: See note following RCW 36.70A.030.

36.70A.110 Comprehensive plans—Urban growth areas. (1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth,

or is a designated new fully contained community as defined by RCW 36.70A.350.

(2) Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, except for those urban growth areas contained totally within a national historical reserve. As part of this planning process, each city within the county must include areas sufficient to accommodate the broad range of needs and uses that will accompany the projected urban growth including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.

Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. In the case of urban growth areas contained totally within a national historical reserve, the city may restrict densities, intensities, and forms of urban growth as determined to be necessary and appropriate to protect the physical, cultural, or historic integrity of the reserve. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

Within one year of July 1, 1990, each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040, shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area. Within sixty days of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall begin this consultation with each city located within its boundaries. The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area. A city may object formally with the department over the designation of the urban growth area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services.

(3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.

(4) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services

be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

(5) On or before October 1, 1993, each county that was initially required to plan under RCW 36.70A.040(1) shall adopt development regulations designating interim urban growth areas under this chapter. Within three years and three months of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall adopt development regulations designating interim urban growth areas under this chapter. Adoption of the interim urban growth areas may only occur after public notice; public hearing; and compliance with the state environmental policy act, chapter 43.21C RCW, and under this section. Such action may be appealed to the growth management hearings board under RCW 36.70A.280. Final urban growth areas shall be adopted at the time of comprehensive plan adoption under this chapter.

(6) Each county shall include designations of urban growth areas in its comprehensive plan.

(7) An urban growth area designated in accordance with this section may include within its boundaries urban service areas or potential annexation areas designated for specific cities or towns within the county.

(8)(a) Except as provided in (b) of this subsection, the expansion of an urban growth area is prohibited into the one hundred year floodplain of any river or river segment that: (i) Is located west of the crest of the Cascade mountains; and (ii) has a mean annual flow of one thousand or more cubic feet per second as determined by the department of ecology.

(b) Subsection (8)(a) of this section does not apply to:

(i) Urban growth areas that are fully contained within a floodplain and lack adjacent buildable areas outside the floodplain;

(ii) Urban growth areas where expansions are precluded outside floodplains because:

(A) Urban governmental services cannot be physically provided to serve areas outside the floodplain; or

(B) Expansions outside the floodplain would require a river or estuary crossing to access the expansion; or

(iii) Urban growth area expansions where:

(A) Public facilities already exist within the floodplain and the expansion of an existing public facility is only possible on the land to be included in the urban growth area and located within the floodplain; or

(B) Urban development already exists within a floodplain as of July 26, 2009, and is adjacent to, but outside of, the urban growth area, and the expansion of the urban growth area is necessary to include such urban development within the urban growth area; or

(C) The land is owned by a jurisdiction planning under this chapter or the rights to the development of the land have been permanently extinguished, and the following criteria are met:

(I) The permissible use of the land is limited to one of the following: Outdoor recreation; environmentally beneficial projects, including but not limited to habitat enhancement or

environmental restoration; stormwater facilities; flood control facilities; or underground conveyances; and

(II) The development and use of such facilities or projects will not decrease flood storage, increase stormwater runoff, discharge pollutants to fresh or salt waters during normal operations or floods, or increase hazards to people and property.

(c) For the purposes of this subsection (8), "one hundred year floodplain" means the same as "special flood hazard area" as set forth in WAC 173-158-040 as it exists on July 26, 2009.

(9) If a county, city, or utility has adopted a capital facility plan or utilities element to provide sewer service within the urban growth areas during the twenty-year planning period, nothing in this chapter obligates counties, cities, or utilities to install sanitary sewer systems to properties within urban growth areas designated under subsection (2) of this section by the end of the twenty-year planning period when those properties:

(a)(i) Have existing, functioning, nonpolluting on-site sewage systems;

(ii) Have a periodic inspection program by a public agency to verify the on-site sewage systems function properly and do not pollute surface or groundwater; and

(iii) Have no redevelopment capacity; or

(b) Do not require sewer service because development densities are limited due to wetlands, flood plains, fish and wildlife habitats, or geological hazards. [2017 c 305 § 1; 2010 c 211 § 1. Prior: 2009 c 342 § 1; 2009 c 121 § 1; 2004 c 206 § 1; 2003 c 299 § 5; 1997 c 429 § 24; 1995 c 400 § 2; 1994 c 249 § 27; 1993 sp.s. c 6 § 2; 1991 sp.s. c 32 § 29; 1990 1st ex.s. c 17 § 11.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Additional notes found at www.leg.wa.gov

36.70A.115 Comprehensive plans and development regulations must provide sufficient land capacity for development. (1) Counties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, including the accommodation of, as appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related to such growth, as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the office of financial management.

(2) This analysis shall include the reasonable measures findings developed under RCW 36.70A.215, if applicable to such counties and cities. [2017 3rd sp.s. c 16 § 1; 2009 c 121 § 3; 2003 c 333 § 1.]

36.70A.211 Siting of schools—Rural areas, when authorized—Impact fees. (Expires June 30, 2031.) (1) A county may authorize the siting in a rural area of a school that serves students from an urban area, even where otherwise prohibited by a multicounty planning policy, under the following circumstances:

(a) The county has a population of more than eight hundred forty thousand but fewer than one million five hundred thousand and abuts at least six other counties;

(b) The county must have adopted in its comprehensive plan a policy concerning the siting of schools in rural areas;

(c) Any impacts associated with the siting of such a school are mitigated as required by the state environmental policy act, chapter 43.21C RCW; and

(d) The county must be a participant in a multicounty planning policy as described in RCW 36.70A.210.

(2) A multicounty planning policy in which any county referenced in subsection (1) of this section is a participant must be amended, at its next regularly scheduled update, to include a policy that addresses the siting of schools in rural areas of all counties subject to the multicounty planning policy.

(3) A school sited under this section may not collect or impose the impact fees described in RCW 82.02.050.

(4) This section expires June 30, 2031. [2017 c 129 § 2.]

36.70A.212 Siting of schools—Periodic updates. In a county that chooses to site schools under RCW 36.70A.211, each school district within the county must participate in the county's periodic updates required by RCW 36.70A.130(1)(b) by:

(1) Coordinating its enrollment forecasts and projections with the county's adopted population projections;

(2) Identifying school siting criteria with the county, cities, and regional transportation planning organizations;

(3) Identifying suitable school sites with the county and cities, with priority to siting urban-serving schools in existing cities and towns in locations where students can safely walk and bicycle to the school from their homes and that can effectively be served with transit; and

(4) Working with the county and cities to identify school costs and funding for the capital facilities plan element required by RCW 36.70A.070(3). [2017 c 129 § 3.]

36.70A.213 Extension of public facilities and utilities to serve school sited in a rural area authorized—Requirements for authorization—Report. (1) This chapter does not prohibit a county planning under RCW 36.70A.040 from authorizing the extension of public facilities and utilities to serve a school sited in a rural area that serves students from a rural area and an urban area so long as the following requirements are met:

(a) The applicable school district board of directors has adopted a policy addressing school service area and facility needs and educational program requirements;

(b) The applicable school district has made a finding, with the concurrence of the county legislative authority and the legislative authorities of any affected cities, that the district's proposed site is suitable to site the school and any associated recreational facilities that the district has determined cannot reasonably be collocated on an existing school site, taking into consideration the policy adopted in (a) of this subsection and the extent to which vacant or developable land within the growth area meets those requirements;

(c) The county and any affected cities agree to the extension of public facilities and utilities to serve the school sited

in a rural area that serves urban and rural students at the time of concurrence in (b) of this subsection;

(d) If the public facility or utility is extended beyond the urban growth area to serve a school, the public facility or utility must serve only the school and the costs of such extension must be borne by the applicable school district based on a reasonable nexus to the impacts of the school, except as provided in subsection (3) of this section; and

(e) Any impacts associated with the siting of the school are mitigated as required by the state environmental policy act, chapter 43.21C RCW.

(2) This chapter does not prohibit either the expansion or modernization of an existing school in the rural area or the placement of portable classrooms at an existing school in the rural area.

(3) Where a public facility or utility has been extended beyond the urban growth area to serve a school, the public facility or utility may, where consistent with RCW 36.70A.110(4), serve a property or properties in addition to the school if the property owner so requests, provided that the county and any affected cities agree with the request and provided that the property is located no further from the public facility or utility than the distance that, if the property were within the urban growth area, the property would be required to connect to the public facility or utility. In such an instance, the school district may, for a period not to exceed twenty years, require reimbursement from a requesting property owner for a proportional share of the construction costs incurred by the school district for the extension of the public facility or utility.

(4) By December 1, 2023, the department shall report to the governor and the appropriate committees of the legislature about schools outside of urban growth areas that have been built, are under construction, or are planned as a result of the requirements of chapter 32, Laws of 2017 3rd sp. sess. The report shall include the number, location, and characteristics of the schools; the number of urban and rural students served; and a cost analysis of schools built outside of urban growth boundaries. [2017 3rd sp.s. c 32 § 1.]

36.70A.215 Review and evaluation program. (Effective until January 1, 2030.) (1) Subject to the limitations in subsection (5) of this section, a county shall adopt, in consultation with its cities, countywide planning policies to establish a review and evaluation program. This program shall be in addition to the requirements of RCW 36.70A.110, 36.70A.130, and 36.70A.210. In developing and implementing the review and evaluation program required by this section, the county and its cities shall consider information from other appropriate jurisdictions and sources. The purpose of the review and evaluation program shall be to:

(a) Determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions, targets, and objectives contained in the countywide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and

(b) Identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter. Reasonable measures are those actions necessary to reduce the differences between growth

and development assumptions and targets contained in the countywide planning policies and the county and city comprehensive plans with actual development patterns. The reasonable measures process in subsection (3) of this section shall be used as part of the next comprehensive plan update to reconcile inconsistencies.

(2) The review and evaluation program shall:

(a) Encompass land uses and activities both within and outside of urban growth areas and provide for annual collection of data on urban and rural land uses, development, zoning and development standards, environmental regulations including but not limited to critical areas, stormwater, shoreline, and tree retention requirements; and capital facilities to determine the quantity and type of land suitable for development, both for residential and employment-based activities;

(b) Provide for evaluation of the data collected under (a) of this subsection as provided in subsection (3) of this section. The evaluation shall be completed no later than three years prior to the deadline for review and, if necessary, update of comprehensive plans and development regulations as required by RCW 36.70A.130. For comprehensive plans required to be updated before 2024, the evaluation as provided in subsection (3) of this section shall be completed no later than two years prior to the deadline for review and, if necessary, update of comprehensive plans. The county and its cities may establish in the countywide planning policies indicators, benchmarks, and other similar criteria to use in conducting the evaluation;

(c) Provide for methods to resolve disputes among jurisdictions relating to the countywide planning policies required by this section and procedures to resolve inconsistencies in collection and analysis of data; and

(d) Develop reasonable measures to use in reducing the differences between growth and development assumptions and targets contained in the countywide planning policies and county and city comprehensive plans, with the actual development patterns. The reasonable measures shall be adopted, if necessary, into the countywide planning policies and the county or city comprehensive plans and development regulations during the next scheduled update of the plans.

(3) At a minimum, the evaluation component of the program required by subsection (1) of this section shall:

(a) Determine whether there is sufficient suitable land to accommodate the countywide population projection established for the county pursuant to RCW 43.62.035 and the subsequent population allocations within the county and between the county and its cities and the requirements of RCW 36.70A.110. The zoned capacity of land alone is not a sufficient standard to deem land suitable for development or redevelopment within the twenty-year planning period;

(b) An evaluation and identification of land suitable for development or redevelopment shall include:

(i) A review and evaluation of the land use designation and zoning/development regulations; environmental regulations (such as tree retention, stormwater, or critical area regulations) impacting development; and other regulations that could prevent assigned densities from being achieved; infrastructure gaps (including but not limited to transportation, water, sewer, and stormwater); and

(ii) Use of a reasonable land market supply factor when evaluating land suitable to accommodate new development

or redevelopment of land for residential development and employment activities. The reasonable market supply factor identifies reductions in the amount of land suitable for development and redevelopment. The methodology for conducting a reasonable land market factor shall be determined through the guidance developed in RCW 36.70A.217;

(c) Provide an analysis of county and/or city development assumptions, targets, and objectives contained in the countywide planning policies and the county and city comprehensive plans when growth targets and assumptions are not being achieved. It is not appropriate to make a finding that assumed growth contained in the countywide planning policies and the county or city comprehensive plan will occur at the end of the current comprehensive planning twenty-year planning cycle without rationale;

(d) Determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses within the urban growth area since the adoption of a comprehensive plan under this chapter or since the last periodic evaluation as required by subsection (1) of this section; and

(e) Based on the actual density of development as determined under (b) of this subsection, review commercial, industrial, and housing needs by type and density range to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the twenty-year planning period used in the most recently adopted comprehensive plan.

(4) From funds appropriated by the legislature for this purpose, the department shall provide grants to counties, cities, and regional planning organizations required under subsection (5) of this section to conduct the review and perform the evaluation required by this section.

(5) The provisions of this section shall apply to counties, and the cities within those counties, that were greater than one hundred fifty thousand in population in 1996 as determined by office of financial management population estimates and that are located west of the crest of the Cascade mountain range. Any other county planning under RCW 36.70A.040 may carry out the review, evaluation, and amendment programs and procedures as provided in this section.

(6) The requirements of this section are subject to the availability of funds appropriated for this specific purpose. If sufficient funds are not appropriated consistent with the timelines in subsection (2)(b) of this section, counties and cities shall be subject to the review and evaluation program as it existed prior to October 19, 2017. [2017 3rd sp.s. c 16 § 2; 2011 c 353 § 3; 1997 c 429 § 25.]

Expiration date—2017 3rd sp.s. c 16 § 2: "Section 2 of this act expires January 1, 2030." [2017 3rd sp.s. c 16 § 8.]

Intent—2011 c 353: See note following RCW 36.70A.130.

Additional notes found at www.leg.wa.gov

36.70A.215 Review and evaluation program. (Effective January 1, 2030.) (1) Subject to the limitations in subsection (7) of this section, a county shall adopt, in consultation with its cities, countywide planning policies to establish a review and evaluation program. This program shall be in addition to the requirements of RCW 36.70A.110, 36.70A.130, and 36.70A.210. In developing and implement-

ing the review and evaluation program required by this section, the county and its cities shall consider information from other appropriate jurisdictions and sources. The purpose of the review and evaluation program shall be to:

(a) Determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions, targets, and objectives contained in the countywide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and

(b) Identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter.

(2) The review and evaluation program shall:

(a) Encompass land uses and activities both within and outside of urban growth areas and provide for annual collection of data on urban and rural land uses, development, critical areas, and capital facilities to the extent necessary to determine the quantity and type of land suitable for development, both for residential and employment-based activities;

(b) Provide for evaluation of the data collected under (a) of this subsection as provided in subsection (3) of this section. The evaluation shall be completed no later than one year prior to the deadline for review and, if necessary, update of comprehensive plans and development regulations as required by RCW 36.70A.130. The county and its cities may establish in the countywide planning policies indicators, benchmarks, and other similar criteria to use in conducting the evaluation;

(c) Provide for methods to resolve disputes among jurisdictions relating to the countywide planning policies required by this section and procedures to resolve inconsistencies in collection and analysis of data; and

(d) Provide for the amendment of the countywide policies and county and city comprehensive plans as needed to remedy an inconsistency identified through the evaluation required by this section, or to bring these policies into compliance with the requirements of this chapter.

(3) At a minimum, the evaluation component of the program required by subsection (1) of this section shall:

(a) Determine whether there is sufficient suitable land to accommodate the countywide population projection established for the county pursuant to RCW 43.62.035 and the subsequent population allocations within the county and between the county and its cities and the requirements of RCW 36.70A.110;

(b) Determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses within the urban growth area since the adoption of a comprehensive plan under this chapter or since the last periodic evaluation as required by subsection (1) of this section; and

(c) Based on the actual density of development as determined under (b) of this subsection, review commercial, industrial, and housing needs by type and density range to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the twenty-year planning period used in the most recently adopted comprehensive plan.

(4) If the evaluation required by subsection (3) of this section demonstrates an inconsistency between what has

occurred since the adoption of the countywide planning policies and the county and city comprehensive plans and development regulations and what was envisioned in those policies and plans and the planning goals and the requirements of this chapter, as the inconsistency relates to the evaluation factors specified in subsection (3) of this section, the county and its cities shall adopt and implement measures that are reasonably likely to increase consistency during the subsequent five-year period. If necessary, a county, in consultation with its cities as required by RCW 36.70A.210, shall adopt amendments to countywide planning policies to increase consistency. The county and its cities shall annually monitor the measures adopted under this subsection to determine their effect and may revise or rescind them as appropriate.

(5)(a) Not later than July 1, 1998, the department shall prepare a list of methods used by counties and cities in carrying out the types of activities required by this section. The department shall provide this information and appropriate technical assistance to counties and cities required to or choosing to comply with the provisions of this section.

(b) By December 31, 2007, the department shall submit to the appropriate committees of the legislature a report analyzing the effectiveness of the activities described in this section in achieving the goals envisioned by the countywide planning policies and the comprehensive plans and development regulations of the counties and cities.

(6) From funds appropriated by the legislature for this purpose, the department shall provide grants to counties, cities, and regional planning organizations required under subsection (7) of this section to conduct the review and perform the evaluation required by this section.

(7) The provisions of this section shall apply to counties, and the cities within those counties, that were greater than one hundred fifty thousand in population in 1995 as determined by office of financial management population estimates and that are located west of the crest of the Cascade mountain range. Any other county planning under RCW 36.70A.040 may carry out the review, evaluation, and amendment programs and procedures as provided in this section. [2011 c 353 § 3; 1997 c 429 § 25.]

Intent—2011 c 353: See note following RCW 36.70A.130.

Additional notes found at www.leg.wa.gov

36.70A.217 Guidance for local governments on the review and evaluation program—Public participation—Analysis and recommendations. (1) The department of commerce, through a contract with a land use and economics entity, shall develop guidance for local governments on the review and evaluation program in RCW 36.70A.215. The contract shall be with an entity experienced in serving private and public sector clients which can assist developers and policymakers to understand near-term market realities and long-term planning considerations, and with experience facilitating successful conversations between multiple local governments and stakeholders on complex land use issues. The department of commerce shall enable appropriate public participation by affected stakeholders in the development of the guidance for the appropriate market factor analysis and review and update of the overall buildable lands program. This guidance regarding the market factor methodology and buildable lands program shall be completed by December 1,

2018. The buildable lands guidance shall analyze and provide recommendations on:

(a) The review and evaluation program in RCW 36.70A.215 and changes to the required information to be analyzed within the program to increase the accuracy of the report when updating countywide planning policies and the county and city comprehensive plans;

(b) Whether a more effective schedule could be developed for countywide planning policies and the county and city comprehensive plan updates to better align with implementing reasonable measures identified through the review and evaluation program, and population projections and census data while maintaining appropriate and timely consideration of planning needs best done through a comprehensive planning process;

(c) A determination on how reasonable measures, based on the review and evaluation program, should be implemented into updates for countywide planning policies and the county and city comprehensive plans;

(d) Infrastructure costs, including but not limited to transportation, water, sewer, stormwater, and the cost to provide new or upgraded infrastructure if required to serve development; cost of development; timelines to permit and develop land; market availability of land; the nexus between proposed densities, economic conditions needed to achieve those densities, and the impact to housing affordability for home ownership and rental housing; and, market demand when evaluating if land is suitable for development or redevelopment. These all have an impact on whether development occurs or if planned for densities will differ from achieved densities;

(e) Identifying the measures to increase housing availability and affordability for all economic segments of the community and the factors contributing to the high cost of housing including zoning/development/environmental regulations, permit processing timelines, housing production trends by housing type and rents and prices, national and regional economic and demographic trends affecting housing affordability and production by rents and prices, housing unit size by housing type, and how well growth targets align with market conditions including the assumptions on where people desire to live;

(f) Evaluating how existing zoning and land use regulations are promoting or hindering attainment of the goal for affordable housing in RCW 36.70A.020(4). Barriers to meeting this goal shall be identified and considered as possible reasonable measures for each county and city, and as part of the next countywide planning policies and county and city comprehensive plan update;

(g) Identifying opportunities and strategies to encourage growth within urban growth areas;

(h) Identifying strategies to increase local government capacity to invest in the infrastructure necessary to accommodate growth and provide opportunities for affordable housing across all economic segments of the community and housing types; and

(i) Other topics identified by stakeholders and the department.

(2) The requirements of this section are subject to the availability of funds appropriated for this specific purpose. [2017 3rd sp.s. c 16 § 3.]

36.70A.690 On-site sewage system self-inspection.

This chapter does not preclude counties from authorizing inspections of on-site sewage systems to be conducted by a homeowner, a homeowner's family member, or a homeowner's tenant that has completed certification requirements specified by the county. Nothing in this section eliminates the requirement that counties protect water quality consistent with RCW 36.70A.070 (1) and (5). [2017 c 105 § 1.]

36.70A.725 Technical review of work plan—Time frame for action by director. (1) Upon receipt of a work plan submitted to the director under RCW 36.70A.720(2)(a), the director must submit the work plan to the technical panel for review.

(2) The technical panel shall review the work plan and report to the director within ninety days after the director receives the work plan. The technical panel shall assess whether at the end of ten years after receipt of funding, the work plan, in conjunction with other existing plans and regulations, will protect critical areas while maintaining and enhancing the viability of agriculture in the watershed.

(3)(a) If the technical panel determines the proposed work plan will protect critical areas while maintaining and enhancing the viability of agriculture in the watershed:

- (i) It must recommend approval of the work plan; and
- (ii) The director must approve the work plan.

(b) If the technical panel determines the proposed work plan will not protect critical areas while maintaining and enhancing the viability of agriculture in the watershed:

- (i) It must identify the reasons for its determination; and
- (ii) The director must advise the watershed group of the reasons for disapproval.

(4) The watershed group may modify and resubmit its work plan for review and approval consistent with this section.

(5) If the director does not approve a work plan submitted under this section within two years and nine months after receipt of funding, the director shall submit the work plan to the statewide advisory committee for resolution. If the statewide advisory committee recommends approval, the director must approve the work plan.

(6) If the director does not approve a work plan for a watershed within three years after receipt of funding, the provisions of RCW 36.70A.735(2) apply to the watershed. [2017 3rd sp.s. c 1 § 961; 2011 c 360 § 7.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Chapter 36.71 RCW**PEDDLERS' AND HAWKERS' LICENSES**

Sections

36.71.090 Farmers, gardeners, etc., peddling own produce exempt from license requirements—Exception. (*Effective January 1, 2018.*)

36.71.090 Farmers, gardeners, etc., peddling own produce exempt from license requirements—Exception. (*Effective January 1, 2018.*) It shall be lawful for any farmer, gardener, or other person, without license, to sell, deliver, or peddle any fruits, vegetables, berries, eggs, or any farm produce or edibles raised, gathered, produced, or manu-

factured by such person and no city or town shall pass or enforce any ordinance prohibiting the sale by or requiring license from the producers and manufacturers of farm produce and edibles as defined in this section. However, nothing in this section authorizes any person to sell, deliver, or peddle, without license, in any city or town, any dairy product, meat, poultry, eel, fish, mollusk, or shellfish where a license is required to engage legally in such activity in such city or town. [2017 3rd sp.s. c 8 § 56; 2003 c 387 § 5; 2002 c 301 § 9; 1984 c 25 § 4; 1963 c 4 § 36.71.090. Prior: 1917 c 45 § 1; 1897 c 62 § 1; RRS § 8343.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

**Chapter 36.72 RCW
PRINTING**

Sections

36.72.075 Official county newspaper.

36.72.075 Official county newspaper. At its first April meeting, the county legislative authority shall let a contract to a legal newspaper qualified under this section to serve as the official county newspaper for the term of one year beginning on the first day of July following. If there be at least one legal newspaper published in the county, the contract shall be let to a legal newspaper published in the county. If there be no legal newspaper published in the county, the county legislative authority shall let the contract to a legal newspaper published in an adjacent county and having general circulation in the county.

When two or more legal newspapers are qualified under the provisions of this section to be the official county newspaper, the clerk of the county legislative authority shall advertise, at least five weeks before the meeting at which the county legislative authority shall let the contract for the official county newspaper, for bid proposals to be submitted by interested qualified legal newspapers. Advertisement of the opportunity to bid shall be mailed to all qualified legal newspapers and shall be published once in the official county newspaper. The advertisement may designate the form which notices shall take, and may require that the successful bidder provide a bond for the correct and faithful performance of the contract.

The county legislative authority shall let the contract to the best and lowest responsible bidder, giving consideration to the question of circulation in awarding the contract, with a view to giving publication of notices the widest publicity. [2017 c 37 § 3; 1977 c 34 § 2.]

**Chapter 36.86 RCW
ROADS AND BRIDGES—STANDARDS**

Sections

36.86.100 Railroad grade crossings—Obstructions.

36.86.100 Railroad grade crossings—Obstructions. Each railroad company shall keep its right-of-way clear of all brush and timber in the vicinity of a railroad grade crossing

with a county road for a distance of one hundred feet from the crossing in such a manner as to permit a person upon the road to obtain an unobstructed view in both directions of an approaching train or other on-track equipment. The county legislative authority shall cause brush and timber to be cleared from the right-of-way of county roads in the proximity of a railroad grade crossing for a distance of one hundred feet from the crossing in such a manner as to permit a person traveling upon the road to obtain an unobstructed view in both directions of an approaching train or other on-track equipment. It is unlawful to erect or maintain a sign, signboard, or billboard within a distance of one hundred feet from the point of intersection of the road and railroad grade crossing located outside the corporate limits of any city or town unless, after thirty days notice to the Washington utilities and transportation commission and the railroad operating the crossing, the county legislative authority determines that it does not obscure the sight distance of a person operating a vehicle or train approaching the grade crossing.

When a person who has erected or who maintains such a sign, signboard, or billboard or when a railroad company permits such brush or timber in the vicinity of a railroad grade crossing with a county road or permits the surface of a grade crossing to become inconvenient or dangerous for passage and who has the duty to maintain it, fails, neglects, or refuses to remove or cause to be removed such brush, timber, sign, signboard, or billboard, or maintain the surface of the crossing, the utilities and transportation commission upon complaint of the county legislative authority or upon complaint of any party interested, or upon its own motion, shall enter upon a hearing in the manner now provided for hearings with respect to railroad-highway grade crossings, and make and enforce proper orders for the removal of the brush, timber, sign, signboard or billboard, or maintenance of the crossing. Nothing in this section prevents the posting or maintaining thereon of highway or road signs or traffic devices giving directions or distances for the information of the public when the signs conform to the "Manual for Uniform Traffic Control Devices" issued by the state department of transportation. The county legislative authority shall inspect highway grade crossings and make complaint of the violation of any provisions of this section. [2017 c 87 § 4; 1983 c 19 § 1; 1963 c 4 § 36.86.100. Prior: 1955 c 310 § 6.]

Railroad grade crossings, obstructions: RCW 47.32.140.

Title 38

MILITIA AND MILITARY AFFAIRS

Chapters

38.52 Emergency management.

Chapter 38.52 RCW

EMERGENCY MANAGEMENT

Sections

- 38.52.010 Definitions.
- 38.52.070 Local organizations and joint local organizations authorized—Establishment, operation—Emergency powers, procedures—Communication plans.
- 38.52.073 Communication plan status report—Life safety information communication report.
- 38.52.105 Disaster response account.

- 38.52.180 Liability for property damage, bodily injury, death—Immunity—Assumption by state—Indemnification—Immunity from liability for covered volunteers.
- 38.52.440 Assistance for persons with disabilities present at scene of emergency—Assessment and report—Definitions.
- 38.52.580 State agency communication plan for emergencies and disasters—Copy to legislature—Report.

38.52.010 Definitions. As used in this chapter:

(1) "Communication plan," as used in RCW 38.52.070, means a section in a local comprehensive emergency management plan that addresses emergency notification of life safety information.

(2) "Continuity of operations planning" means the internal effort of an organization to assure that the capability exists to continue essential functions and services in response to a comprehensive array of potential emergencies or disasters.

(3) "Department" means the state military department.

(4) "Director" means the adjutant general.

(5) "Emergency management" or "comprehensive emergency management" means the preparation for and the carrying out of all emergency functions, other than functions for which the military forces are primarily responsible, to mitigate, prepare for, respond to, and recover from emergencies and disasters, and to aid victims suffering from injury or damage, resulting from disasters caused by all hazards, whether natural, technological, or human caused, and to provide support for search and rescue operations for persons and property in distress. However, "emergency management" or "comprehensive emergency management" does not mean preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack.

(6)(a) "Emergency or disaster" as used in all sections of this chapter except RCW 38.52.430 shall mean an event or set of circumstances which: (i) Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences, or (ii) reaches such a dimension or degree of destructiveness as to warrant the governor declaring a state of emergency pursuant to RCW 43.06.010.

(b) "Emergency" as used in RCW 38.52.430 means an incident that requires a normal police, coroner, fire, rescue, emergency medical services, or utility response as a result of a violation of one of the statutes enumerated in RCW 38.52.430.

(7) "Emergency response" as used in RCW 38.52.430 means a public agency's use of emergency services during an emergency or disaster as defined in subsection (6)(b) of this section.

(8) "Emergency worker" means any person who is registered with a local emergency management organization or the department and holds an identification card issued by the local emergency management director or the department for the purpose of engaging in authorized emergency management activities or is an employee of the state of Washington or any political subdivision thereof who is called upon to perform emergency management activities.

(9) "Executive head" and "executive heads" means the county executive in those charter counties with an elective office of county executive, however designated, and, in the case of other counties, the county legislative authority. In the case of cities and towns, it means the mayor in those cities

and towns with mayor-council or commission forms of government, where the mayor is directly elected, and it means the city manager in those cities and towns with council manager forms of government. Cities and towns may also designate an executive head for the purposes of this chapter by ordinance.

(10) "Expense of an emergency response" as used in RCW 38.52.430 means reasonable costs incurred by a public agency in reasonably making an appropriate emergency response to the incident, but shall only include those costs directly arising from the response to the particular incident. Reasonable costs shall include the costs of providing police, coroner, firefighting, rescue, emergency medical services, or utility response at the scene of the incident, as well as the salaries of the personnel responding to the incident.

(11) "Incident command system" means: (a) An all-hazards, on-scene functional management system that establishes common standards in organization, terminology, and procedures; provides a means (unified command) for the establishment of a common set of incident objectives and strategies during multiagency/multijurisdiction operations while maintaining individual agency/jurisdiction authority, responsibility, and accountability; and is a component of the national interagency incident management system; or (b) an equivalent and compatible all-hazards, on-scene functional management system.

(12) "Injury" as used in this chapter shall mean and include accidental injuries and/or occupational diseases arising out of emergency management activities.

(13) "Life safety information" means information provided to people during a response to a life-threatening emergency or disaster informing them of actions they can take to preserve their safety. Such information may include, but is not limited to, information regarding evacuation, sheltering, sheltering-in-place, facility lockdown, and where to obtain food and water.

(14) "Local director" means the director of a local organization of emergency management or emergency services.

(15) "Local organization for emergency services or management" means an organization created in accordance with the provisions of this chapter by state or local authority to perform local emergency management functions.

(16) "Political subdivision" means any county, city or town.

(17) "Public agency" means the state, and a city, county, municipal corporation, district, town, or public authority located, in whole or in part, within this state which provides or may provide firefighting, police, ambulance, medical, or other emergency services.

(18) "Radio communications service company" has the meaning ascribed to it in RCW 82.14B.020.

(19) "Search and rescue" means the acts of searching for, rescuing, or recovering by means of ground, marine, or air activity any person who becomes lost, injured, or is killed while outdoors or as a result of a natural, technological, or human caused disaster, including instances involving searches for downed aircraft when ground personnel are used. Nothing in this section shall affect appropriate activity by the department of transportation under chapter 47.68 RCW. [2017 c 312 § 3. Prior: 2015 c 61 § 1; 2007 c 292 § 1; 2002 c 341 § 2; 1997 c 49 § 1; 1995 c 391 § 2; prior: 1993 c 251 § 5; 1993 c 206 § 1; 1986 c 266 § 23; 1984 c 38 § 2; 1979

ex.s. c 268 § 1; 1975 1st ex.s. c 113 § 1; 1974 ex.s. c 171 § 4; 1967 c 203 § 1; 1953 c 223 § 2; 1951 c 178 § 3.]

Finding—Intent—2017 c 312: See note following RCW 38.52.580.

Finding—Intent—1993 c 251: See note following RCW 38.52.430.

Additional notes found at www.leg.wa.gov

38.52.070 Local organizations and joint local organizations authorized—Establishment, operation—Emergency powers, procedures—Communication plans. (1)

Each political subdivision of this state is hereby authorized and directed to establish a local organization or to be a member of a joint local organization for emergency management in accordance with the state comprehensive emergency management plan and program: PROVIDED, That a political subdivision proposing such establishment shall submit its plan and program for emergency management to the state director and secure his or her recommendations thereon, and verification of consistency with the state comprehensive emergency management plan, in order that the plan of the local organization for emergency management may be coordinated with the plan and program of the state. Local comprehensive emergency management plans must specify the use of the incident command system for multiagency/multijurisdiction operations. No political subdivision may be required to include in its plan provisions for the emergency evacuation or relocation of residents in anticipation of nuclear attack. If the director's recommendations are adverse to the plan as submitted, and, if the local organization does not agree to the director's recommendations for modification to the proposal, the matter shall be referred to the council for final action. The director may authorize two or more political subdivisions to join in the establishment and operation of a joint local organization for emergency management as circumstances may warrant, in which case each political subdivision shall contribute to the cost of emergency management upon such fair and equitable basis as may be determined upon by the executive heads of the constituent subdivisions. If in any case the executive heads cannot agree upon the proper division of cost the matter shall be referred to the council for arbitration and its decision shall be final. When two or more political subdivisions join in the establishment and operation of a joint local organization for emergency management each shall pay its share of the cost into a special pooled fund to be administered by the treasurer of the most populous subdivision, which fund shall be known as the emergency management fund. Each local organization or joint local organization for emergency management shall have a director who shall be appointed by the executive head of the political subdivision, and who shall have direct responsibility for the organization, administration, and operation of such local organization for emergency management, subject to the direction and control of such executive officer or officers. In the case of a joint local organization for emergency management, the director shall be appointed by the joint action of the executive heads of the constituent political subdivisions. Each local organization or joint local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of this chapter.

(2) In carrying out the provisions of this chapter each political subdivision, in which any disaster as described in RCW 38.52.020 occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise the powers vested under this section in the light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements), including, but not limited to, budget law limitations, requirements of competitive bidding and publication of notices, provisions pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes, and the appropriation and expenditures of public funds.

(3)(a) Each local organization or joint local organization for emergency management that produces a local comprehensive emergency management plan must include a communication plan for notifying significant population segments of life safety information during an emergency. Local organizations and joint local organizations are encouraged to consult with affected community organizations in the development of the communication plans.

(i) In developing communication plans, local organizations and joint organizations should consider, as part of their determination of the extent of the obligation to provide emergency notification to significant population segments, the following factors: The number or proportion of the limited English proficiency persons eligible to be served or likely to be encountered; the frequency with which limited English proficiency individuals come in contact with the emergency notification; the nature and importance of the emergency notification, service, or program to people's lives; and the resources available to the political subdivision to provide emergency notifications.

(ii) "Significant population segment" means, for the purposes of this subsection (3), each limited English proficiency language group that constitutes five percent or one thousand residents, whichever is less, of the population of persons eligible to be served or likely to be affected within a city, town, or county. The office of financial management forecasting division's limited English proficiency population estimates are the demographic data set for determining eligible limited English proficiency language groups.

(b) Local organizations and joint local organizations must submit the plans produced under (a) of this subsection to the Washington military department emergency management division, and must implement those plans. An initial communication plan must be submitted with the local organization or joint local organization's next local emergency management plan update following July 23, 2017, and subsequent plans must be reviewed in accordance with the director's schedule.

(4) When conducting emergency or disaster after-action reviews, local organizations and joint local organizations must evaluate the effectiveness of communication of life safety information and must inform the emergency management division of the Washington military department of tech-

nological challenges which limited communications efforts, along with identifying recommendations and resources needed to address those challenges. [2017 c 312 § 4; 1997 c 49 § 4; 1986 c 266 § 28; 1984 c 38 § 7; 1974 ex.s. c 171 § 9; 1951 c 178 § 8.]

Finding—Intent—2017 c 312: See note following RCW 38.52.580.

Additional notes found at www.leg.wa.gov

38.52.073 Communication plan status report—Life safety information communication report. (1) Beginning December 1, 2019, the Washington military department emergency management division must submit a report every five years to the relevant committees of the legislature containing the status of communication plans produced under RCW 38.52.070(3)(a).

(2) The emergency management division of the Washington military department must provide the legislature an annual report on instances of emergency or disaster in which communication of life safety information was technologically infeasible, as reported to the department pursuant to RCW 38.52.070(4). When potential technology solutions exist, the report must include recommendations and an estimate of resources required to remedy the infeasibility. The first annual report is due December 1, 2019. [2017 c 312 § 5.]

Finding—Intent—2017 c 312: See note following RCW 38.52.580.

38.52.105 Disaster response account. The disaster response account is created in the state treasury. Moneys may be placed in the account from legislative appropriations and transfers, federal appropriations, or any other lawful source. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for support of state agency and local government disaster response and recovery efforts and to reimburse the workers' compensation funds and self-insured employers under RCW 51.16.220. During the 2009-2011 fiscal biennium, the legislature may transfer from the disaster response account to the state drought preparedness account such amounts as reflect the excess fund balance of the account to support expenditures related to a state drought declaration. During the 2009-2011 fiscal biennium, the legislature may transfer from the disaster response account to the state general fund such amounts as reflect the excess fund balance of the account. During the 2015-2017 and 2017-2019 fiscal biennia, expenditures from the disaster response account may be used for military department operations and to support wildland fire suppression preparedness, prevention, and restoration activities by state agencies and local governments. During the 2017-2019 fiscal biennium, the legislature may direct the treasurer to make transfers of moneys in the disaster response account to the state general fund. [2017 3rd sp.s. c 1 § 962; 2016 sp.s. c 36 § 918; 2010 2nd sp.s. c 1 § 901; 2010 1st sp.s. c 37 § 919; 2005 c 422 § 2; 2002 c 371 § 903; 1997 c 251 § 1.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

Effective date—2010 2nd sp.s. c 1: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [December 11, 2010]." [2010 2nd sp.s. c 1 § 909.]

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Additional notes found at www.leg.wa.gov

38.52.180 Liability for property damage, bodily injury, death—Immunity—Assumption by state—Indemnification—Immunity from liability for covered volunteers. (1) There shall be no liability on the part of anyone including any person, partnership, corporation, the state of Washington or any political subdivision thereof who owns or maintains any building or premises which have been designated by a local organization for emergency management as a shelter from destructive operations or attacks by enemies of the United States for any injuries sustained by any person while in or upon said building or premises, as a result of the condition of said building or premises or as a result of any act or omission, or in any way arising from the designation of such premises as a shelter, when such person has entered or gone upon or into said building or premises for the purpose of seeking refuge therein during destructive operations or attacks by enemies of the United States or during tests ordered by lawful authority, except for an act of willful negligence by such owner or occupant or his or her servants, agents, or employees.

(2) All legal liability for damage to property or injury or death to persons (except an emergency worker, regularly enrolled and acting as such), caused by acts done or attempted during or while traveling to or from an emergency or disaster, search and rescue, or training or exercise authorized by the department in preparation for an emergency or disaster or search and rescue, under the color of this chapter in a bona fide attempt to comply therewith, except as provided in subsections (3), (4), and (5) of this section regarding covered volunteer emergency workers, shall be the obligation of the state of Washington. Suits may be instituted and maintained against the state for the enforcement of such liability, or for the indemnification of persons appointed and regularly enrolled as emergency workers while actually engaged in emergency management duties, or as members of any agency of the state or political subdivision thereof engaged in emergency management activity, or their dependents, for damage done to their private property, or for any judgment against them for acts done in good faith in compliance with this chapter: PROVIDED, That the foregoing shall not be construed to result in indemnification in any case of willful misconduct, gross negligence, or bad faith on the part of any agent of emergency management: PROVIDED, That should the United States or any agency thereof, in accordance with any federal statute, rule, or regulation, provide for the payment of damages to property and/or for death or injury as provided for in this section, then and in that event there shall be no liability or obligation whatsoever upon the part of the state of Washington for any such damage, death, or injury for which the United States government assumes liability.

(3) No act or omission by a covered volunteer emergency worker while engaged in a covered activity shall impose any liability for civil damages resulting from such an act or omission upon:

- (a) The covered volunteer emergency worker;
- (b) The supervisor or supervisors of the covered volunteer emergency worker;

- (c) Any facility or their officers or employees;
- (d) The employer of the covered volunteer emergency worker;
- (e) The owner of the property or vehicle where the act or omission may have occurred during the covered activity;
- (f) Any local organization that registered the covered volunteer emergency worker;
- (g) The state or any state or local governmental entity; and
- (h) Any professional or trade association of covered volunteer emergency workers.

(4) The immunity in subsection (3) of this section applies only when the covered volunteer emergency worker was engaged in a covered activity:

- (a) Within the scope of his or her assigned duties;
- (b) Under the direction of a local emergency management organization or the department, or a local law enforcement agency for search and rescue; and
- (c) The act or omission does not constitute gross negligence or willful or wanton misconduct.

(5) For purposes of this section:

(a) "Covered volunteer emergency worker" means an emergency worker as defined in RCW 38.52.010 who (i) is not receiving or expecting compensation as an emergency worker from the state or local government, or (ii) is not a state or local government employee unless on leave without pay status.

(b) "Covered activity" means:

(i) Providing assistance or transportation authorized by the department during an emergency or disaster or search and rescue as defined in RCW 38.52.010, whether such assistance or transportation is provided at the scene of the emergency or disaster or search and rescue, at an alternative care site, at a hospital, or while in route to or from such sites or between sites; or

(ii) Participating in training or exercise authorized by the department in preparation for an emergency or disaster or search and rescue.

(6) Any requirement for a license to practice any professional, mechanical, or other skill shall not apply to any authorized emergency worker who shall, in the course of performing his or her duties as such, practice such professional, mechanical, or other skill during an emergency described in this chapter.

(7) The provisions of this section shall not affect the right of any person to receive benefits to which he or she would otherwise be entitled under this chapter, or under the workers' compensation law, or under any pension or retirement law, nor the right of any such person to receive any benefits or compensation under any act of congress.

(8) Any act or omission by a covered volunteer emergency worker while engaged in a covered activity using an off-road vehicle, nonhighway vehicle, or wheeled all-terrain vehicle does not impose any liability for civil damages resulting from such an act or omission upon the covered volunteer emergency worker or the worker's sponsoring organization. [2017 c 36 § 1; 2016 c 84 § 1; 2011 c 336 § 791; 2007 c 292 § 2; 1987 c 185 § 7; 1984 c 38 § 17; 1974 ex.s. c 171 § 20; 1971 ex.s. c 8 § 2; 1953 c 145 § 1; 1951 c 178 § 11.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

38.52.440 Assistance for persons with disabilities present at scene of emergency—Assessment and report—Definitions.

(1) Subject to the availability of amounts appropriated for this specific purpose, the director, through the state enhanced 911 coordinator, and in collaboration with the department of health, the department of social and health services, the Washington state patrol, the Washington association of sheriffs and police chiefs, the Washington council of police and sheriffs, the state fire marshal's office, a representative of a first responder organization with experience in addressing the needs of a person with a disability, and other individuals and entities at the discretion of the director, must assess, and report back to the appropriate committees of the legislature by December 1, 2018, regarding:

(a) The resources, capabilities, techniques, protocols, and procedures available or required in order to include as part of the enhanced 911 emergency service the ability to allow an immediate display on the screen indicating that a person with a disability may be present at the scene of an emergency, the caller's identification, location, phone number, address, and if made available, additional information on the person with a disability that would assist the first responder in the emergency response;

(b) How best to acquire, implement, and safeguard a secure web site and the information in the system provided by a person with a disability, or a parent, guardian, or caretaker of a person with a disability in order to make such information directly available to first responders at the scene of an emergency or on the way to the scene of an emergency;

(c) What information provided by a person must remain confidential under state or federal law, or otherwise should remain confidential without written permission to release it for purposes of chapter 295, Laws of 2017 or the information is otherwise releasable or available under other provisions of law; and

(d) The need to provide various agencies and employees that are first responders and emergency personnel immunity from civil liability for acts or omissions in the performance of their duties, and what standard should apply, such as if the act or omission is the result of simple negligence, gross negligence, or willful misconduct.

(2) For purposes of this section:

(a) Both "accident" and "emergency" mean an unforeseen combination of circumstances or a resulting situation that results in a need for assistance or relief and calls for immediate action; and

(b) "Person with a disability" means an individual who has been diagnosed medically to have a physical, mental, emotional, intellectual, behavioral, developmental, or sensory disability. [2017 c 295 § 3.]

Short title—2017 c 295: See note following RCW 43.70.490.

38.52.580 State agency communication plan for emergencies and disasters—Copy to legislature—Report.

Beginning December 1, 2019, a state agency that provides life safety information in an emergency or disaster must provide, to the relevant committees of the legislature, a copy of its current communication plan for notifying significant population segments of such information, including the agency's point of contact. The state agency must also submit an annual report to the relevant committees of the legislature identify-

ing those instances of emergency or disaster in the preceding year in which life safety information was provided and what public messaging strategies and means were used to notify citizens with limited English proficiency. [2017 c 312 § 2.]

Finding—Intent—2017 c 312: "The legislature finds that, as a matter of human dignity, all persons should be informed of emergency notifications in a manner in which they can understand. It is the intent of the legislature that all persons who may be in harm's way in an emergency are informed of their peril, and informed of appropriate actions they should take to protect themselves and their families." [2017 c 312 § 1.]

Title 39**PUBLIC CONTRACTS AND INDEBTEDNESS****Chapters**

39.04 Public works.

39.08 Contractor's bond.

39.10 Alternative public works contracting procedures.

39.26 Procurement of goods and services.

Chapter 39.04 RCW**PUBLIC WORKS****Sections**

39.04.350 Bidder responsibility criteria—Sworn statement—Supplemental criteria.

39.04.350 Bidder responsibility criteria—Sworn statement—Supplemental criteria. (1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

(a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;

(b) Have a current state unified business identifier number;

(c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;

(d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);

(e) If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation;

(f) Until December 31, 2013, not have violated RCW 39.04.370 more than one time as determined by the department of labor and industries; and

(g) Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to

**Chapter 39.08 RCW
CONTRACTOR'S BOND**

Sections

39.08.010 Bond required—Conditions—Retention of contract amount in lieu of bond.

have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.

(2) Before award of a public works contract, a bidder shall submit to the contracting agency a signed statement in accordance with RCW 9A.72.085 verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of subsection (1)(g) of this section. A contracting agency may award a contract in reasonable reliance upon such a sworn statement.

(3) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.

(a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.

(b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.

(c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.

(d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

(4) The capital projects advisory review board created in RCW 39.10.220 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's web site. [2017 c 258 § 2; 2010 c 276 § 2; 2009 c 197 § 2; 2007 c 133 § 2.]

Findings—2017 c 258: "The legislature finds that government contracts should not be awarded to those who knowingly and intentionally violate state laws. The legislature also finds that businesses that follow the law and pay their workers appropriately are placed at a competitive disadvantage to those who reduce costs by willfully violating the minimum wage act and wage payment act. In order to create a level playing field for businesses and avoid taxpayer contracts going to those that willfully violate the law and illegally withhold money from workers, the state should amend the state responsible bidder criteria to consider whether a company has willfully violated the state's wage payment laws over the previous three years." [2017 c 258 § 1.]

Rules—Implementation—2009 c 197: See note following RCW 39.04.320.

39.08.010 Bond required—Conditions—Retention of contract amount in lieu of bond. (1)(a) Whenever any board, council, commission, trustees, or body acting for the state or any county or municipality or any public body must contract with any person or corporation to do any work for the state, county, or municipality, or other public body, city, town, or district, such board, council, commission, trustees, or body must require the person or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond, with a surety company as surety, conditioned that such person or persons must:

(i) Faithfully perform all the provisions of such contract;

(ii) Pay all laborers, mechanics, and subcontractors and material suppliers, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work; and

(iii) Pay the taxes, increases, and penalties incurred on the project under Titles 50, 51, and 82 RCW on: (A) Projects referred to in RCW 60.28.011(1)(b); and/or (B) projects for which the bond is conditioned on the payment of such taxes, increases, and penalties.

(b) The bond, in cases of cities and towns, must be filed with the clerk or comptroller thereof, and any person or persons performing such services or furnishing material to any subcontractor has the same right under the provisions of such bond as if such work, services, or material was furnished to the original contractor.

(2) The provisions of RCW 39.08.010 through 39.08.030 do not apply to any money loaned or advanced to any such contractor, subcontractor, or other person in the performance of any such work.

(3) On contracts of one hundred fifty thousand dollars or less, at the option of the contractor or the general contractor/construction manager as defined in RCW 39.10.210, the respective public entity may, in lieu of the bond, retain ten percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue, the employment security department, and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later. The recovery of unpaid wages and benefits must be the first priority for any actions filed against retainage held by a state agency or authorized local government.

(4) For contracts of one hundred fifty thousand dollars or less, the public entity may accept a full payment and performance bond from an individual surety or sureties.

(5) The surety must agree to be bound by the laws of the state of Washington and subjected to the jurisdiction of the state of Washington. [2017 c 75 § 1; 2013 c 113 § 2. Prior: 2007 c 218 § 88; 2007 c 210 § 3; 1989 c 145 § 1; 1982 c 98 § 5; 1975 1st ex.s. c 278 § 23; 1967 c 70 § 2; 1915 c 28 § 1; 1909 c 207 § 1; RRS § 1159; prior: 1897 c 44 § 1; 1888 p 15 § 1.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

State highway construction and maintenance, bond and surety requirements: Chapter 47.28 RCW.

Additional notes found at www.leg.wa.gov

Chapter 39.10 RCW

ALTERNATIVE PUBLIC WORKS CONTRACTING PROCEDURES

Sections

- 39.10.270 Project review committee—Certification of public bodies.
39.10.420 Job order procedure—Which public bodies may use—Authorized use.

39.10.270 Project review committee—Certification of public bodies. (1) A public body may apply for certification to use the design-build or general contractor/construction manager contracting procedure, or both. Once certified, a public body may use the contracting procedure for which it is certified on individual projects without seeking committee approval for a period of three years. Public bodies certified to use the design-build procedure are limited to no more than five projects with a total project cost between two and ten million dollars during the certification period. A public body seeking certification must submit to the committee an application in a format and manner as prescribed by the committee. The application must include a description of the public body's qualifications, its capital plan during the certification period, and its intended use of alternative contracting procedures.

(2) A public body seeking certification for the design-build procedure must demonstrate successful management of at least one design-build project within the previous five years. A public body seeking certification for the general contractor/construction manager procedure must demonstrate successful management of at least one general contractor/construction manager project within the previous five years.

(3) To certify a public body, the committee shall determine that the public body:

(a) Has the necessary experience and qualifications to determine which projects are appropriate for using alternative contracting procedures;

(b) Has the necessary experience and qualifications to carry out the alternative contracting procedure including, but not limited to: (i) Project delivery knowledge and experience; (ii) personnel with appropriate construction experience; (iii) a management plan and rationale for its alternative public works projects; (iv) demonstrated success in managing public works projects; (v) the ability to properly manage its capital facilities plan including, but not limited to, appropriate project planning and budgeting experience; and (vi) the ability to meet requirements of this chapter; and

(c) Has resolved any audit findings on previous public works projects in a manner satisfactory to the committee.

(4) The committee shall, if practicable, make its determination at the public meeting during which an application for certification is reviewed. Public comments must be considered before a determination is made. Within ten business days of the public meeting, the committee shall provide a

written determination to the public body, and make its determination available to the public on the committee's web site.

(5) The committee may revoke any public body's certification upon a finding, after a public hearing, that its use of design-build or general contractor/construction manager contracting procedures no longer serves the public interest.

(6) The committee may renew the certification of a public body for additional three-year periods. The public body must submit an application for recertification at least three months before the initial certification expires. The committee may accept late applications, if administratively feasible, to avoid expiration of certification on a case-by-case basis. The application shall include updated information on the public body's experience and current staffing with the procedure it is applying to renew, and any other information requested in advance by the committee. The committee must review the application for recertification at a meeting held before expiration of the applicant's initial certification period. A public body must reapply for certification under the process described in subsection (1) of this section once the period of recertification expires.

(7) Certified public bodies must submit project data information as required in RCW 39.10.320 and 39.10.350. [2017 c 211 § 1; 2013 c 222 § 7; 2009 c 75 § 3; 2007 c 494 § 107.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

39.10.420 Job order procedure—Which public bodies may use—Authorized use. (1) The following public bodies of the state of Washington are authorized to award job order contracts and use the job order contracting procedure:

(a) The department of enterprise services;

(b) The state universities, regional universities, and The Evergreen State College;

(c) Sound transit (central Puget Sound regional transit authority);

(d) Every city with a population greater than seventy thousand and any public authority chartered by such city under RCW 35.21.730 through 35.21.755;

(e) Every county with a population greater than four hundred fifty thousand;

(f) Every port district with total revenues greater than fifteen million dollars per year;

(g) Every public utility district with revenues from energy sales greater than twenty-three million dollars per year;

(h) Every school district;

(i) The state ferry system;

(j) The Washington state department of transportation, for the administration of building improvement, replacement, and renovation projects only;

(k) Every public hospital district with total revenues greater than fifteen million dollars per year; and

(l) Every public transportation benefit area authority as defined under RCW 36.57A.010.

(2)(a) The department of enterprise services may issue job order contract work orders for Washington state parks department projects and public hospital districts.

(b) The department of enterprise services, the University of Washington, and Washington State University may issue

job order contract work orders for the state regional universities and The Evergreen State College.

(3) Public bodies may use a job order contract for public works projects when a determination is made that the use of job order contracts will benefit the public by providing an effective means of reducing the total lead-time and cost for the construction of public works projects for repair and renovation required at public facilities through the use of unit price books and work orders by eliminating time-consuming, costly aspects of the traditional public works process, which require separate contracting actions for each small project. [2017 c 136 § 1; 2016 c 52 § 1. Prior: 2013 c 222 § 18; 2013 c 186 § 1; 2012 c 102 § 1; 2009 c 75 § 7; 2007 c 494 § 401; 2003 c 301 § 1. Formerly RCW 39.10.130.]

Sunset Act application: See note following chapter digest.

Effective date—2013 c 222: See note following RCW 39.10.210.

Chapter 39.26 RCW

PROCUREMENT OF GOODS AND SERVICES

Sections

- 39.26.160 Bid awards—Considerations—Requirements and criteria to be set forth—Negotiations—Use of enterprise vendor registration and bid notification system.
- 39.26.200 Authority to fine or debar.

39.26.160 Bid awards—Considerations—Requirements and criteria to be set forth—Negotiations—Use of enterprise vendor registration and bid notification system. (1)(a) After bids that are submitted in response to a competitive solicitation process are reviewed by the awarding agency, the awarding agency may:

- (i) Reject all bids and rebid or cancel the competitive solicitation;
 - (ii) Request best and final offers from responsive and responsible bidders; or
 - (iii) Award the purchase or contract to the lowest responsive and responsible bidder.
- (b) The agency may award one or more contracts from a competitive solicitation.
- (2) In determining whether the bidder is a responsible bidder, the agency must consider the following elements:
- (a) The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
 - (b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
 - (c) Whether the bidder can perform the contract within the time specified;
 - (d) The quality of performance of previous contracts or services;
 - (e) The previous and existing compliance by the bidder with laws relating to the contract or services;

(f) Whether, within the three-year period immediately preceding the date of the bid solicitation, the bidder has been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW; and

(g) Such other information as may be secured having a bearing on the decision to award the contract.

(3) In determining the lowest responsive and responsible bidder, an agency may consider best value criteria, including but not limited to:

- (a) Whether the bid satisfies the needs of the state as specified in the solicitation documents;
- (b) Whether the bid encourages diverse contractor participation;
- (c) Whether the bid provides competitive pricing, economies, and efficiencies;
- (d) Whether the bid considers human health and environmental impacts;
- (e) Whether the bid appropriately weighs cost and non-cost considerations; and
- (f) Life-cycle cost.

(4) The solicitation document must clearly set forth the requirements and criteria that the agency will apply in evaluating bid submissions. Before award of a contract, a bidder shall submit to the contracting agency a signed statement in accordance with RCW 9A.72.085 verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of subsection (2)(f) of this section. A contracting agency may award a contract in reasonable reliance upon such a sworn statement.

(5) The awarding agency may at its discretion reject the bid of any contractor who has failed to perform satisfactorily on a previous contract with the state.

(6) After reviewing all bid submissions, an agency may enter into negotiations with the lowest responsive and responsible bidder in order to determine if the bid may be improved. An agency may not use this negotiation opportunity to permit a bidder to change a nonresponsive bid into a responsive bid.

(7) The procuring agency must enter into the state's enterprise vendor registration and bid notification system the name of each bidder and an indication as to the successful bidder. [2017 c 258 § 3; 2012 c 224 § 18.]

Findings—2017 c 258: See note following RCW 39.04.350.

39.26.200 Authority to fine or debar. (1)(a) The director shall provide notice to the contractor of the director's intent to either fine or debar with the specific reason for either the fine or debarment. The department must establish the debarment and fining processes by rule.

(b) After reasonable notice to the contractor and reasonable opportunity for that contractor to be heard, the director has the authority to debar a contractor for cause from consideration for award of contracts. The debarment must be for a period of not more than three years.

(2) The director may either fine or debar a contractor based on a finding of one or more of the following causes:

(a) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(b) Conviction or a final determination in a civil action under state or federal statutes of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, violation of the federal false claims act, 31 U.S.C. Sec. 3729 et seq., or the state medicaid fraud

false claims act, chapter 74.66 RCW, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects responsibility as a state contractor;

(c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(d) Two or more violations within the previous five years of the federal labor relations act as determined by the national labor relations board or court of competent jurisdiction;

(e) Violation of contract provisions, as set forth in this subsection, of a character that is regarded by the director to be so serious as to justify debarment action:

(i) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, however the failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment;

(f) Violation of ethical standards set forth in RCW 39.26.020;

(g) Any other cause the director determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity for any cause listed in regulations; and

(h) During the 2017-2019 fiscal biennium, the failure to comply with a provision in a state master contract or other agreement with a state agency that requires equality among its workers by ensuring similarly employed individuals are compensated as equals.

(3) The director must issue a written decision to debar. The decision must:

(a) State the reasons for the action taken; and

(b) Inform the debarred contractor of the contractor's rights to judicial or administrative review. [2017 3rd sp.s. c 1 § 996; 2015 c 44 § 1; 2013 2nd sp.s. c 34 § 1; 2012 c 224 § 22.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Title 40

PUBLIC DOCUMENTS, RECORDS, AND PUBLICATIONS

Chapters

- 40.14** Preservation and destruction of public records.
40.26 Biometric identifiers.

Chapter 40.14 RCW

PRESERVATION AND DESTRUCTION OF PUBLIC RECORDS

Sections

- 40.14.024 Division of archives and records management—Local government archives account.
 40.14.026 Division of archives and records management—Competitive grant program to improve technology information systems for public records and related training—Review of program and training services—Public records request log—Agency reporting requirements—Duties of the joint legislative audit and review committee.

40.14.024 Division of archives and records management—Local government archives account. The local government archives account is created in the state treasury. All receipts collected by the county auditors under RCW 40.14.027 and 36.22.175 for local government services, such as providing records schedule compliance, security microfilm inspection and storage, archival preservation, cataloging, and indexing for local government records and digital data and access to those records and data through the regional branch archives of the division of archives and records management, must be deposited into the account, and expenditures from the account may be used only for these purposes. Any amounts deposited in the account in accordance with RCW 36.22.175(4) may only be expended for the purposes authorized under that provision as follows: No more than fifty percent of funding may be used for the attorney general's consultation program and the state archivist's training services, and the remainder is to be used for the competitive grant program. [2017 c 303 § 5; 2008 c 328 § 6005; 2003 c 163 § 3.]

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

40.14.026 Division of archives and records management—Competitive grant program to improve technology information systems for public records and related training—Review of program and training services—Public records request log—Agency reporting requirements—Duties of the joint legislative audit and review committee. (1) The division of archives and records management in the office of the secretary of state must establish and administer a competitive grant program for local agencies to improve technology information systems for public record retention, management, and disclosure, and any related training. The division of archives and records management may use up to six percent of amounts appropriated for the program for administration of the grant program. The program in this subsection ceases to exist June 30, 2020.

(2) Any local agency may apply to the grant program. The division of archives and records management in the office of the secretary of state must award grants annually. The division of archives and records management must consult with the chief information officer to develop the criteria for grant recipient selection with a preference given to small local governmental agencies based on the applicant agency's need and ability to improve its information technology systems for public record retention, management, and disclosure. The division of archives and records management may award grants for specific hardware, software, equipment, technology services management and training needs, indexing for local records and digital data, and other resources for improving information technology systems. To the extent possible, information technology systems, processes, training, and other resources for improving information technology systems for records retention and distribution may be replicated and shared with other governmental entities. Grants are provided for one-time investments and are not an ongoing source of revenue for operation or management costs. A grantee may not supplant local funding with grant funding provided by the office of the secretary of state. The program in this subsection ceases to exist June 30, 2020.

(3) The joint legislative audit and review committee must conduct a review of the attorney general's consultation program and the state archivist's training services created under section 4, chapter 303, Laws of 2017, and the local government competitive grant program created under this section. The review must include:

(a)(i) Information on the number of local governments served, the types of consultation and training provided, and the implementation of any practices adopted from the attorney general's consultation program and the state archivist's training services; and

(ii) The effectiveness of the consultation program and the training services in providing assistance for local governments; and

(b)(i) Information on the number of local governments that applied for and participated in the competitive grant program under this section, the amount of funding awarded through the grant program, and how such funding was used; and

(ii) The effectiveness of the grant program in improving local government technology information systems for public records retention, management, disclosure, and training.

(4) Each agency shall maintain a log of public records requests submitted to and processed by the agency, which shall include but not be limited to the following information for each request: The identity of the requestor if provided by the requestor, the date the request was received, the text of the original request, a description of the records produced in response to the request, a description of the records redacted or withheld and the reasons therefor, and the date of the final disposition of the request. The log must be retained by the agency in accordance with the relevant record retention schedule established under this chapter, and shall be a public record subject to disclosure under chapter 42.56 RCW.

(5) To improve best practices for dissemination of public records, each agency with actual staff and legal costs associated with fulfilling public records requests of at least one hundred thousand dollars during the prior fiscal year must, and each agency with such estimated costs of less than one hundred thousand dollars during the prior fiscal year may, report to the joint legislative audit and review committee by July 1st of each subsequent year the following metrics, measured over the preceding year:

(a) An identification of leading practices and processes for records management and retention, including technological upgrades, and what percentage of those leading practices and processes were implemented by the agency;

(b) The average length of time taken to acknowledge receipt of a public records request;

(c) The proportion of requests where the agency provided the requested records within five days of receipt of the request compared to the proportion of requests where the agency provided an estimate of an anticipated response time beyond five days of receipt of the request;

(d) A comparison of the agency's average initial estimate provided for full disclosure of responsive records with the actual time when all responsive records were fully disclosed, including whether the agency sent subsequent estimates of an anticipated response time;

(e) The number of requests where the agency formally sought additional clarification from the requestor;

(f) The number of requests denied and the most common reasons for denying requests;

(g) The number of requests abandoned by requestors;

(h) To the extent the information is known by the agency, requests by type of requestor, including individuals, law firms, organizations, insurers, governments, incarcerated persons, the media, anonymous requestors, current or former employees, and others;

(i) Which portion of requests were fulfilled electronically compared to requests fulfilled by physical records;

(j) The number of requests where the agency was required to scan physical records electronically to fulfill disclosure;

(k) The estimated agency staff time spent on each individual request;

(l) The estimated costs incurred by the agency in fulfilling records requests, including costs for staff compensation and legal review, and a measure of the average cost per request;

(m) The number of claims filed alleging a violation of chapter 42.56 RCW or other public records statutes in the past year involving the agency, categorized by type and exemption at issue, if applicable;

(n) The costs incurred by the agency litigating claims alleging a violation of chapter 42.56 RCW or other public records statutes in the past year, including any penalties imposed on the agency;

(o) The costs incurred by the agency with managing and retaining records, including staff compensation and purchases of equipment, hardware, software, and services to manage and retain public records or otherwise assist in the fulfillment of public records requests;

(p) Expenses recovered by the agency from requestors for fulfilling public records requests, including any customized service charges; and

(q) Measures of requestor satisfaction with agency responses, communication, and processes relating to the fulfillment of public records requests.

(6) The joint legislative audit and review committee must consult with state and local agencies to develop a reporting method and clearly define standardized metrics in accordance with this section.

(7) By December 1, 2019, the joint legislative audit and review committee must report to the legislature on its findings from the review, including recommendations on whether the competitive grant program, the attorney general's consultation program, and the state archivist's training services should continue or be allowed to expire. [2017 c 303 § 6.]

Chapter 40.26 RCW BIOMETRIC IDENTIFIERS

Sections

40.26.010	Finding.
40.26.020	Biometric identifiers—Notice and consent—Agencies—Use, storage, retention—Review—Definitions—Exceptions.

40.26.010 Finding. The legislature finds that the collection and use of personal information has been a practice of virtually all state agencies and programs. Advances in technology have given rise to new forms of data, such as email

and internet protocol (IP) addresses, which can be easily collected and stored along with traditional types of data such as names and dates of birth. One new form of personally identifiable information is biometric identifiers. The unique nature of this new type of personal data calls for additional guidance regarding its use by state agencies. [2017 c 306 § 1.]

40.26.020 Biometric identifiers—Notice and consent—Agencies—Use, storage, retention—Review—Definitions—Exceptions. (1) Unless authorized by law, an agency may not collect, capture, purchase, or otherwise obtain a biometric identifier without first providing notice and obtaining the individual's consent, as follows:

(a) The notice provided must clearly specify the purpose and use of the biometric identifier; and

(b) The consent obtained must be specific to the terms of the notice, and must be recorded and maintained by the agency for the duration of the retention of the biometric identifier.

(2) Any biometric identifier obtained by an agency:

(a) May not be sold;

(b) May only be used consistent with the terms of the notice and consent obtained under subsection (1) of this section, or as authorized by law; and

(c) May be shared, including with other state agencies or local governments, only:

(i) As needed to execute the purposes of the collection, consistent with the notice and consent obtained under subsection (1) of this section, or as authorized by law; or

(ii) If such sharing is specified within the original consent.

(3) An agency that collects, purchases, or otherwise obtains biometric identifiers must:

(a) Establish security policies that ensure the integrity and appropriate confidentiality of the biometric identifiers;

(b) Address biometric identifiers in the agency's privacy policies;

(c) Only retain biometric identifiers necessary to fulfill the original purpose and use, as specified in the notice and consent obtained under subsection (1) of this section, or as authorized by law;

(d) Set record retention schedules tailored to the original purpose of the collection of biometric identifiers;

(e) Otherwise minimize the review and retention of the biometric identifiers, consistent with state record retention requirements; and

(f) Design a biometric policy to ensure that the agency is minimizing the collection of biometric identifiers to the fewest number necessary to accomplish the agency mission.

(4) The use and storage of biometric identifiers obtained by an agency must comply with all other applicable state and federal laws and regulations, including the health insurance portability and accountability act (HIPAA), the family educational rights and privacy act (FERPA), regulations regarding data breach notifications and individual privacy protections, and any policies or standards published by the office of the chief information officer.

(5) Biometric identifiers may not be disclosed under the public records act, chapter 42.56 RCW.

(6) Agency policies, regulations, guidance, and retention schedules regarding biometric identifiers must be reviewed

annually to incorporate any new technology, as appropriate, and respond to citizen complaints.

(7) The definitions in this subsection apply throughout this section unless the context requires otherwise.

(a) "Agency" means every state office, department, division, bureau, board, commission, or other state agency.

(b) "Biometric identifier" means any information, regardless of how it is captured, converted, stored, or shared, based on an individual's retina or iris scan, fingerprint, voiceprint, DNA, or scan of hand or face geometry, except when such information is derived from:

(i) Writing samples, written signatures, photographs, human biological samples used for valid scientific testing or screening, demographic data, tattoo descriptions, or physical descriptions such as height, weight, hair color, or eye color;

(ii) Donated organ tissues or parts, or blood or serum stored on behalf of recipients or potential recipients of living or cadaveric transplants and obtained or stored by a federally designated organ procurement agency;

(iii) Information captured from a patient in a health care setting or information collected, used, or stored for health care treatment, payment, or operations under the federal health insurance portability and accountability act of 1996; or

(iv) X-ray, roentgen process, computed tomography, magnetic resonance imaging (MRI), positron emission tomography (PET) scan, mammography, or other image or film of the human anatomy used to diagnose, develop a prognosis for, or treat an illness or other medical condition or to further validate scientific testing or screening.

(8) Subsection (1) of this section does not apply to general authority Washington law enforcement agencies, as defined under RCW 10.93.020.

(9)(a) For purposes of the restrictions and obligations in subsection (1) of this section, "biometric identifier" does not include fingerprints or DNA for the following:

(i) Limited authority Washington law enforcement agencies, as defined under RCW 10.93.020;

(ii) Agencies authorized by statute to confine a person involuntarily, or to petition for such confinement; and

(iii) The attorney general's office when obtaining or using biometric identifiers is necessary for law enforcement, legal advice, or legal representation.

(b) When an agency listed under (a) of this subsection has a need to collect, capture, purchase, or otherwise obtain a biometric identifier other than a fingerprint or DNA to fulfill a purpose authorized by law, for either an individual circumstance or a categorical circumstance, the requirements of subsection (1) of this section are waived upon such agency providing prompt written notice to the state's chief privacy officer and to the appropriate committees of the legislature, stating the type of biometric identifier at issue and the general circumstances requiring the waiver. [2017 2nd sp.s. c 1 § 1; 2017 c 306 § 2.]

Effective date—2017 2nd sp.s. c 1: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect on the date that Substitute House Bill No. 1717 takes effect [July 23, 2017]." [2017 2nd sp.s. c 1 § 2.]

Title 41

PUBLIC EMPLOYMENT, CIVIL SERVICE, AND PENSIONS

Chapters

- 41.04 General provisions.
- 41.05 State health care authority.
- 41.06 State civil service law.
- 41.26 Law enforcement officers' and firefighters' retirement system.
- 41.37 Washington public safety employees' retirement system.
- 41.56 Public employees' collective bargaining.
- 41.58 Public employment labor relations.
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Chapter 41.04 RCW
GENERAL PROVISIONS

Sections

- 41.04.007 "Veteran" defined for certain purposes.
- 41.04.010 Veterans' scoring criteria status in examinations.
- 41.04.665 Leave sharing program—When employee may receive leave—When employee may transfer accrued leave—Transfer of leave between employees of different agencies—Return of unused leave—Rules.
- 41.04.672 Veterans' in-state service shared leave pool.
- 41.04.674 Foster parent shared leave pool.

41.04.007 "Veteran" defined for certain purposes.

"Veteran" includes every person who, at the time he or she seeks the benefits of RCW 46.18.212, 46.18.235, 72.36.030, 41.04.010, 73.04.090, or 43.180.250, has received an honorable discharge, received a discharge for medical reasons with an honorable record, where applicable, or is in receipt of a United States department of defense discharge document DD form 214, NGB form 22, or their equivalent or successor discharge paperwork, that characterizes his or her service as honorable, and who has served in at least one of the following capacities:

- (1) As a member in any branch of the armed forces of the United States, including the national guard and armed forces reserves, and has fulfilled his or her initial military service obligation;
- (2) As a member of the women's air forces service pilots;
- (3) As a member of the armed forces reserves, national guard, or coast guard, and has been called into federal service by a presidential select reserve call up for at least one hundred eighty cumulative days;
- (4) As a civil service crewmember with service aboard a U.S. army transport service or U.S. naval transportation service vessel in oceangoing service from December 7, 1941, through December 31, 1946;
- (5) As a member of the Philippine armed forces/scouts during the period of armed conflict from December 7, 1941, through August 15, 1945; or
- (6) A United States documented merchant mariner with service aboard an oceangoing vessel operated by the department of defense, or its agents, from both June 25, 1950, through July 27, 1953, in Korean territorial waters and from August 5, 1964, through May 7, 1975, in Vietnam territorial

waters, and who received a military commendation. [2017 c 97 § 1; 2013 c 42 § 1; 2010 c 161 § 1105; 2007 c 448 § 1; 2006 c 252 § 2. Prior: 2005 c 251 § 1; 2005 c 216 § 7; 2002 c 292 § 2.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

41.04.010 Veterans' scoring criteria status in examinations. In all competitive examinations, unless otherwise provided in this section, to determine the qualifications of applicants for public offices, positions, or employment, either the state, and all of its political subdivisions and all municipal corporations, or private companies or agencies contracted with by the state to give the competitive examinations shall give a scoring criteria status to all veterans as defined in RCW 41.04.007, by adding to the passing mark, grade or rating only, based upon a possible rating of one hundred points as perfect a percentage in accordance with the following:

(1) Ten percent to a veteran who served during a period of war or in an armed conflict as defined in RCW 41.04.005 and does not receive military retirement. The percentage shall be added to the passing mark, grade, or rating of competitive examinations until the veteran's first appointment. The percentage shall not be utilized in promotional examinations;

(2) Five percent to a veteran who did not serve during a period of war or in an armed conflict as defined in RCW 41.04.005 or is receiving military retirement. The percentage shall be added to the passing mark, grade, or rating of competitive examinations until the veteran's first appointment. The percentage shall not be utilized in promotional examinations;

(3) Five percent to a veteran who was called to active military service from employment with the state or any of its political subdivisions or municipal corporations. The percentage shall be added to promotional examinations until the first promotion only;

(4) All veterans' scoring criteria may be claimed:

(a) Upon release from active military service with an honorable discharge or a discharge for medical reasons with an honorable record, where applicable; or

(b) Upon receipt of a United States department of defense discharge document DD form 214, NGB form 22, or their equivalent or successor discharge paperwork, that characterizes his or her service as honorable. [2017 c 97 § 2; 2013 c 83 § 1; 2009 c 248 § 1; 2007 c 449 § 1; 2003 c 45 § 1; 2002 c 292 § 4; 2000 c 140 § 1; 1974 ex.s. c 170 § 1; 1969 ex.s. c 269 § 2; 1953 ex.s. c 9 § 1; 1949 c 134 § 1; 1947 c 119 § 1; 1945 c 189 § 1; Rem. Supp. 1949 § 9963-5.]

Veterans and veterans' affairs: Title 73 RCW.

41.04.665 Leave sharing program—When employee may receive leave—When employee may transfer accrued leave—Transfer of leave between employees of different agencies—Return of unused leave—Rules. (1) An agency head may permit an employee to receive leave under this section if:

(a)(i) The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(ii) The employee has been called to service in the uniformed services;

(iii) The employee is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability;

(iv) The employee is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointment or treatment;

(v) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has needed skills to assist in responding to the emergency or its aftermath and volunteers his or her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services; or

(vi) The employee is a victim of domestic violence, sexual assault, or stalking;

(b) The illness, injury, impairment, condition, call to service, emergency volunteer service, or consequence of domestic violence, sexual assault, temporary layoff under section 3(5), chapter 32, Laws of 2010 1st sp. sess., or stalking has caused, or is likely to cause, the employee to:

(i) Go on leave without pay status; or

(ii) Terminate state employment;

(c) The employee's absence and the use of shared leave are justified;

(d) The employee has depleted or will shortly deplete his or her:

(i) Annual leave and sick leave reserves if he or she qualifies under (a)(i) of this subsection;

(ii) Annual leave and paid military leave allowed under RCW 38.40.060 if he or she qualifies under (a)(ii) of this subsection; or

(iii) Annual leave if he or she qualifies under (a)(v) or (vi) of this subsection;

(e) The employee has abided by agency rules regarding:

(i) Sick leave use if he or she qualifies under (a)(i) or (vi) of this subsection; or

(ii) Military leave if he or she qualifies under (a)(ii) of this subsection; and

(f) The employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if he or she qualifies under (a)(i) of this subsection.

(2) The agency head shall determine the amount of leave, if any, which an employee may receive under this section. However, an employee shall not receive a total of more than five hundred twenty-two days of leave, except that, a supervisor may authorize leave in excess of five hundred twenty-two days in extraordinary circumstances for an employee qualifying for the shared leave program because he or she is suffering from an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature. Shared leave received under the uniformed service shared leave pool in RCW 41.04.685 is not included in this total.

(3) The agency head must allow employees who are veterans, as defined under RCW 41.04.005, and their spouses, to

access shared leave from the veterans' in-state service shared leave pool upon employment.

(4) An employee may transfer annual leave, sick leave, and his or her personal holiday, as follows:

(a) An employee who has an accrued annual leave balance of more than ten days may request that the head of the agency for which the employee works transfer a specified amount of annual leave to another employee authorized to receive leave under subsection (1) of this section. In no event may the employee request a transfer of an amount of leave that would result in his or her annual leave account going below ten days. For purposes of this subsection (4)(a), annual leave does not accrue if the employee receives compensation in lieu of accumulating a balance of annual leave.

(b) An employee may transfer a specified amount of sick leave to an employee requesting shared leave only when the donating employee retains a minimum of one hundred seventy-six hours of sick leave after the transfer.

(c) An employee may transfer, under the provisions of this section relating to the transfer of leave, all or part of his or her personal holiday, as that term is defined under RCW 1.16.050, or as such holidays are provided to employees by agreement with a school district's board of directors if the leave transferred under this subsection does not exceed the amount of time provided for personal holidays under RCW 1.16.050.

(5) An employee of an institution of higher education under RCW 28B.10.016, school district, or educational service district who does not accrue annual leave but does accrue sick leave and who has an accrued sick leave balance of more than twenty-two days may request that the head of the agency for which the employee works transfer a specified amount of sick leave to another employee authorized to receive leave under subsection (1) of this section. In no event may such an employee request a transfer that would result in his or her sick leave account going below twenty-two days. Transfers of sick leave under this subsection are limited to transfers from employees who do not accrue annual leave. Under this subsection, "sick leave" also includes leave accrued pursuant to RCW 28A.400.300(1)(b) or 28A.310.240(1) with compensation for illness, injury, and emergencies.

(6) Transfers of leave made by an agency head under subsections (4) and (5) of this section shall not exceed the requested amount.

(7) Leave transferred under this section may be transferred from employees of one agency to an employee of the same agency or, with the approval of the heads of both agencies, to an employee of another state agency.

(8) While an employee is on leave transferred under this section, he or she shall continue to be classified as a state employee and shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual leave or sick leave.

(a) All salary and wage payments made to employees while on leave transferred under this section shall be made by the agency employing the person receiving the leave. The value of leave transferred shall be based upon the leave value of the person receiving the leave.

(b) In the case of leave transferred by an employee of one agency to an employee of another agency, the agencies

involved shall arrange for the transfer of funds and credit for the appropriate value of leave.

(i) Pursuant to rules adopted by the office of financial management, funds shall not be transferred under this section if the transfer would violate any constitutional or statutory restrictions on the funds being transferred.

(ii) The office of financial management may adjust the appropriation authority of an agency receiving funds under this section only if and to the extent that the agency's existing appropriation authority would prevent it from expending the funds received.

(iii) Where any questions arise in the transfer of funds or the adjustment of appropriation authority, the director of financial management shall determine the appropriate transfer or adjustment.

(9) Leave transferred under this section shall not be used in any calculation to determine an agency's allocation of full time equivalent staff positions.

(10)(a) The value of any leave transferred under this section which remains unused shall be returned at its original value to the employee or employees who transferred the leave when the agency head finds that the leave is no longer needed or will not be needed at a future time in connection with the illness or injury for which the leave was transferred or for any other qualifying condition. Unused shared leave may not be returned until one of the following occurs:

(i) The agency head receives from the affected employee a statement from the employee's doctor verifying that the illness or injury is resolved; or

(ii) The employee is released to full-time employment; has not received additional medical treatment for his or her current condition or any other qualifying condition for at least six months; and the employee's doctor has declined, in writing, the employee's request for a statement indicating the employee's condition has been resolved.

(b) If a shared leave account is closed and an employee later has a need to use shared leave due to the same condition listed in the closed account, the agency head must approve a new shared leave request for the employee.

(c) To the extent administratively feasible, the value of unused leave which was transferred by more than one employee shall be returned on a pro rata basis.

(11) An employee who uses leave that is transferred to him or her under this section may not be required to repay the value of the leave that he or she used.

(12) The director of financial management may adopt rules as necessary to implement subsection (2) of this section. [2017 c 173 § 1; 2016 c 177 § 1; 2015 3rd sp.s. c 1 § 312; 2011 1st sp.s. c 43 § 435. Prior: 2010 1st sp.s. c 32 § 10; 2010 c 168 § 1; 2008 c 36 § 3; prior: 2007 c 454 § 1; 2007 c 25 § 2; 2003 1st sp.s. c 12 § 3; 1999 c 25 § 1; 1996 c 176 § 1; 1990 c 23 § 2; 1989 c 93 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Conflict with federal requirements—Effective date—2010 1st sp.s. c 32: See notes following RCW 42.04.060.

Effective date—2010 c 168: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 23, 2010]." [2010 c 168 § 2.]

Effective date—2008 c 36: See note following RCW 41.04.655.

Severability—Effective date—2007 c 25: See notes following RCW 41.04.685.

Additional notes found at www.leg.wa.gov

41.04.672 Veterans' in-state service shared leave pool. (1) The veterans' in-state service shared leave pool is created to allow employees to donate leave to be used as shared leave for:

(a) Veteran employees who meet the requirements of RCW 41.04.665; or

(b) Spouses of veteran employees, who meet the requirements of RCW 41.04.665, who are caring for their spouses.

(2) Participation in the pool shall, at all times, be voluntary on the part of the employee. The department of veterans affairs shall administer the veterans' in-state service shared leave pool.

(3) Employees who are eligible to donate leave under RCW 41.04.665 may donate leave to the veterans' in-state service shared leave pool.

(4) A veteran employee who is eligible for shared leave under RCW 41.04.665 or a spouse of a veteran employee, who is eligible for shared leave under RCW 41.04.665, who is caring for his or her spouse may request shared leave from veterans' in-state service shared leave pool.

(5) Shared leave under this section may not be granted unless the pool has a sufficient balance to fund the requested shared leave.

(6) Shared leave paid under this section, in combination with an employee's salary, may not exceed the level of the employee's state monthly salary.

(7) Any leave donated must be removed from the personally accumulated leave balance of the employee donating the leave.

(8) All employees who donate to the shared leave pool must specify their intent to donate to the veterans' in-state service shared leave pool.

(9) An employee who receives shared leave from the pool is not required to recontribute such leave to the pool, except as otherwise provided in this section.

(10) Leave that may be donated or received by any one employee must be calculated as in RCW 41.04.665.

(11) As used in this section:

(a) "Employee" has the meaning provided in RCW 41.04.655, except that "employee" as used in this section does not include employees of school districts and educational service districts. "Employee" does not include employees called to service in the uniformed services.

(b) "Monthly salary" includes monthly salary and special pay and shift differential, or the monthly equivalent for hourly employees. "Monthly salary" does not include:

(i) Overtime pay;

(ii) Call back pay;

(iii) Standby pay; or

(iv) Performance bonuses.

(c) "Service in the uniformed services" has the meaning provided in RCW 41.04.655.

(d) "Veteran" has the meaning provided in RCW 41.04.005.

(12) The office of financial management, in consultation with the department of veterans affairs, shall adopt rules and policies governing the donation and use of shared leave from

the veterans' in-state service shared leave pool, including definitions of pay and allowances and guidelines for agencies to use in recordkeeping concerning shared leave.

(13) Agencies shall investigate any alleged abuse of the veterans' in-state service shared leave pool and on a finding of wrongdoing, the employee may be required to repay all of the shared leave received from the veterans' in-state service shared leave pool.

(14) Higher education institutions shall adopt policies consistent with the needs of the employees under their respective jurisdictions. [2017 c 173 § 2.]

41.04.674 Foster parent shared leave pool. (1) The foster parent shared leave pool is created to allow employees to donate leave to be used as shared leave for any employee who is a foster parent needing to care for or preparing to accept a foster child in their home. Participation in the pool shall, at all times, be voluntary on the part of the employee. The department of social and health services, in consultation with the office of financial management, shall administer the foster parent shared leave pool.

(2) Employees, as defined in RCW 41.04.655, may donate leave to the foster parent shared leave pool.

(3) An employee, as defined in RCW 41.04.655, who is also a foster parent licensed pursuant to RCW 74.15.040 may request shared leave from the foster parent shared leave pool.

(4) Shared leave under this section may not be granted unless the pool has a sufficient balance to fund the requested shared leave.

(5) Shared leave paid under this section must not exceed the level of the employee's state monthly salary.

(6) Any leave donated must be removed from the personally accumulated leave balance of the employee donating the leave.

(7) An employee who receives shared leave from the pool is not required to recontribute such leave to the pool, except as otherwise provided in this section.

(8) Leave that may be donated or received by any one employee shall be calculated as in RCW 41.04.665.

(9) As used in this section, "monthly salary" includes monthly salary and special pay and shift differential, or the monthly equivalent for hourly employees. "Monthly salary" does not include:

- (a) Overtime pay;
- (b) Call back pay;
- (c) Standby pay; or
- (d) Performance bonuses.

(10) The office of financial management, in consultation with the department of social and health services, shall adopt rules and policies governing the donation and use of shared leave from the foster parent shared leave pool, including definitions of pay and allowances and guidelines for agencies to use in recordkeeping concerning shared leave.

(11) Agencies must investigate any alleged abuse of the foster parent shared leave pool and on a finding of wrongdoing, the employee may be required to repay all of the shared leave received from the foster parent shared leave pool.

(12) Higher education institutions shall adopt policies consistent with the needs of the employees under their respective jurisdictions. [2017 3rd sp.s. c 20 § 12.]

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

Chapter 41.05 RCW

STATE HEALTH CARE AUTHORITY

Sections

41.05.011	Definitions.
41.05.019	Repealed.
41.05.021	State health care authority—Director—Cost control and delivery strategies—Health information technology—Managed competition—Rules.
41.05.022	State agent for purchasing health services—Single community-rated risk pool.
41.05.026	Contracts—Proprietary data, trade secrets, actuarial formulas, statistics, cost and utilization data—Exemption from public inspection—Executive sessions.
41.05.050	Contributions for employees and dependents—Definitions.
41.05.055	Public employees' benefits board—Members.
41.05.075	Employee benefit plans—Contracts with insuring entities—Performance measures—Financial incentives—Health information technology.
41.05.120	Public employees' and retirees' insurance account—School employees' insurance account.
41.05.130	State health care authority administrative account—School employees' insurance administrative account.
41.05.143	Uniform medical plan benefits administration account—Uniform dental plan benefits administration account—Public employees' benefits board medical benefits administration account—School employees' benefits board medical benefits administration account.
41.05.230	Repealed.
41.05.655	Repealed.
41.05.670	Chronic care management incentives—Provider reimbursement methods.
41.05.700	Reimbursement of health care services provided through telemedicine or store and forward technology. (<i>Effective January 1, 2018.</i>)
41.05.740	School employees' benefits board.

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

(1) "Authority" means the Washington state health care authority.

(2) "Board" means the public employees' benefits board established under RCW 41.05.055.

(3) "Dependent care assistance program" means a benefit plan whereby state employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 129 or other sections of the internal revenue code.

(4) "Director" means the director of the authority.

(5) "Emergency service personnel killed in the line of duty" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010 who die as a result of injuries sustained in the course of employment as determined consistent with Title 51 RCW by the department of labor and industries.

(6)(a) "Employee" for the public employees' benefits board program includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursu-

ant to contractual agreement with the authority, "employee" may also include: (i) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021(1)(g); (ii) employees of employee organizations representing state civil service employees, at the option of each such employee organization; (iii) through December 31, 2019, employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (iv) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021(1) (f) and (g); (v) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021(1) (g) and (n); and (vi) through December 31, 2019, employees of a charter school established under chapter 28A.710 RCW. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under this chapter or by the authority under this chapter.

(b) Effective January 1, 2020, "employee" for the school employees' benefits board program includes all employees of school districts, educational service districts, and charter schools established under chapter 28A.710 RCW.

(7) "Employee group" means employees of a similar employment type, such as administrative, represented classified, nonrepresented classified, confidential, represented certificated, or nonrepresented certificated, within a school district.

(8)(a) "Employer" for the public employees' benefits board program means the state of Washington.

(b) "Employer" for the school employees' benefits board program means school districts and educational service districts and charter schools established under chapter 28A.710 RCW.

(9) "Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, and educational service districts, and employee organizations representing state civil service employees, obtaining employee benefits through a contractual agreement with the authority.

(10)(a) "Employing agency" for the public employees' benefits board program means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, or other political subdivision; charter school; and a tribal government covered by this chapter.

(b) "Employing agency" for the school employees' benefits board program means school districts and educational service districts.

(11) "Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

(12) "Flexible benefit plan" means a benefit plan that allows employees to choose the level of health care coverage provided and the amount of employee contributions from among a range of choices offered by the authority.

(13) "Insuring entity" means an insurer as defined in chapter 48.01 RCW, a health care service contractor as defined in chapter 48.44 RCW, or a health maintenance organization as defined in chapter 48.46 RCW.

(14) "Medical flexible spending arrangement" means a benefit plan whereby state employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(15) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the salary reduction plan.

(16) "Plan year" means the time period established by the authority.

(17) "Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(18) "Retired or disabled school employee" means:

(a) Persons who separated from employment with a school district or educational service district and are receiving a retirement allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

(b) Persons who separate from employment with a school district, educational service district, or charter school on or after October 1, 1993, and immediately upon separation receive a retirement allowance under chapter 41.32, 41.35, or 41.40 RCW;

(c) Persons who separate from employment with a school district, educational service district, or charter school due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 41.32, 41.35, or 41.40 RCW.

(19) "Salary" means a state employee's monthly salary or wages.

(20) "Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(21) "School employees' benefits board" means the board established in RCW 41.05.740.

(22) "School employees' benefits board participating organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that participates in benefit plans provided by the school employees' benefits board.

(23) "Seasonal employee" means a state employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

(24) "Separated employees" means persons who separate from employment with an employer as defined in:

- (a) RCW 41.32.010(17) on or after July 1, 1996; or
- (b) RCW 41.35.010 on or after September 1, 2000; or
- (c) RCW 41.40.010 on or after March 1, 2002;

and who are at least age fifty-five and have at least ten years of service under the teachers' retirement system plan 3 as defined in RCW 41.32.010(33), the Washington school employees' retirement system plan 3 as defined in RCW 41.35.010, or the public employees' retirement system plan 3 as defined in RCW 41.40.010.

(25) "State purchased health care" or "health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the department of social and health services, the department of health, the basic health plan, the state health care authority, the department of labor and industries, the department of corrections, the department of veterans affairs, and local school districts.

(26) "Tribal government" means an Indian tribal government as defined in section 3(32) of the employee retirement income security act of 1974, as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state. [2017 3rd sp.s. c 13 § 802. Prior: 2016 c 241 § 136; 2016 c 67 § 2; prior: 2015 c 116 § 2; 2013 c 2 § 306 (Initiative Measure No. 1240, approved November 6, 2012); 2012 c 87 § 22; prior: 2011 1st sp.s. c 15 § 54; 2009 c 537 § 3; 2008 c 229 § 2; prior: 2007 c 488 § 2; 2007 c 114 § 2; 2005 c 143 § 1; 2001 c 165 § 2; prior: 2000 c 247 § 604; 2000 c 230 § 3; 1998 c 341 § 706; 1996 c 39 § 21; 1995 1st sp.s. c 6 § 2; 1994 c 153 § 2; prior: 1993 c 492 § 214; 1993 c 386 § 5; 1990 c 222 § 2; 1988 c 107 § 3.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Application of chapter 241, Laws of 2016—Effective date—2016 c 241: See RCW 28A.710.900 and 28A.710.901.

Findings—2013 c 2 (Initiative Measure No. 1240): See RCW 28A.710.005.

Effective date—2012 c 87 §§ 4, 16, 18, and 19-23: See note following RCW 43.71.030.

Spiritual care services—2012 c 87: See RCW 43.71.901.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Effective date—2009 c 537: See note following RCW 41.05.008.

Effective date—2008 c 229: See note following RCW 41.05.295.

Short title—2007 c 488: See note following RCW 43.43.285.

Intent—2007 c 114: "Consistent with the centennial accord, the new millennium agreement, related treaties, and federal and state law, it is the intent of the legislature to authorize tribal governments to participate in public employees' benefits board programs to the same extent that counties, municipalities, and other political subdivisions of the state are authorized to do so." [2007 c 114 § 1.]

Effective date—2007 c 114: "This act takes effect January 1, 2009." [2007 c 114 § 8.]

Reviser's note: Contractual right not granted—2006 c 345: See note following RCW 41.26.510.

Intent—1994 c 153: "It is the intent of the legislature to increase access to health insurance for retired and disabled state and school district employees and to increase equity between state and school employees and between state and school retirees." [1994 c 153 § 1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

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

41.05.021 State health care authority—Director—Cost control and delivery strategies—Health information technology—Managed competition—Rules. (1) The Washington state health care authority is created within the executive branch. The authority shall have a director appointed by the governor, with the consent of the senate. The director shall serve at the pleasure of the governor. The director may employ a deputy director, and such assistant directors and special assistants as may be needed to administer the authority, who shall be exempt from chapter 41.06 RCW, and any additional staff members as are necessary to administer this chapter. The director may delegate any power or duty vested in him or her by law, including authority to make final decisions and enter final orders in hearings conducted under chapter 34.05 RCW. The primary duties of the authority shall be to: Administer insurance benefits for state employees, retired or disabled state and school employees, and subject to school employees' benefits board direction, school employees; administer the basic health plan pursuant to chapter 70.47 RCW; administer the children's health program pursuant to chapter 74.09 RCW; study state purchased health care programs in order to maximize cost containment in these programs while ensuring access to quality health care; implement state initiatives, joint purchasing strategies, and techniques for efficient administration that have potential application to all state-purchased health services; and administer grants that further the mission and goals of the authority. The authority's duties include, but are not limited to, the following:

(a) To administer health care benefit programs for state employees, retired or disabled state and school employees, and subject to school employees' benefits board direction, school employees as specifically authorized in RCW 41.05.065 and 41.05.740 and in accordance with the methods described in RCW 41.05.075, 41.05.140, and other provisions of this chapter;

(b) To analyze state purchased health care programs and to explore options for cost containment and delivery alternatives for those programs that are consistent with the purposes of those programs, including, but not limited to:

(i) Creation of economic incentives for the persons for whom the state purchases health care to appropriately utilize and purchase health care services, including the development of flexible benefit plans to offset increases in individual financial responsibility;

(ii) Utilization of provider arrangements that encourage cost containment, including but not limited to prepaid deliv-

ery systems, utilization review, and prospective payment methods, and that ensure access to quality care, including assuring reasonable access to local providers, especially for employees residing in rural areas;

(iii) Coordination of state agency efforts to purchase drugs effectively as provided in RCW 70.14.050;

(iv) Development of recommendations and methods for purchasing medical equipment and supporting services on a volume discount basis;

(v) Development of data systems to obtain utilization data from state purchased health care programs in order to identify cost centers, utilization patterns, provider and hospital practice patterns, and procedure costs, utilizing the information obtained pursuant to RCW 41.05.031; and

(vi) In collaboration with other state agencies that administer state purchased health care programs, private health care purchasers, health care facilities, providers, and carriers:

(A) Use evidence-based medicine principles to develop common performance measures and implement financial incentives in contracts with insuring entities, health care facilities, and providers that:

(I) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

(II) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved health outcomes, better coordination of care, and decreased medical errors;

(B) Through state health purchasing, reimbursement, or pilot strategies, promote and increase the adoption of health information technology systems, including electronic medical records, by hospitals as defined in RCW 70.41.020, integrated delivery systems, and providers that:

(I) Facilitate diagnosis or treatment;

(II) Reduce unnecessary duplication of medical tests;

(III) Promote efficient electronic physician order entry;

(IV) Increase access to health information for consumers and their providers; and

(V) Improve health outcomes;

(C) Coordinate a strategy for the adoption of health information technology systems using the final health information technology report and recommendations developed under chapter 261, Laws of 2005;

(c) To analyze areas of public and private health care interaction;

(d) To provide information and technical and administrative assistance to the board and the school employees' benefits board;

(e) To review and approve or deny applications from counties, municipalities, and other political subdivisions of the state to provide state-sponsored insurance or self-insurance programs to their employees in accordance with the provisions of RCW 41.04.205 and (g) of this subsection, setting the premium contribution for approved groups as outlined in RCW 41.05.050;

(f) To review and approve or deny the application when the governing body of a tribal government applies to transfer their employees to an insurance or self-insurance program

administered under this chapter. In the event of an employee transfer pursuant to this subsection (1)(f), members of the governing body are eligible to be included in such a transfer if the members are authorized by the tribal government to participate in the insurance program being transferred from and subject to payment by the members of all costs of insurance for the members. The authority shall: (i) Establish the conditions for participation; (ii) have the sole right to reject the application; and (iii) set the premium contribution for approved groups as outlined in RCW 41.05.050. Approval of the application by the authority transfers the employees and dependents involved to the insurance, self-insurance, or health care program approved by the authority;

(g) To ensure the continued status of the employee insurance or self-insurance programs administered under this chapter as a governmental plan under section 3(32) of the employee retirement income security act of 1974, as amended, the authority shall limit the participation of employees of a county, municipal, school district, educational service district, or other political subdivision, the Washington health benefit exchange, or a tribal government, including providing for the participation of those employees whose services are substantially all in the performance of essential governmental functions, but not in the performance of commercial activities;

(h) To establish billing procedures and collect funds from school districts in a way that minimizes the administrative burden on districts;

(i) Through December 31, 2019, to publish and distribute to nonparticipating school districts and educational service districts by October 1st of each year a description of health care benefit plans available through the authority and the estimated cost if school districts and educational service district employees were enrolled;

(j) To apply for, receive, and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and make arrangements as to the use of these receipts to implement initiatives and strategies developed under this section;

(k) To issue, distribute, and administer grants that further the mission and goals of the authority;

(l) To adopt rules consistent with this chapter as described in RCW 41.05.160 including, but not limited to:

(i) Setting forth the criteria established by the board under RCW 41.05.065, and by the school employees' benefits board under RCW 41.05.740, for determining whether an employee is eligible for benefits;

(ii) Establishing an appeal process in accordance with chapter 34.05 RCW by which an employee may appeal an eligibility determination;

(iii) Establishing a process to assure that the eligibility determinations of an employing agency comply with the criteria under this chapter, including the imposition of penalties as may be authorized by the board or the school employees' benefits board;

(m)(i) To administer the medical services programs established under chapter 74.09 RCW as the designated single state agency for purposes of Title XIX of the federal social security act;

(ii) To administer the state children's health insurance program under chapter 74.09 RCW for purposes of Title XXI of the federal social security act;

(iii) To enter into agreements with the department of social and health services for administration of medical care services programs under Titles XIX and XXI of the social security act. The agreements shall establish the division of responsibilities between the authority and the department with respect to mental health, chemical dependency, and long-term care services, including services for persons with developmental disabilities. The agreements shall be revised as necessary, to comply with the final implementation plan adopted under section 116, chapter 15, Laws of 2011 1st sp. sess.;

(iv) To adopt rules to carry out the purposes of chapter 74.09 RCW;

(v) To appoint such advisory committees or councils as may be required by any federal statute or regulation as a condition to the receipt of federal funds by the authority. The director may appoint statewide committees or councils in the following subject areas: (A) Health facilities; (B) children and youth services; (C) blind services; (D) medical and health care; (E) drug abuse and alcoholism; (F) rehabilitative services; and (G) such other subject matters as are or come within the authority's responsibilities. The statewide councils shall have representation from both major political parties and shall have substantial consumer representation. Such committees or councils shall be constituted as required by federal law or as the director in his or her discretion may determine. The members of the committees or councils shall hold office for three years except in the case of a vacancy, in which event appointment shall be only for the remainder of the unexpired term for which the vacancy occurs. No member shall serve more than two consecutive terms. Members of such state advisory committees or councils may be paid their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended;

(n) To review and approve or deny the application from the governing board of the Washington health benefit exchange to provide state-sponsored insurance or self-insurance programs to employees of the exchange. The authority shall (i) establish the conditions for participation; (ii) have the sole right to reject an application; and (iii) set the premium contribution for approved groups as outlined in RCW 41.05.050.

(2) On and after January 1, 1996, the public employees' benefits board and the school employees' benefits board beginning October 1, 2017, may implement strategies to promote managed competition among employee health benefit plans. Strategies may include but are not limited to:

- (a) Standardizing the benefit package;
- (b) Soliciting competitive bids for the benefit package;
- (c) Limiting the state's contribution to a percent of the lowest priced qualified plan within a geographical area;

(d) Monitoring the impact of the approach under this subsection with regards to: Efficiencies in health service delivery, cost shifts to subscribers, access to and choice of managed care plans statewide, and quality of health services. The health care authority shall also advise on the value of administering a benchmark employer-managed plan to promote competition among managed care plans. [2017 3rd

sp.s. c 13 § 803; 2012 c 87 § 23; 2011 1st sp.s. c 15 § 56; 2009 c 537 § 4. Prior: 2007 c 274 § 1; 2007 c 114 § 3; 2006 c 103 § 2; 2005 c 446 § 1; 2002 c 142 § 1; 1999 c 372 § 4; 1997 c 274 § 1; 1995 1st sp.s. c 6 § 7; 1994 c 309 § 1; prior: 1993 c 492 § 215; 1993 c 386 § 6; 1990 c 222 § 3; 1988 c 107 § 4.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2012 c 87 §§ 4, 16, 18, and 19-23: See note following RCW 43.71.030.

Spiritual care services—2012 c 87: See RCW 43.71.901.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Effective date—2009 c 537: See note following RCW 41.05.008.

Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Intent—2006 c 103: "(1) The legislature recognizes that improvements in the quality of health care lead to better health care outcomes for the residents of Washington state and contain health care costs. The improvements are facilitated by the adoption of electronic medical records and other health information technologies.

(2) It is the intent of the legislature to encourage all hospitals, integrated delivery systems, and providers in the state of Washington to adopt health information technologies by the year 2012." [2006 c 103 § 1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.022 State agent for purchasing health services—Single community-rated risk pool. (1) The health care authority is hereby designated as the single state agent for purchasing health services.

(2) On and after January 1, 1995, at least the following state-purchased health services programs shall be merged into a single, community-rated risk pool: Health benefits for groups of employees of school districts and educational service districts that voluntarily purchase health benefits as provided in RCW 41.05.011 through December 31, 2019; health benefits for state employees; health benefits for eligible retired or disabled school employees not eligible for parts A and B of medicare; and health benefits for eligible state retirees not eligible for parts A and B of medicare.

(3) On and after January 1, 2020, health benefits for groups of employees of school districts and educational service districts shall be merged into a single, community-rated risk pool separate and distinct from the pool described in subsection (2) of this section.

(4) By December 15, 2018, the health care authority, in consultation with the public employees' benefits board and the school employees' benefits board, shall submit to the appropriate committees of the legislature a complete analysis of the most appropriate risk pool for the retired and disabled school employees, to include at a minimum an analysis of the size of the nonmedicare and medicare retiree enrollment pools, the impacts on cost for state and school district retirees of moving retirees from one pool to another, the need for and the amount of an ongoing retiree subsidy allocation from the active school employees, and the timing and suggested approach for a transition from one risk pool to another.

(5) At a minimum, and regardless of other legislative enactments, the state health services purchasing agent shall:

(a) Require that a public agency that provides subsidies for a substantial portion of services now covered under the

basic health plan use uniform eligibility processes, insofar as may be possible, and ensure that multiple eligibility determinations are not required;

(b) Require that a health care provider or a health care facility that receives funds from a public program provide care to state residents receiving a state subsidy who may wish to receive care from them, and that an insuring entity that receives funds from a public program accept enrollment from state residents receiving a state subsidy who may wish to enroll with them;

(c) Strive to integrate purchasing for all publicly sponsored health services in order to maximize the cost control potential and promote the most efficient methods of financing and coordinating services;

(d) Consult regularly with the governor, the legislature, and state agency directors whose operations are affected by the implementation of this section; and

(e) Ensure the control of benefit costs under managed competition by adopting rules to prevent employers from entering into an agreement with employees or employee organizations when the agreement would result in increased utilization in public employees' benefits board or school employee[s]' benefits board plans or reduce the expected savings of managed competition. [2017 3rd sp.s. c 13 § 804; 1995 1st sp.s. c 6 § 3; 1994 c 153 § 3; 1993 c 492 § 227.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

41.05.026 Contracts—Proprietary data, trade secrets, actuarial formulas, statistics, cost and utilization data—Exemption from public inspection—Executive sessions. (1) When soliciting proposals for the purpose of awarding contracts for goods or services, the director shall, upon written request by the bidder, exempt from public inspection and copying such proprietary data, trade secrets, or other information contained in the bidder's proposal that relate to the bidder's unique methods of conducting business or of determining prices or premium rates to be charged for services under terms of the proposal.

(2) When soliciting information for the development, acquisition, or implementation of state purchased health care services, the director shall, upon written request by the respondent, exempt from public inspection and copying such proprietary data, trade secrets, or other information submitted by the respondent that relate to the respondent's unique methods of conducting business, data unique to the product or services of the respondent, or to determining prices or rates to be charged for services.

(3) Actuarial formulas, statistics, cost and utilization data, or other proprietary information submitted upon request of the director, board, school employees' benefits board, or a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under this chapter by a contracting insurer, health care service contractor, health maintenance organization, vendor, or other health services organization may be withheld at any time from public inspection when necessary to preserve trade secrets or prevent unfair competition.

(4) The board, school employees' benefits board, or a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under this chapter, may hold an executive session in accordance with chapter 42.30 RCW during any regular or special meeting to discuss information submitted in accordance with subsections (1) through (3) of this section.

(5) A person who challenges a request for or designation of information as exempt under this section is entitled to seek judicial review pursuant to chapter 42.56 RCW. [2017 3rd sp.s. c 13 § 805; 2005 c 274 § 277; 2003 c 277 § 2; 1991 c 79 § 1; 1990 c 222 § 6.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

41.05.050 Contributions for employees and dependents—Definitions. (1) Every: (a) Department, division, or separate agency of state government; (b) county, municipal, school district, educational service district, or other political subdivisions; and (c) tribal governments as are covered by this chapter, shall provide contributions to insurance and health care plans for its employees and their dependents, the content of such plans to be determined by the authority. Contributions, paid by the county, the municipality, other political subdivision, or a tribal government for their employees, shall include an amount determined by the authority to pay such administrative expenses of the authority as are necessary to administer the plans for employees of those groups, except as provided in subsection (4) of this section.

(2) To account for increased cost of benefits for the state and for state employees, the authority may develop a rate surcharge applicable to participating counties, municipalities, other political subdivisions, and tribal governments.

(3) The contributions of any: (a) Department, division, or separate agency of the state government; (b) county, municipal, or other political subdivisions; (c) any tribal government as are covered by this chapter; and (d) school districts and educational service districts, shall be set by the authority, subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(4)(a) Until January 1, 2020, the authority shall collect from each participating school district and educational service district an amount equal to the composite rate charged to state agencies, plus an amount equal to the employee premiums by plan and family size as would be charged to state employees, for groups of district employees enrolled in authority plans. The authority may collect these amounts in accordance with the district fiscal year, as described in RCW 28A.505.030.

(b) For all groups of district employees enrolling in authority plans for the first time after September 1, 2003, and until January 1, 2020, the authority shall collect from each participating school district an amount equal to the composite rate charged to state agencies, plus an amount equal to the employee premiums by plan and by family size as would be charged to state employees, only if the authority determines that this method of billing the districts will not result in a material difference between revenues from districts and expenditures made by the authority on behalf of districts and their employees. The authority may collect these amounts in

accordance with the district fiscal year, as described in RCW 28A.505.030.

(c) If the authority determines at any time that the conditions in (b) of this subsection cannot be met, the authority shall offer enrollment to additional groups of district employees on a tiered rate structure until such time as the authority determines there would be no material difference between revenues and expenditures under a composite rate structure for all district employees enrolled in authority plans.

(d) Beginning January 1, 2020, all school districts and educational service districts shall commence participation in the school employees' benefits board program established under RCW 41.05.740. All school districts and educational service districts, and all district employee groups participating in the public employees' benefits board plans before January 1, 2020, shall thereafter participate in the school employees' benefits board program administered by the authority.

(e) For the purposes of this subsection:

(i) "District" means school district and educational service district; and

(ii) "Tiered rates" means the amounts the authority must pay to insuring entities by plan and by family size.

(f) Notwithstanding this subsection and RCW 41.05.065(4), the authority may allow districts enrolled on a tiered rate structure prior to September 1, 2002, and until January 1, 2020, to continue participation based on the same rate structure and under the same conditions and eligibility criteria.

(5) The authority shall transmit a recommendation for the amount of the employer contributions to the governor and the director of financial management for inclusion in the proposed budgets submitted to the legislature. [2017 3rd sp.s. c 13 § 806; 2016 c 67 § 3; 2009 c 537 § 5; 2007 c 114 § 4; 2005 c 518 § 919; 2003 c 158 § 1. Prior: 2002 c 319 § 4; 2002 c 142 § 2; prior: 1995 1st sp.s. c 6 § 22; 1994 c 309 § 2; 1994 c 153 § 4; prior: 1993 c 492 § 216; 1993 c 386 § 7; 1988 c 107 § 18; 1987 c 122 § 4; 1984 c 107 § 1; 1983 c 15 § 20; 1983 c 2 § 9; prior: 1982 1st ex.s. c 34 § 2; 1981 c 344 § 6; 1979 c 151 § 55; 1977 ex.s. c 136 § 4; 1975-'76 2nd ex.s. c 106 § 4; 1975 1st ex.s. c 38 § 2; 1973 1st ex.s. c 147 § 3; 1970 ex.s. c 39 § 5.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2009 c 537: See note following RCW 41.05.008.

Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Intent—2002 c 319: See note following RCW 41.04.208.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.055 Public employees' benefits board—Members. (1) The public employees' benefits board is created within the authority. The function of the board is to design and approve insurance benefit plans for employees and to establish eligibility criteria for participation in insurance benefit plans.

(2) The board shall be composed of nine members through December 31, 2019, and of eight members thereafter, appointed by the governor as follows:

(a) Two representatives of state employees, one of whom shall represent an employee union certified as exclusive representative of at least one bargaining unit of classified employees, and one of whom is retired, is covered by a program under the jurisdiction of the board, and represents an organized group of retired public employees;

(b) Through December 31, 2019, two representatives of school district employees, one of whom shall represent an association of school employees as a nonvoting member, and one of whom is retired, and represents an organized group of retired school employees. Thereafter, and only while retired school employees are served by the board, only the retired representative shall serve on the board;

(c) Four members with experience in health benefit management and cost containment, one of whom shall be a nonvoting member; and

(d) The director.

(3) The governor shall appoint the initial members of the board to staggered terms not to exceed four years. Members appointed thereafter shall serve two-year terms. Members of the board shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060. The board shall prescribe rules for the conduct of its business. The director shall serve as chair of the board. Meetings of the board shall be at the call of the chair. [2017 3rd sp.s. c 13 § 807; 2009 c 537 § 6; 1995 1st sp.s. c 6 § 4; 1994 c 36 § 1; 1993 c 492 § 217; 1989 c 324 § 1; 1988 c 107 § 7.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2009 c 537: See note following RCW 41.05.008.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

41.05.075 Employee benefit plans—Contracts with insuring entities—Performance measures—Financial incentives—Health information technology. (1) The director shall provide benefit plans designed by the board and the school employees' benefits board through a contract or contracts with insuring entities, through self-funding, self-insurance, or other methods of providing insurance coverage authorized by RCW 41.05.140. The process of contracting for plans offered by the school employees' benefits board is subject to oversight and direction by the school employees' benefits board.

(2) The director, subject to school employees' benefits board direction for plans offered to school employees, shall establish a contract bidding process that:

(a) Encourages competition among insuring entities;

(b) Maintains an equitable relationship between premiums charged for similar benefits and between risk pools including premiums charged for retired state and school district employees under the separate risk pools established by RCW 41.05.022 and 41.05.080 such that insuring entities may not avoid risk when establishing the premium rates for retirees eligible for medicare;

(c) Is timely to the state budgetary process; and

(d) Sets conditions for awarding contracts to any insuring entity.

(3) School districts directly providing medical and dental benefits plans and contracted insuring entities providing medical and dental benefits plans to school districts on December 31, 2017, shall provide the school employees' benefits board and authority specified data by January 1, 2019, to support an initial benefits plans procurement. At a minimum, the data must cover the period January 1, 2014, through August 1, 2018, and include:

(a) A summary of the benefit packages offered to each group of district employees, including covered benefits, point-of-service cost-sharing, member count, and the group policy number;

(b) Aggregated subscriber and member demographic information, including age band and gender, by insurance tier by month and by benefit packages;

(c) Monthly total by benefit package, including premiums paid, inpatient facility claims paid, outpatient facility claims paid, physician claims paid, pharmacy claims paid, capitation amounts paid, and other claims paid;

(d) A listing for calendar years 2014 through 2017 of large claims defined as annual amounts paid in excess of one hundred thousand dollars including the amount paid, the member enrollment status, and the primary diagnosis; and

(e) A listing of calendar year 2018 allowed claims by provider entity.

Any data that may be confidential and contain personal health information may be protected in accordance with a data-sharing agreement.

(4) The director shall establish a requirement for review of utilization and financial data from participating insuring entities on a quarterly basis.

(5) The director shall centralize the enrollment files for all employee and retired or disabled school employee health plans offered under chapter 41.05 RCW and develop enrollment demographics on a plan-specific basis.

(6) All claims data shall be the property of the state. The director may require of any insuring entity that submits a bid to contract for coverage all information deemed necessary including:

(a) Subscriber or member demographic and claims data necessary for risk assessment and adjustment calculations in order to fulfill the director's duties as set forth in this chapter; and

(b) Subscriber or member demographic and claims data necessary to implement performance measures or financial incentives related to performance under subsection (8) of this section.

(7) All contracts with insuring entities for the provision of health care benefits shall provide that the beneficiaries of such benefit plans may use on an equal participation basis the services of practitioners licensed pursuant to chapters 18.22, 18.25, 18.32, 18.53, 18.57, 18.71, 18.74, 18.83, and 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners. However, nothing in this subsection may preclude the director from establishing appropriate utilization controls approved pursuant to RCW 41.05.065(2) (a), (b), and (d).

(8) The director shall, in collaboration with other state agencies that administer state purchased health care pro-

grams, private health care purchasers, health care facilities, providers, and carriers:

(a) Use evidence-based medicine principles to develop common performance measures and implement financial incentives in contracts with insuring entities, health care facilities, and providers that:

(i) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

(ii) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved health outcomes, better coordination of care, and decreased medical errors;

(b) Through state health purchasing, reimbursement, or pilot strategies, promote and increase the adoption of health information technology systems, including electronic medical records, by hospitals as defined in RCW 70.41.020, integrated delivery systems, and providers that:

(i) Facilitate diagnosis or treatment;

(ii) Reduce unnecessary duplication of medical tests;

(iii) Promote efficient electronic physician order entry;

(iv) Increase access to health information for consumers and their providers; and

(v) Improve health outcomes;

(c) Coordinate a strategy for the adoption of health information technology systems using the final health information technology report and recommendations developed under chapter 261, Laws of 2005.

The director may permit the Washington state health insurance pool to contract to utilize any network maintained by the authority or any network under contract with the authority. [2017 3rd sp.s. c 13 § 808; 2007 c 259 § 34; 2006 c 103 § 3; 2005 c 446 § 2; 2002 c 142 § 4. Prior: 1994 sp.s. c 9 § 724; 1994 c 309 § 3; 1994 c 153 § 6; 1993 c 386 § 10; 1988 c 107 § 9.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Intent—2006 c 103: See note following RCW 41.05.021.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.120 Public employees' and retirees' insurance account—School employees' insurance account. (1) The public employees' and retirees' insurance account is hereby established in the custody of the state treasurer, to be used by the director for the deposit of contributions, the remittance paid by school districts and educational service districts under RCW 28A.400.410, reserves, dividends, and refunds, for payment of premiums for employee and retiree insurance benefit contracts and subsidy amounts provided under RCW 41.05.085, and transfers from the flexible spending administrative account as authorized in RCW 41.05.123. Moneys from the account shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the director. Moneys from the account may be transferred to the flexible spending administrative account to provide reserves and start-up

costs for the operation of the flexible spending administrative account program.

(2) The state treasurer and the state investment board may invest moneys in the public employees' and retirees' insurance account. All such investments shall be in accordance with RCW 43.84.080 or 43.84.150, whichever is applicable. The director shall determine whether the state treasurer or the state investment board or both shall invest moneys in the public employees' and retirees' insurance account.

(3) The school employees' insurance account is hereby established in the custody of the state treasurer, to be used by the director for the deposit of contributions, reserves, dividends, and refunds, for payment of premiums for school employee insurance benefit contracts. Moneys from the account shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the director.

(4) The state treasurer and the state investment board may invest moneys in the school employees' insurance account. These investments must be in accordance with RCW 43.84.080 or 43.84.150, whichever is applicable. The director shall determine whether the state treasurer or the state investment board or both shall invest moneys in the school employees' insurance account. [2017 3rd sp.s. c 13 § 809. Prior: 2005 c 518 § 921; 2005 c 143 § 3; 1994 c 153 § 9; 1993 c 492 § 219; 1991 sp.s. c 13 § 100; 1988 c 107 § 10.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

41.05.130 State health care authority administrative account—School employees' insurance administrative account. (1) The state health care authority administrative account is hereby created in the state treasury. Moneys in the account, including unanticipated revenues under RCW 43.79.270, may be spent only after appropriation by statute, and may be used only for operating expenses of the authority, and during the 2013-2015 fiscal biennium, for health care related analysis provided to the legislature by the office of the state actuary. During the 2017-2019 and 2019-2021 fiscal biennia, moneys in the account may be used for the initial operating expenses of the authority associated with chapter 13, Laws of 2017 3rd sp. sess. All funds so used shall be reimbursed from the school employees' insurance administrative account following the start of benefit provision by the school employees' benefits board on January 1, 2020.

(2) The school employees' insurance administrative account is hereby created in the state treasury. Moneys in the account may be used for operating, contracting, and other administrative expenses of the authority in administration of the school employees insurance program, including reimbursement of the state health care authority administrative account for initial operating expenses of the authority associated with chapter 13, Laws of 2017 3rd sp. sess. [2017 3rd sp.s. c 13 § 810; 2014 c 221 § 914; 1988 c 107 § 11.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2014 c 221: See note following RCW 28A.710.260.

41.05.143 Uniform medical plan benefits administration account—Uniform dental plan benefits administra-

tion account—Public employees' benefits board medical benefits administration account—School employees' benefits board medical benefits administration account. (1) The uniform medical plan benefits administration account is created in the custody of the state treasurer. Only the director or the director's designee may authorize expenditures from the account. Moneys in the account shall be used exclusively for contracted expenditures for uniform medical plan claims administration, data analysis, utilization management, preferred provider administration, and activities related to benefits administration where the level of services provided pursuant to a contract fluctuate as a direct result of changes in uniform medical plan enrollment. Moneys in the account may also be used for administrative activities required to respond to new and unforeseen conditions that impact the uniform medical plan, but only when the authority and the office of financial management jointly agree that such activities must be initiated prior to the next legislative session.

(2) Receipts from amounts due from or on behalf of uniform medical plan enrollees for expenditures related to benefits administration, including moneys disbursed from the public employees' and retirees' insurance account, shall be deposited into the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. All proposals for allotment increases shall be provided to the house of representatives appropriations committee and to the senate ways and means committee at the same time as they are provided to the office of financial management.

(3) The uniform dental plan benefits administration account is created in the custody of the state treasurer. Only the director or the director's designee may authorize expenditures from the account. Moneys in the account shall be used exclusively for contracted expenditures related to benefits administration for the uniform dental plan as established under RCW 41.05.140. Receipts from amounts due from or on behalf of uniform dental plan enrollees for expenditures related to benefits administration, including moneys disbursed from the public employees' and retirees' insurance account, shall be deposited into the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(4) The public employees' benefits board medical benefits administration account is created in the custody of the state treasurer. Only the director or the director's designee may authorize expenditures from the account. Moneys in the account shall be used exclusively for contracted expenditures related to claims administration, data analysis, utilization management, preferred provider administration, and other activities related to benefits administration for self-insured medical plans other than the uniform medical plan. Receipts from amounts due from or on behalf of enrollees for expenditures related to benefits administration, including moneys disbursed from the public employees' and retirees' insurance account, shall be deposited into the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(5) The school employees' benefits board medical benefits administration account is created in the custody of the state treasurer. Only the director or the director's designee may authorize expenditures from the account. Moneys in the

account shall be used exclusively for contracted expenditures related to claims administration, data analysis, utilization management, preferred provider administration, and other activities related to benefits administration for self-insured medical plans other than the uniform medical plan. Receipts from amounts due from or on behalf of enrollees for expenditures related to benefits administration, including moneys disbursed from the school employees' insurance account, shall be deposited into the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [2017 3rd sp.s. c 13 § 811; 2007 c 507 § 1; 2000 2nd sp.s. c 1 § 901.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Additional notes found at www.leg.wa.gov

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

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

41.05.670 Chronic care management incentives—Provider reimbursement methods. (1) Effective January 1, 2013, the authority must contract with all of the public employees' benefits board managed care plans and the self-insured plan or plans to include provider reimbursement methods that incentivize chronic care management within health homes resulting in reduced emergency department and inpatient use.

(2) Health home services contracted for under this section may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(3) For the purposes of this section, "chronic care management" and "health home" have the same meaning as in RCW 74.09.010.

(4) Contracts with fully insured plans and with any third-party administrator for the self-funded plan that include the items in subsection (1) of this section must be funded within the resources provided by employer funding rates provided for employee health benefits in the omnibus appropriations act.

(5) Nothing in this section shall require contracted third-party health plans administering the self-insured contract to expend resources to implement items in subsection (1) of this section beyond the resources provided by employer funding rates provided for employee health benefits in the omnibus appropriations act or from other sources in the absence of these provisions.

(6) The school employees' benefits board, under RCW 41.05.740, shall implement the provisions of this section, effective January 1, 2020. [2017 3rd sp.s. c 13 § 812; 2011 c 316 § 6.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

41.05.700 Reimbursement of health care services provided through telemedicine or store and forward technology. (Effective January 1, 2018.) (1) A health plan offered to employees and their covered dependents under this chapter issued or renewed on or after January 1, 2017, shall reimburse a provider for a health care service provided to a

covered person through telemedicine or store and forward technology if:

(a) The plan provides coverage of the health care service when provided in person by the provider;

(b) The health care service is medically necessary;

(c) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal patient protection and affordable care act in effect on January 1, 2015; and

(d) The health care service is determined to be safely and effectively provided through telemedicine or store and forward technology according to generally accepted health care practices and standards, and the technology used to provide the health care service meets the standards required by state and federal laws governing the privacy and security of protected health information.

(2)(a) If the service is provided through store and forward technology there must be an associated office visit between the covered person and the referring health care provider. Nothing in this section prohibits the use of telemedicine for the associated office visit.

(b) For purposes of this section, reimbursement of store and forward technology is available only for those covered services specified in the negotiated agreement between the health plan and health care provider.

(3) An originating site for a telemedicine health care service subject to subsection (1) of this section includes a:

(a) Hospital;

(b) Rural health clinic;

(c) Federally qualified health center;

(d) Physician's or other health care provider's office;

(e) Community mental health center;

(f) Skilled nursing facility;

(g) Home or any location determined by the individual receiving the service; or

(h) Renal dialysis center, except an independent renal dialysis center.

(4) Except for subsection (3)(g) of this section, any originating site under subsection (3) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement must be subject to a negotiated agreement between the originating site and the health plan. A distant site or any other site not identified in subsection (3) of this section may not charge a facility fee.

(5) The plan may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.

(6) The plan may subject coverage of a telemedicine or store and forward technology health service under subsection (1) of this section to all terms and conditions of the plan including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable health care service provided in person.

(7) This section does not require the plan to reimburse:

(a) An originating site for professional fees;

(b) A provider for a health care service that is not a covered benefit under the plan; or

(c) An originating site or health care provider when the site or provider is not a contracted provider under the plan.

(8) For purposes of this section:

(a) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through telemedicine;

(b) "Health care service" has the same meaning as in RCW 48.43.005;

(c) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW;

(d) "Originating site" means the physical location of a patient receiving health care services through telemedicine;

(e) "Provider" has the same meaning as in RCW 48.43.005;

(f) "Store and forward technology" means use of an asynchronous transmission of a covered person's medical information from an originating site to the health care provider at a distant site which results in medical diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email; and

(g) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "telemedicine" does not include the use of audio-only telephone, facsimile, or email. [2017 c 219 § 2; 2016 c 68 § 4; 2015 c 23 § 2.]

Effective date—2017 c 219: See note following RCW 48.43.735.

Effective date—Intent—2016 c 68: See notes following RCW 48.43.735.

Effective date—2015 c 23 §§ 2-4: "Sections 2 through 4 of this act take effect January 1, 2017." [2015 c 23 § 7.]

Adoption of sections—2015 c 23 §§ 2-4: "The legislature encourages health plans to adopt the requirements of sections 2 through 4 of this act prior to January 1, 2017. Therefore, nothing in this act prohibits a plan from adopting the requirements of sections 2 through 4 of this act prior to January 1, 2017." [2015 c 23 § 8.]

Intent—2015 c 23: "It is the intent of the legislature to recognize the application of telemedicine as a reimbursable service by which an individual receives medical services from a health care provider without in-person contact with the provider. It is also the intent of the legislature to reduce the compliance requirements on hospitals when granting privileges or associations to telemedicine physicians." [2015 c 23 § 1.]

41.05.740 School employees' benefits board. (1) The school employees' benefits board is created within the authority. The function of the board is to design and approve insurance benefit plans for school employees and to establish eligibility criteria for participation in insurance benefit plans.

(2) By September 30, 2017, the governor shall appoint the following voting members to the board as follows:

(a) Two members from associations representing certificated employees;

(b) Two members from associations representing classified employees;

(c) Four members with expertise in employee health benefits policy and administration, one of which is nominated by an association representing school business officials; and

(d) The director of the authority or his or her designee.

(3) Initial members of the board shall serve staggered terms not to exceed four years. Members appointed thereafter shall serve two-year terms.

(4) Members of the board must be compensated in accordance with RCW 43.03.250 and must be reimbursed for their

travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060.

(5) The director of the authority or his or her designee shall be the chair and another member shall be selected by the board as vice chair. The chair shall conduct meetings of the board. The vice chair shall preside over meetings in the absence of the chair. The board shall develop bylaws for the conduct of its business.

(6) The board shall:

(a) Study all matters connected with the provision of health care coverage, life insurance, liability insurance, accidental death and dismemberment, and disability insurance, or any of, or combination of, the enumerated types of insurance for eligible employees and their dependents on the best basis possible with relation both to the welfare of the employees and the state. However, liability insurance should not be made available to dependents;

(b) Develop employee benefit plans that include comprehensive, evidence-based health care benefits for employees. In developing these plans, the board shall consider the following elements:

(i) Methods of maximizing cost containment while ensuring access to quality health care;

(ii) Development of provider arrangements that encourage cost containment and ensure access to quality care including, but not limited to, prepaid delivery systems and prospective payment methods;

(iii) Wellness, preventive care, chronic disease management, and other incentives that focus on proven strategies;

(iv) Utilization review procedures to support cost-effective benefits delivery;

(v) Ways to leverage efficient purchasing by coordinating with the public employees' benefits board;

(vi) Effective coordination of benefits; and

(vii) Minimum standards for insuring entities;

(c) Authorize premium contributions for an employee and the employee's dependents in a manner that encourages the use of cost-efficient health care systems. For participating employees, the required employee share of the cost for family coverage under a plan may not exceed the required employee share of the cost for employee-only coverage;

(d) Determine the terms and conditions of employee and dependent eligibility criteria, enrollment policies, and scope of coverage. At a minimum, the eligibility criteria established by the board shall address the following:

(i) The effective date of coverage following hire;

(ii) An employee must work at least six hundred thirty hours per year to qualify for coverage; and

(iii) Coverage for dependents, including criteria for legal spouses; children up to age twenty-six; children of any age with disabilities, mental illness, or intellectual or other developmental disabilities; and state registered domestic partners, as defined in RCW 26.60.020, and others authorized by the legislature;

(e) Determine the terms and conditions of purchasing system participation, consistent with chapter 13, Laws of 2017 3rd sp. sess., including establishment of criteria for employing districts and individual employees;

(f) Establish penalties to be imposed when the employing district fails to comply with established participation criteria; and

(g) Participate with the authority in the preparation of specifications and selection of carriers contracted for employee benefit plan coverage of eligible employees in accordance with the criteria set forth in rules. To the extent possible, the board shall leverage efficient purchasing by coordinating with the public employees' benefits board.

(7) By November 30, 2021, the authority shall review the benefit plans provided through the school employees' benefits board, complete an analysis of the benefits provided and the administration of the benefits plans, and determine whether provisions in chapter 13, Laws of 2017 3rd sp. sess. have resulted in cost savings to the state. The authority shall submit a report to the relevant legislative policy and fiscal committees summarizing the results of the review and analysis. [2017 3rd sp.s. c 13 § 801.]

Effective date—2017 3rd sp.s. c 13 §§ 102, 505, and 801: See note following RCW 28A.400.205.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Chapter 41.06 RCW STATE CIVIL SERVICE LAW

Sections

- 41.06.0971 Department of children, youth, and families—Certain personnel exempted from chapter. (*Effective July 1, 2018.*)
41.06.475 Employees with unsupervised access to children—Rules for background investigation. (*Effective July 1, 2018.*)

41.06.0971 Department of children, youth, and families—Certain personnel exempted from chapter. (*Effective July 1, 2018.*) In addition to the exemptions under RCW 41.06.070, this chapter does not apply in the department of children, youth, and families to the secretary; the secretary's confidential secretary; deputy, assistant, and regional secretaries, one confidential secretary for each of the aforesaid officers; and any other exempt staff members provided for in chapter 6, Laws of 2017 3rd sp. sess. [2017 3rd sp.s. c 6 § 105.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

41.06.475 Employees with unsupervised access to children—Rules for background investigation. (*Effective July 1, 2018.*) The director shall adopt rules, in cooperation with the secretary of the department of children, youth, and families, for the background investigation of current employees and of persons being actively considered for positions with the department who will or may have unsupervised access to children. The director shall also adopt rules, in cooperation with the secretary of the department of children, youth, and families, for background investigation of positions otherwise required by federal law to meet employment standards. "Considered for positions" includes decisions about (1) initial hiring, layoffs, reallocations, transfers, promotions, or demotions, or (2) other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer. [2017 3rd sp.s. c 6 § 807; 2007 c 387 § 8; 2002 c 354 § 222; 1993 c 281 § 38; 1986 c 269 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Children and vulnerable adults: RCW 43.43.830 through 43.43.842.

State hospitals: RCW 72.23.035.

Supervision, care, or treatment of children or individuals with developmental disabilities or other vulnerable persons—State employment—Investigation of conviction records or pending charges: RCW 43.20A.710.

Additional notes found at www.leg.wa.gov

Chapter 41.26 RCW LAW ENFORCEMENT OFFICERS' AND FIREFIGHTERS' RETIREMENT SYSTEM

Sections

- 41.26.030 Definitions.
41.26.450 Port districts and institutions of higher education—Employer and state contributions—Recovery of contributions.
41.26.545 Emergency medical technicians—Establishing service credit—Dates—Process—Contributions.
41.26.546 Emergency medical technicians—Member elects to transfer under RCW 41.26.545—Death—Retirement for disability.
41.26.802 Local public safety enhancement account—Transfers into account.

41.26.030 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Accumulated contributions" means the employee's contributions made by a member, including any amount paid under RCW 41.50.165(2), plus accrued interest credited thereon.

(2) "Actuarial reserve" means a method of financing a pension or retirement plan wherein reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement of each member to pay the member's future benefits during the period of retirement.

(3) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to mortality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

(4)(a) "Basic salary" for plan 1 members, means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages, upon which pension or retirement benefits will be computed and upon which employer contributions and salary deductions will be based.

(b) "Basic salary" for plan 2 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay. In any year in which a member serves in the legislature the member shall have the option of having such member's basic salary be the greater of:

(i) The basic salary the member would have received had such member not served in the legislature; or

(ii) Such member's actual basic salary received for non-legislative public employment and legislative service combined. Any additional contributions to the retirement system required because basic salary under (b)(i) of this subsection is greater than basic salary under (b)(ii) of this subsection shall be paid by the member for both member and employer contributions.

(5)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for plan 2 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(6)(a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically disabled as determined by the department, except a person who is disabled and in the full time care of a state institution, who is:

- (i) A natural born child;
- (ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;
- (iii) A posthumous child;
- (iv) A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter; or
- (v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.

(7) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(8) "Director" means the director of the department.

(9) "Disability board" for plan 1 members means either the county disability board or the city disability board established in RCW 41.26.110.

(10) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to the member's full salary prior to the commencement of disability retirement. The definition contained in this subsection shall apply only to plan 1 members.

(11) "Disability retirement" for plan 1 members, means the period following termination of a member's disability leave, during which the member is in receipt of a disability retirement allowance.

(12) "Domestic partners" means two adults who have registered as domestic partners under RCW 26.60.020.

(13) "Employee" means any law enforcement officer or firefighter as defined in subsections (16) and (18) of this section.

(14)(a) "Employer" for plan 1 members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs

any law enforcement officer and/or firefighter, any authorized association of such municipalities, and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the firefighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or firefighters as defined in this chapter.

(b) "Employer" for plan 2 members, means the following entities to the extent that the entity employs any law enforcement officer and/or firefighter:

(i) The legislative authority of any city, town, county, district, or public corporation established under RCW 35.21.730 to provide emergency medical services as defined in RCW 18.73.030;

(ii) The elected officials of any municipal corporation;

(iii) The governing body of any other general authority law enforcement agency; or

(iv) A four-year institution of higher education having a fully operational fire department as of January 1, 1996.

(c) Except as otherwise specifically provided in this chapter, "employer" does not include a government contractor. For purposes of this subsection, a "government contractor" is any entity, including a partnership, limited liability company, for-profit or nonprofit corporation, or person, that provides services pursuant to a contract with an "employer." The determination whether an employer-employee relationship has been established is not based on the relationship between a government contractor and an "employer," but is based solely on the relationship between a government contractor's employee and an "employer" under this chapter.

(15)(a) "Final average salary" for plan 1 members, means (i) for a member holding the same position or rank for a minimum of twelve months preceding the date of retirement, the basic salary attached to such same position or rank at time of retirement; (ii) for any other member, including a civil service member who has not served a minimum of twelve months in the same position or rank preceding the date of retirement, the average of the greatest basic salaries payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed, computed by dividing the total basic salaries payable to such member during the selected twenty-four month period by twenty-four; (iii) in the case of disability of any member, the basic salary payable to such member at the time of disability retirement; (iv) in the case of a member who hereafter vests pursuant to RCW 41.26.090, the basic salary payable to such member at the time of vesting.

(b) "Final average salary" for plan 2 members, means the monthly average of the member's basic salary for the highest consecutive sixty service credit months of service prior to such member's retirement, termination, or death. Periods constituting authorized unpaid leaves of absence may not be used in the calculation of final average salary.

(c) In calculating final average salary under (a) or (b) of this subsection, the department of retirement systems shall include:

(i) Any compensation forgone by a member employed by a state agency or institution during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or

voluntary leave without pay, temporary reduction in pay implemented prior to December 11, 2010, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer; and

(ii) Any compensation forgone by a member employed by the state or a local government employer during the 2011-2013 fiscal biennium as a result of reduced work hours, mandatory leave without pay, temporary layoffs, or reductions to current pay if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer. Reductions to current pay shall not include elimination of previously agreed upon future salary increases.

(16) "Firefighter" means:

(a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for firefighter, and who is actively employed as such;

(b) Anyone who is actively employed as a full time firefighter where the fire department does not have a civil service examination;

(c) Supervisory firefighter personnel;

(d) Any full time executive secretary of an association of fire protection districts authorized under RCW 52.12.031. The provisions of this subsection (16)(d) shall not apply to plan 2 members;

(e) The executive secretary of a labor guild, association or organization (which is an employer under subsection (14) of this section), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW. The provisions of this subsection (16)(e) shall not apply to plan 2 members;

(f) Any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for firefighter;

(g) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971, was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW; and

(h) Any person who is employed on a full-time, fully compensated basis by an employer as an emergency medical technician that meets the requirements of RCW 18.71.200 or 18.73.030(12), and whose duties include providing emergency medical services as defined in RCW 18.73.030.

(17) "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, but not including the Washington state patrol. Such an agency, department, or division is distinguished from a limited authority law enforcement agency having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural

resources and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor and cannabis board, and the state department of corrections. A general authority law enforcement agency under this chapter does not include a government contractor.

(18) "Law enforcement officer" beginning January 1, 1994, means any person who is commissioned and employed by an employer on a full time, fully compensated basis to enforce the criminal laws of the state of Washington generally, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature, and who is not commissioned shall be considered a law enforcement officer;

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers;

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under subsection (14) of this section) if that individual has five years previous membership in the retirement system established in chapter 41.20 RCW. The provisions of this subsection (18)(d) shall not apply to plan 2 members; and

(e) The term "law enforcement officer" also includes a person employed on or after January 1, 1993, as a public safety officer or director of public safety, so long as the job duties substantially involve only either police or fire duties, or both, and no other duties in a city or town with a population of less than ten thousand. The provisions of this subsection (18)(e) shall not apply to any public safety officer or director of public safety who is receiving a retirement allowance under this chapter as of May 12, 1993.

(19) "Medical services" for plan 1 members, shall include the following as minimum services to be provided. Reasonable charges for these services shall be paid in accordance with RCW 41.26.150.

(a) Hospital expenses: These are the charges made by a hospital, in its own behalf, for

(i) Board and room not to exceed semiprivate room rate unless private room is required by the attending physician due to the condition of the patient.

(ii) Necessary hospital services, other than board and room, furnished by the hospital.

(b) Other medical expenses: The following charges are considered "other medical expenses," provided that they have not been considered as "hospital expenses".

(i) The fees of the following:

(A) A physician or surgeon licensed under the provisions of chapter 18.71 RCW;

(B) An osteopathic physician and surgeon licensed under the provisions of chapter 18.57 RCW;

(C) A chiropractor licensed under the provisions of chapter 18.25 RCW.

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

(iii) The charges for the following medical services and supplies:

(A) Drugs and medicines upon a physician's prescription;

(B) Diagnostic X-ray and laboratory examinations;

(C) X-ray, radium, and radioactive isotopes therapy;

(D) Anesthesia and oxygen;

(E) Rental of iron lung and other durable medical and surgical equipment;

(F) Artificial limbs and eyes, and casts, splints, and trusses;

(G) Professional ambulance service when used to transport the member to or from a hospital when injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his or her teeth and who commences treatment by a legally licensed dentist within ninety days after the accident;

(I) Nursing home confinement or hospital extended care facility;

(J) Physical therapy by a registered physical therapist;

(K) Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors;

(L) An optometrist licensed under the provisions of chapter 18.53 RCW.

(20) "Member" means any firefighter, law enforcement officer, or other person as would apply under subsections (16) or (18) of this section whose membership is transferred to the Washington law enforcement officers' and firefighters' retirement system on or after March 1, 1970, and every law enforcement officer and firefighter who is employed in that capacity on or after such date.

(21) "Plan 1" means the law enforcement officers' and firefighters' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(22) "Plan 2" means the law enforcement officers' and firefighters' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(23) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(24) "Regular interest" means such rate as the director may determine.

(25) "Retiree" for persons who establish membership in the retirement system on or after October 1, 1977, means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(26) "Retirement fund" means the "Washington law enforcement officers' and firefighters' retirement system fund" as provided for herein.

(27) "Retirement system" means the "Washington law enforcement officers' and firefighters' retirement system" provided herein.

(28)(a) "Service" for plan 1 members, means all periods of employment for an employer as a firefighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all service credit months of service rendered by a member from and after the member's initial commencement of employment as a firefighter or law enforcement officer, during which the member worked for seventy or more hours, or was on disability leave or disability retirement. Only service credit months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter.

(i) For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall also include (A) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under the member's particular prior pension act, and (B) such other periods of service as were then creditable to a particular member under the provisions of RCW 41.18.165, 41.20.160, or 41.20.170. However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act.

(ii) A member who is employed by two employers at the same time shall only be credited with service to one such employer for any month during which the member rendered such dual service.

(b) "Service" for plan 2 members, means periods of employment by a member for one or more employers for which basic salary is earned for ninety or more hours per calendar month which shall constitute a service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for at least seventy hours but less than ninety hours per calendar month shall constitute one-half service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for less than seventy hours shall constitute a one-quarter service credit month.

Members of the retirement system who are elected or appointed to a state elective position may elect to continue to be members of this retirement system.

Service credit years of service shall be determined by dividing the total number of service credit months of service by twelve. Any fraction of a service credit year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

If a member receives basic salary from two or more employers during any calendar month, the individual shall receive one service credit month's service credit during any calendar month in which multiple service for ninety or more

hours is rendered; or one-half service credit month's service credit during any calendar month in which multiple service for at least seventy hours but less than ninety hours is rendered; or one-quarter service credit month during any calendar month in which multiple service for less than seventy hours is rendered.

(29) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(30) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(31) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(32) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(33) "Surviving spouse" means the surviving widow or widower of a member. "Surviving spouse" shall not include the divorced spouse of a member except as provided in RCW 41.26.162. [2017 c 309 § 1; 2012 c 236 § 2; 2011 1st sp.s. c 5 § 1; 2010 2nd sp.s. c 1 § 903; 2010 1st sp.s. c 32 § 6. Prior: 2009 c 523 § 3; 2005 c 459 § 1; 2003 c 388 § 2; 2002 c 128 § 3; prior: 1996 c 178 § 11; 1996 c 38 § 2; prior: 1994 c 264 § 14; 1994 c 197 § 5; prior: 1993 c 502 § 1; 1993 c 322 § 1; 1991 sp.s. c 12 § 1; prior: (1991 sp.s. c 11 § 3 repealed by 1991 sp.s. c 12 § 3); 1991 c 365 § 35; 1991 c 343 § 14; 1991 c 35 § 13; 1987 c 418 § 1; 1985 c 13 § 5; 1984 c 230 § 83; 1981 c 256 § 4; 1979 ex.s. c 249 § 2; 1977 ex.s. c 294 § 17; 1974 ex.s. c 120 § 1; 1972 ex.s. c 131 § 1; 1971 ex.s. c 257 § 6; 1970 ex.s. c 6 § 1; 1969 ex.s. c 209 § 3.]

Purpose—Application—2012 c 236: "(1) On August 18, 2011, the state supreme court entered an opinion in the matter of *Dolan v. King County*, Cause No. 82842-3. The court recognized that a public employees' retirement system eligible employee must work for a public employees' retirement system employer under RCW 41.40.010. However, the court did not explain how such an employee can be an employee of a government contractor and also of a government employer. The legislature determines it necessary and appropriate to affirmatively state that a governmental contractor is not an employer for purposes of the state's public pension systems, including the public employees' retirement system, whether or not the contractor is providing mandatory or discretionary governmental services, and whether or not the contractor is a for-profit or not-for-profit entity.

(2) The legislature has not intended in its pension legislation to provide retirement system eligibility to employees of government contractors. Only in specific circumstances, such as employees of entities, including nonprofits, created by government under the interlocal cooperation act in chapter 39.34 RCW, has the legislature and department of retirement systems permitted retirement system eligibility for employees of government contractors. The department's rules in WAC 415-02-110 conform to the purpose and intent of the legislature regarding public pension eligibility.

(3) It is the purpose of this act to more clearly state and to confirm that employees of for-profit or not-for-profit corporations or other entities providing services under governmental contracts are not, as a result of providing such governmental service, eligible for membership in the various public retirement programs. The state and its local governments have not provided for such eligibility and such eligibility would create unfunded liability for state and local governments and potential impacts on the integrity of the public pension systems.

(4) This act provides cross-references to existing statutes that affect eligibility for pensions under the retirement systems authorized by chapters 41.26, 41.32, 41.35, 41.37, 41.40, and 41.50 RCW and to the relevant definition sections of those chapters. Except as provided, this act is technical in nature and neither enhances nor diminishes existing pension rights. It is not the intent of the legislature to change the substance or effect of any statute previously enacted. Rather, this act provides cross-references to applicable statutes in order to aid with the administration of eligibility and benefits authorized in chapters 41.26, 41.32, 41.35, 41.37, 41.40, and 41.50 RCW.

(5) This act shall apply solely to eligibility for state-sponsored public employee pension plans under chapters 41.26, 41.32, 41.35, 41.37, and 41.40 RCW and shall not affect any other statute or rule regarding employee benefits, status, or workplace protections.

(6) This act is curative and remedial, but does not affect the state supreme court decision in *Dolan v. King County*, Cause No. 82842-3, and the right established therein of King county public defenders and staff to public employees' retirement system enrollment and eligibility." [2012 c 236 § 1.]

Effective date—2011 1st sp.s. c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 5 § 7.]

Effective date—2010 2nd sp.s. c 1: See note following RCW 38.52.105.

Intent—Conflict with federal requirements—Effective date—2010 1st sp.s. c 32: See notes following RCW 42.04.060.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Purpose—1981 c 256: "It is the primary purpose of this act to assure that the provisions of RCW 41.04.250 and 41.04.260 and of any deferred compensation plan established thereunder, are in conformity with the requirements of 26 U.S.C. Sec. 457 and any other requirements of federal law relating to such a deferred compensation plan. This act shall be construed in such a manner as to accomplish this purpose." [1981 c 256 § 1.]

Purpose—1971 ex.s. c 257: "It is the purpose of this act to provide minimum medical and health standards for membership coverage into the Washington law enforcement officers' and firefighters' retirement system act, for the improvement of the public service, and to safeguard the integrity and actuarial soundness of their pension systems, and to improve their retirement and pension systems and related provisions." [1971 ex.s. c 257 § 1.]

Additional notes found at www.leg.wa.gov

41.26.450 Port districts and institutions of higher education—Employer and state contributions—Recovery of contributions. (1) Port districts established under Title 53 RCW and institutions of higher education as defined in RCW 28B.10.016 shall contribute both the employer and state shares of the cost of the retirement system for any of their employees who are law enforcement officers.

(2) Institutions of higher education shall contribute both the employer and the state shares of the cost of the retirement system for any of their employees who are firefighters.

(3) During fiscal years 2018 and 2019:

When an employer charges a fee or recovers costs for work performed by a plan member where:

(a) The member receives compensation that is includable as basic salary under RCW 41.26.030(4)(b); and

(b) The service is provided, whether directly or indirectly, to an entity that is not an "employer" under RCW 41.26.030(14)(b);

the employer shall contribute both the employer and state shares of the cost of the retirement system contributions for that compensation. Nothing in this subsection prevents an employer from recovering the cost of the contribution from the entity receiving services from the member. [2017 3rd sp.s. c 1 § 963; 2000 c 247 § 801; 1996 c 38 § 3; 1993 c 502 § 2; 1989 c 273 § 14; 1986 c 268 § 1; 1984 c 184 § 10; 1977 ex.s. c 294 § 6.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Additional notes found at www.leg.wa.gov

41.26.545 Emergency medical technicians—Establishing service credit—Dates—Process—Contributions.

(1) A member who provided service as an emergency medical technician to an employer may establish credit for such service rendered on or after July 24, 2005, and prior to July 23, 2017, unless that service is already credited. Upon receipt of a written request, the department of retirement systems must notify the member of the cost to establish credit for all or part of such service.

(a) Before July 1, 2018, a member not enrolled in the public employees' retirement system for service between July 24, 2005, and July 23, 2017, may elect to establish credit in plan 2 under this section. Such election must be filed in writing with the department of retirement systems by June 30, 2018. The elected period must be in contiguous monthly increments beginning with the oldest service.

(i) To establish service under this section, except as provided in RCW 41.26.546, the member must pay the employee contributions he or she would have paid if he or she had been participating in the retirement system at the time of the service:

(A) No later than five years from the effective date of the election made under this section; and

(B) Prior to retirement.

(ii) Upon full payment of employee contributions for the elected period of service the department of retirement systems must:

(A) Credit the member with the service; and

(B) Bill the employer for the employer contributions it would have paid if such member had been participating in the retirement system at the time of such service. The amount billed to the employer by the department of retirement systems must be reduced by the amount of any employer contributions to an employee's retirement account prior to January 1, 2016, not to exceed three percent of the member's basic salary from July 1, 2005, through December 31, 2015.

(iii) The employer shall pay the required amount prior to July 1, 2028.

(b)(i) A member of the public employees' retirement system who is eligible for membership in the law enforcement officers' and firefighters' retirement system plan 2 under this section may:

(A) Make an election in writing to the department of retirement systems by January 1, 2018, to remain a member of the public employees' retirement system and not participate in the law enforcement officers' and firefighters' retirement system plan 2;

(B) Leave any service credit earned as a member of the public employees' retirement system in the public employees' retirement system, and have service rendered on or after January 1, 2018, as an emergency medical technician in the law enforcement officers' and firefighters' retirement system plan 2, becoming a dual member under the provisions of chapter 41.54 RCW; or

(C) Before July 1, 2018, elect to transfer service credit previously earned as an emergency medical technician to the law enforcement officers' and firefighters' retirement system plan 2 as defined in RCW 41.26.030. Such election must be

filed in writing with the department of retirement systems by June 30, 2018.

(I) A member who elects to transfer service credit under this subsection (1)(b) shall pay, for the applicable period of service, the difference between the contributions the employee paid to the public employees' retirement system plan and the contributions that would have been paid by the employee had the employee been a member of the law enforcement officers' and firefighters' retirement system plan 2, plus interest on this difference as determined by the director.

(II) The payment under (a) of this subsection must be made no later than five years from the effective date of the election and must be made prior to retirement, except as provided under RCW 41.26.546.

(2) Upon transfer or establishment of service credit, contributions, and interest under this section, the employee is permanently excluded from membership in the public employees' retirement system for all service transfers related to their time served as an emergency medical technician under the public employees' retirement system.

(3) Employers shall provide the department of retirement systems with a list of former employees who were employed as emergency medical technicians on or after July 24, 2005, and who are eligible to establish credit for service under this section. The list must include a former employee's name, last known address, and period of employment. The department of retirement systems must notify former employees of the process and cost to establish credit for service under this section. [2017 c 309 § 2.]

41.26.546 Emergency medical technicians—Member elects to transfer under RCW 41.26.545—Death—Retirement for disability. If a member who elected to transfer pursuant to RCW 41.26.545 dies or retires for disability prior to five years from their election date, the member's benefit is calculated as follows:

(1) All of the applicable service credit, accumulated contributions, and interest is transferred to or established in the law enforcement officers' and firefighters' retirement system plan 2 and used in the calculation of a benefit.

(2) If a member's obligation under RCW 41.26.545 has not been paid in full at the time of death or disability retirement, the member, or in the case of death the surviving spouse or eligible minor children, have the following options:

(a) Pay the bill in full;

(b) If a continuing monthly benefit is chosen, have the benefit actuarially reduced to reflect the amount of the unpaid obligation under RCW 41.26.545; or

(c) Continue to make payment against the obligation under RCW 41.26.545, provided that payment in full is made no later than five years from the member's original election date. [2017 c 309 § 3.]

41.26.802 Local public safety enhancement account—Transfers into account. (1) By September 30, 2011, if the prior fiscal biennium's general state revenues exceed the previous fiscal biennium's revenues by more than five percent, subject to appropriation by the legislature, the state treasurer shall transfer five million dollars to the local public safety enhancement account.

(2) By September 30, 2019, and by September 30 of each odd-numbered year thereafter, if the prior fiscal biennium's general state revenues exceed the previous fiscal biennium's revenues by more than five percent, subject to appropriation by the legislature, the state treasurer shall transfer the lesser of one-third of the increase, or fifty million dollars, to the local public safety enhancement account. [2017 3rd sp.s. c 1 § 964; 2015 3rd sp.s. c 4 § 950; 2013 2nd sp.s. c 4 § 969; 2008 c 99 § 4.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.80.020.

Findings—Purpose—2008 c 99: See note following RCW 41.26.800.

Chapter 41.37 RCW

WASHINGTON PUBLIC SAFETY EMPLOYEES' RETIREMENT SYSTEM

Sections

41.37.300 Election to transfer public employees' retirement system service credit—Eligibility—Retroactive to July 1, 2006.

41.37.300 Election to transfer public employees' retirement system service credit—Eligibility—Retroactive to July 1, 2006. (1) An employee may elect to have their public employees' retirement system service credit transferred to the public safety employees' retirement system if:

(a) They worked under a written employment contract prior to January 1, 2017, that defined full-time as less than one hundred sixty hours per month;

(b) Other than the full-time requirement under RCW 41.37.010(19), have met all membership requirements for the public safety employees' retirement system under RCW 41.37.010(19);

(c) Their employer incorrectly reported the employee's service in the public safety employees' retirement system instead of the public employees' retirement system; and

(d) All contributions required for past periods of service established under this subsection are paid to the department, as follows:

(i) A member who elects to transfer service credit under this subsection shall pay, for the applicable period of service, the difference between the contributions the employee paid to the public employees' retirement system and the contributions that would have been paid by the employee had the employee been a member of the public safety employees' retirement system.

(ii) Employer contributions shall be paid by the employer and calculated by the department equal to the difference between the contributions the employer paid to the public employees' retirement system and the contributions that would have been paid by the employer had the employee been a member of the public safety employees' retirement system.

(2) This section applies retroactively to July 1, 2006.

(3) All employees who elect to have their public employees' retirement system service credit transferred to the public safety employees' retirement system under this section shall

continue to have their service credit reported in the public safety employees' retirement system so long as:

(a) They remain with their current employer in an otherwise public safety employees' retirement system eligible position; and

(b) Continue to work under a written employment contract that defines full-time as less than one hundred sixty hours per month, but at least one hundred forty hours per month. [2017 c 143 § 2.]

Intent—2017 c 143: "Since the establishment of the public safety employees' retirement system in 2006, some employees have been reported by employers as members of that retirement system even though they did not work what is normally considered full-time for the purposes of determining plan membership under RCW 41.37.010(19) due to written employment agreements that defined full-time differently. As a result, some employees who believed they were in the public safety employees' retirement system have been, or will be, moved into the public employees' retirement system that has different plan provisions and, generally, a later retirement date. The legislature intends that section 2 of this act only applies to those employees who believed they were in the public safety employees' retirement system and have been, or will be, moved into the public employees' retirement system, as described in this section." [2017 c 143 § 1.]

Chapter 41.56 RCW

PUBLIC EMPLOYEES' COLLECTIVE BARGAINING

Sections

41.56.030 Definitions. (*Effective July 1, 2018.*)

41.56.500 School district collective bargaining agreements.

41.56.510 Application of chapter to language access providers—Governor as public employer—Procedure—Intent. (*Effective July 1, 2018.*)

41.56.800 School district collective bargaining agreements—Classified staff—Restrictions during the 2018-19 school year. (*Expires August 31, 2019.*)

41.56.907 School district collective bargaining agreements not altered or impaired—Compliance with chapter—2017 3rd sp.s. c 13.

41.56.030 Definitions. (*Effective July 1, 2018.*) As used in this chapter:

(1) "Adult family home provider" means a provider as defined in RCW 70.128.010 who receives payments from the medicaid and state-funded long-term care programs.

(2) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(3) "Child care subsidy" means a payment from the state through a child care subsidy program established pursuant to RCW 74.12.340 or *74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor program.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(5) "Commission" means the public employment relations commission.

(6) "Executive director" means the executive director of the commission.

(7) "Family child care provider" means a person who: (a) Provides regularly scheduled care for a child or children in the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours; (b) receives child care subsidies; and (c) under chapter 43.216 RCW, is either licensed by the state or is exempt from licensing.

(8) "Individual provider" means an individual provider as defined in RCW 74.39A.240(4) who, solely for the purposes of collective bargaining, is a public employee as provided in RCW 74.39A.270.

(9) "Institution of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

(10)(a) "Language access provider" means any independent contractor who provides spoken language interpreter services for department of social and health services appointments or medicaid enrollee appointments, or department of children, youth, and families appointments, or provided these services on or after January 1, 2009, and before June 10, 2010, whether paid by a broker, language access agency, or the department.

(b) "Language access provider" does not mean an owner, manager, or employee of a broker or a language access agency.

(11) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multi-member board, commission, or committee, whether appointed by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to (i) the executive head or body of the applicable bargaining unit, or (ii) any person elected by popular vote, or (iii) any person appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multi-member board, commission, or committee, whether appointed by the executive head or body of the public employer, or (d) who is a court commissioner or a court magistrate of superior court, district court, or a department of a district court organized under chapter 3.46 RCW, or (e) who is a personal assistant to a district court judge, superior court judge, or court commissioner. For the purpose of (e) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

(12) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body. For the purposes of this section, the public employer of district court or superior court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court or superior court.

(13) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(9), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (d) security forces established under RCW 43.52.520; (e) firefighters as that term is defined in RCW 41.26.030; (f) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other firefighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer; or (i) court marshals of any county who are employed by, trained for, and commissioned by the county sheriff and charged with the responsibility of enforcing laws, protecting and maintaining security in all county-owned or contracted property, and performing any other duties assigned to them by the county sheriff or mandated by judicial order. [2017 3rd sp.s. c 6 § 808; 2015 2nd sp.s. c 6 § 1; 2011 1st sp.s. c 21 § 11; 2010 c 296 § 3; 2007 c 184 § 2; 2006 c 54 § 2; 2004 c 3 § 6; 2002 c 99 § 2. Prior: 2000 c 23 § 1; 2000 c 19 § 1; 1999 c 217 § 2; 1995 c 273 § 1; prior: 1993 c 398 § 1; 1993 c 397 § 1; 1993 c 379 § 302; 1992 c 36 § 2; 1991 c 363 § 119; 1989 c 275 § 2; 1987 c 135 § 2; 1984 c 150 § 1; 1975 1st ex.s. c 296 § 15; 1973 c 131 § 2; 1967 ex.s. c 108 § 3.]

*Reviser's note: RCW 74.08A.340 was repealed by 2012 c 217 § 2.

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Conflict with federal requirements—2010 c 296: See note following RCW 41.56.510.

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

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

Public employment relations commission: Chapter 41.58 RCW.

Additional notes found at www.leg.wa.gov

41.56.500 School district collective bargaining agreements. (1) All collective bargaining agreements entered into between a school district employer and school district employees under this chapter after June 10, 2010, as well as bargaining agreements existing on June 10, 2010, but

renewed or extended after June 10, 2010, shall be consistent with RCW 28A.657.050.

(2) All collective bargaining agreements entered into between a school district employer and school district employees under this chapter shall be consistent with RCW 28A.400.280 and 28A.400.350.

(3) Employee bargaining shall be initiated after July 1, 2018, over the dollar amount to be contributed for school employee health benefits beginning January 1, 2020, on behalf of each employee for health care benefits. Bargaining must subsequently be conducted in even-numbered years between the governor or governor's designee and one coalition of all the exclusive bargaining representatives impacted by benefit purchasing with the school employees' benefits board established in RCW 41.05.740, consistent with RCW 28A.400.280 and 28A.400.350. The coalition bargaining must follow the model initially established for state employees in RCW 41.80.020.

(4) The governor shall submit a request for funds necessary to implement the collective bargaining agreement for the dollar amount to be expended for school employee health benefits, or for legislation necessary to implement the agreement. A request for funds shall not be submitted to the legislature by the governor unless such request:

(a) Has been submitted to the director of the office of financial management by October 1st prior to the legislative session at which the request is to be considered; and

(b) Has been certified by the director of the office of financial management as being feasible financially for the state.

The legislature shall approve or reject the submission of the request for funds. The legislature shall not consider a request for funds unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060.

If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement. However, if the director of the office of financial management does not certify a request under this section as being feasible financially for the state, the parties shall enter into collective bargaining solely for the purpose of reaching a mutually agreed upon modification of the agreement necessary to address the absence of those requested funds. The legislature may act upon the health care benefit provisions of the modified collective bargaining agreement if those provisions are agreed upon and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating budget. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement. [2017 3rd sp.s. c 13 § 817; 2010 c 235 § 802.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Finding—2010 c 235: See note following RCW 28A.405.245.

41.56.510 Application of chapter to language access providers—Governor as public employer—Procedure—Intent. (Effective July 1, 2018.) (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the governor with respect to language access providers. Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the

public employer of language access providers who, solely for the purposes of collective bargaining, are public employees. The governor or the governor's designee shall represent the public employer for bargaining purposes.

(2) There shall be collective bargaining, as defined in RCW 41.56.030, between the governor and language access providers, except as follows:

(a) A statewide unit of all language access providers is the only unit appropriate for purposes of collective bargaining under RCW 41.56.060;

(b) The exclusive bargaining representative of language access providers in the unit specified in (a) of this subsection shall be the representative chosen in an election conducted pursuant to RCW 41.56.070.

Bargaining authorization cards furnished as the showing of interest in support of any representation petition or motion for intervention filed under this section are exempt from disclosure under chapter 42.56 RCW;

(c) Notwithstanding the definition of "collective bargaining" in RCW 41.56.030(4), the scope of collective bargaining for language access providers under this section is limited solely to: (i) Economic compensation, such as the manner and rate of payments; (ii) professional development and training; (iii) labor-management committees; and (iv) grievance procedures. Retirement benefits are not subject to collective bargaining. By such obligation neither party may be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter;

(d) In addition to the entities listed in the mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480, the provisions apply to the governor or the governor's designee and the exclusive bargaining representative of language access providers, except that:

(i) In addition to the factors to be taken into consideration by an interest arbitration panel under RCW 41.56.465, the panel shall consider the financial ability of the state to pay for the compensation and benefit provisions of a collective bargaining agreement;

(ii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and benefit provisions of the arbitrated collective bargaining agreement, the decision is not binding on the state;

(e) Language access providers do not have the right to strike.

(3) Language access providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state for any other purpose. This section applies only to the governance of the collective bargaining relationship between the employer and language access providers as provided in subsections (1) and (2) of this section.

(4) Each party with whom the department of social and health services or the department of children, youth, and families contracts for language access services and each of their subcontractors shall provide to the department an accurate list of language access providers, as defined in RCW 41.56.030, including their names, addresses, and other contact information, annually by January 30th, except that initially the lists must be provided within thirty days of June 10, 2010. The department shall, upon request, provide a list of all

language access providers, including their names, addresses, and other contact information, to a labor union seeking to represent language access providers.

(5) This section does not create or modify:

(a) The department's obligation to comply with the federal statute and regulations; and

(b) The legislature's right to make programmatic modifications to the delivery of state services under chapter 74.04 RCW. The governor may not enter into, extend, or renew any agreement under this chapter that does not expressly reserve the legislative rights described in this subsection.

(6) Upon meeting the requirements of subsection (7) of this section, the governor must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, a request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section or for legislation necessary to implement the agreement.

(7) A request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section may not be submitted by the governor to the legislature unless the request has been:

(a) Submitted to the director of financial management by October 1st prior to the legislative session at which the requests are to be considered, except that, for initial negotiations under this section, the request may not be submitted before July 1, 2011; and

(b) Certified by the director of financial management as financially feasible for the state or reflective of a binding decision of an arbitration panel reached under subsection (2)(d) of this section.

(8) The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, any collective bargaining agreement must be reopened for the sole purpose of renegotiating the funds necessary to implement the agreement.

(9) If, after the compensation and benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(10) After the expiration date of any collective bargaining agreement entered into under this section, all of the terms and conditions specified in the agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement.

(11) In enacting this section, the legislature intends to provide state action immunity under federal and state anti-trust laws for the joint activities of language access providers and their exclusive bargaining representative to the extent the activities are authorized by this chapter. [2017 3rd sp.s. c 6 § 809; 2010 c 296 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

[2017 RCW Supp—page 390]

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Conflict with federal requirements—2010 c 296: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2010 c 296 § 9.]

41.56.800 School district collective bargaining agreements—Classified staff—Restrictions during the 2018-19 school year. (Expires August 31, 2019.) (1) A school district collective bargaining agreement that is executed or modified after July 6, 2017, and that is in effect for the 2018-19 school year may not provide school district classified staff with a percentage increase to total salary for the 2018-19 school year, including supplemental contracts, that exceeds the previous calendar year's annual average consumer price index, using the official current base compiled by the bureau of labor statistics, United States department of labor, for the city of Seattle. However, if a district's average classified staff salary is less than the average classified salary allocated by the state for that year, the district may increase salaries not to exceed the point where the district's average classified staff salary equals the average classified staff salary allocated by the state.

(2) This section expires August 31, 2019. [2017 3rd sp.s. c 13 § 701.]

Effective date—2017 3rd sp.s. c 13 §§ 701-703: "Sections 701 through 703 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [July 6, 2017]." [2017 3rd sp.s. c 13 § 707.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

41.56.907 School district collective bargaining agreements not altered or impaired—Compliance with chapter—2017 3rd sp.s. c 13. Nothing in chapter 13, Laws of 2017 3rd sp. sess. is intended to alter or impair school district collective bargaining agreements that are in effect on October 19, 2017. Any school district collective bargaining agreement executed or modified after October 19, 2017, must comply with chapter 13, Laws of 2017 3rd sp. sess. [2017 3rd sp.s. c 13 § 704.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Chapter 41.58 RCW

PUBLIC EMPLOYMENT LABOR RELATIONS

Sections

41.58.900 Decodified.

41.58.901 Decodified.

41.58.900 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

41.58.901 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 41.59 RCW

EDUCATIONAL EMPLOYMENT RELATIONS ACT

Sections

- 41.59.105 School district collective bargaining agreements.
 41.59.800 School district collective bargaining agreements—Certificated instructional staff—Restrictions during the 2018-19 school year. (*Expires August 31, 2019.*)
 41.59.935 Construction of chapter—Certain agreements subject to RCW 28A.150.410, 28A.400.200, and 28A.150.276.
 41.59.937 Collective bargaining agreements not altered or impaired—Compliance with chapter—2017 3rd sp.s. c 13.

41.59.105 School district collective bargaining agreements. (1) All collective bargaining agreements entered into between a school district employer and school district employees under this chapter after June 10, 2010, as well as bargaining agreements existing on June 10, 2010, but renewed or extended after June 10, 2010, shall be consistent with RCW 28A.657.050.

(2) All collective bargaining agreements entered into between a school district employer and school district employees under this chapter shall be consistent with RCW 28A.400.280 and 28A.400.350.

(3) Employee bargaining shall be initiated after July 1, 2018, over the dollar amount to be contributed beginning January 1, 2020, on behalf of each employee for health care benefits. Bargaining must subsequently be conducted in even-numbered years between the governor or governor's designee and one coalition of all the exclusive bargaining representatives impacted by benefit purchasing with the school employees' benefits board established in RCW 41.05.740, consistent with RCW 28A.400.280 and 28A.400.350. The coalition bargaining must follow the model initially established for state employees in RCW 41.80.020.

(4) The governor shall submit a request for funds necessary to implement the collective bargaining agreement for the dollar amount to be expended for school employee health benefits, or for legislation necessary to implement the agreement. A request for funds shall not be submitted to the legislature by the governor unless such request:

(a) Has been submitted to the director of the office of financial management by October 1st prior to the legislative session at which the request is to be considered; and

(b) Has been certified by the director of the office of financial management as being feasible financially for the state.

The legislature shall approve or reject the submission of the request for funds. The legislature shall not consider a request for funds unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060.

If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement. However, if the director of the office of financial management does not certify a request under this section as being feasible financially for the state, the parties shall enter into collective bargaining solely for the purpose of reaching a mutually agreed upon modification of the agreement necessary to address the absence of those requested funds. The legislature may act upon the health care benefit provisions of the modified collective bargaining agreement if those provisions are agreed upon and submitted to the office of financial manage-

ment and legislative budget committees before final legislative action on the biennial or supplemental operating budget. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement. [2017 3rd sp.s. c 13 § 818; 2010 c 235 § 803.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Finding—2010 c 235: See note following RCW 28A.405.245.

41.59.800 School district collective bargaining agreements—Certificated instructional staff—Restrictions during the 2018-19 school year. (*Expires August 31, 2019.*)

(1) A school district collective bargaining agreement that is executed or modified after July 6, 2017, and that is in effect for the 2018-19 school year may not provide school district certificated instructional staff with a percentage increase to total salary for the 2018-19 school year, including supplemental contracts, that exceeds the previous calendar year's annual average consumer price index, using the official current base compiled by the bureau of labor statistics, United States department of labor, for the city of Seattle. However, if a district's average certificated instructional staff salary is less than the average certificated instructional staff salary allocated by the state for that year, the district may increase salaries not to exceed the point where the district's average certificated instructional staff salary equals the average certificated instructional staff salary allocated by the state.

(2) This section expires August 31, 2019. [2017 3rd sp.s. c 13 § 702.]

Effective date—2017 3rd sp.s. c 13 §§ 701-703: See note following RCW 41.56.800.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

41.59.935 Construction of chapter—Certain agreements subject to RCW 28A.150.410, 28A.400.200, and 28A.150.276. Nothing in this chapter grants employers or employees the right to reach agreements regarding salary or compensation increases for the state's statutory program of basic education in excess of those authorized in accordance with RCW 28A.150.410 and 28A.400.200. School districts are authorized to reach agreements regarding salaries or compensation for enrichment activities subject to RCW 28A.400.200 and 28A.150.276. [2017 3rd sp.s. c 13 § 706; 1990 c 33 § 571; (1997 c 431 § 22 expired June 30, 1999); 1987 1st ex.s. c 2 § 206; 1981 c 16 § 3.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Intent—Severability—Effective dates—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Additional notes found at www.leg.wa.gov

41.59.937 Collective bargaining agreements not altered or impaired—Compliance with chapter—2017 3rd sp.s. c 13. Nothing in chapter 13, Laws of 2017 3rd sp. sess. is intended to alter or impair school district collective bargaining agreements that are in effect on October 19, 2017. Any school district collective bargaining agreement executed or modified after October 19, 2017, must comply with chapter 13, Laws of 2017 3rd sp. sess. [2017 3rd sp.s. c 13 § 705.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Chapter 41.60 RCW

STATE EMPLOYEES' SUGGESTION AWARDS AND INCENTIVE PAY

Sections

41.60.050 Appropriations for administrative costs.

41.60.050 Appropriations for administrative costs.

The legislature shall appropriate from the personnel service fund for the payment of administrative costs of the productivity board. However, during the 2015-2017 and 2017-2019 fiscal biennia, the operations of the productivity board shall be suspended. [2017 3rd sp.s. c 1 § 965; 2015 3rd sp.s. c 4 § 952; 2013 2nd sp.s. c 4 § 970. Prior: 2011 1st sp.s. c 50 § 937; 2011 1st sp.s. c 43 § 473; 1991 sp.s. c 16 § 918; 1987 c 387 § 4; 1985 c 114 § 3; 1983 c 54 § 3; 1982 c 167 § 11; 1975-'76 2nd ex.s. c 122 § 3; 1969 ex.s. c 152 § 6; 1965 ex.s. c 142 § 5.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Personnel service fund: RCW 41.06.280.

Additional notes found at www.leg.wa.gov

Chapter 41.80 RCW

STATE COLLECTIVE BARGAINING

Sections

41.80.007 Joint committee on employment relations—Members—Purpose—Rules—Meetings.

41.80.010 Negotiation and ratification of collective bargaining agreements—Funding to implement modification of certain collective bargaining agreements.

41.80.007 Joint committee on employment relations—Members—Purpose—Rules—Meetings. (1) A joint committee on employment relations is established, composed of the following members:

(a) Two members with leadership positions in the house of representatives, representing each of the two largest caucuses;

(b) The chair and ranking minority member of the house appropriations committee, or its successor, representing each of the two largest caucuses;

(c) Two members with leadership positions in the senate, representing each of the two largest caucuses;

(d) The chair and ranking minority member of the senate ways and means committee, or its successor, representing each of the two largest caucuses; and

(e) One nonvoting member, appointed by the governor, representing the office of financial management.

(2) The committee shall elect a chairperson and a vice chairperson.

(3) The governor or a designee shall convene meetings of the committee. The committee must meet at least six times, generally every two months, for the purpose of consulting

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with the governor or the governor's designee and institutions of higher education on matters related to collective bargaining with state employees conducted under the authority of this chapter and chapters 41.56, 47.64, and 74.39A RCW. The governor or the governor's designee or the institution of higher education may not share internal bargaining notes.

(4) In years when master collective bargaining agreements are negotiated, the committee must meet prior to the start of bargaining to identify goals and objectives for public employee collective bargaining that the governor may take into consideration during negotiations.

(5) One meeting must be convened following the governor's budget submittal to the legislature to consult with the committee regarding the appropriations necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreements and to advise the committee on the elements of the agreements and on any legislation necessary to implement the agreements.

(6) The committee shall, by a majority of the members, adopt rules to govern its conduct as may be necessary or appropriate, including reasonable procedures for calling and conducting meetings of the committee, ensuring reasonable advance notice of each meeting, and providing for the right of the public to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and confidential information used or to be used in collective bargaining, including the specific details of bargaining proposals.

(7) The committee may, by a majority of the members, meet more or less frequently. A quorum of the joint committee is not required for the meeting to take place. Meetings may take place by conference telephone or similar communications equipment so that all persons participating in the meeting can hear each other at the same time. Participation by that method constitutes presence in person at a meeting. [2017 3rd sp.s. c 23 § 2.]

41.80.010 Negotiation and ratification of collective bargaining agreements—Funding to implement modification of certain collective bargaining agreements. (1) For the purpose of negotiating collective bargaining agreements under this chapter, the employer shall be represented by the governor or governor's designee, except as provided for institutions of higher education in subsection (4) of this section.

(2)(a) If an exclusive bargaining representative represents more than one bargaining unit, the exclusive bargaining representative shall negotiate with each employer representative as designated in subsection (1) of this section one master collective bargaining agreement on behalf of all the employees in bargaining units that the exclusive bargaining representative represents. For those exclusive bargaining representatives who represent fewer than a total of five hundred employees each, negotiation shall be by a coalition of all those exclusive bargaining representatives. The coalition shall bargain for a master collective bargaining agreement covering all of the employees represented by the coalition. The governor's designee and the exclusive bargaining representative or representatives are authorized to enter into supplemental bargaining of agency-specific issues for inclusion in or as an addendum to the master collective bargaining agreement, subject to the parties' agreement regarding the

issues and procedures for supplemental bargaining. This section does not prohibit cooperation and coordination of bargaining between two or more exclusive bargaining representatives.

(b) This subsection (2) does not apply to exclusive bargaining representatives who represent employees of institutions of higher education, except when the institution of higher education has elected to exercise its option under subsection (4) of this section to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section.

(c) If five hundred or more employees of an independent state elected official listed in RCW 43.01.010 are organized in a bargaining unit or bargaining units under RCW 41.80.070, the official shall be consulted by the governor or the governor's designee before any agreement is reached under (a) of this subsection concerning supplemental bargaining of agency specific issues affecting the employees in such bargaining unit.

(3) The governor shall submit a request for funds necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreement or for legislation necessary to implement the agreement. Requests for funds necessary to implement the provisions of bargaining agreements shall not be submitted to the legislature by the governor unless such requests:

(a) Have been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the requests are to be considered; and

(b) Have been certified by the director of the office of financial management as being feasible financially for the state.

The legislature shall approve or reject the submission of the request for funds as a whole. The legislature shall not consider a request for funds to implement a collective bargaining agreement unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement or the exclusive bargaining representative may seek to implement the procedures provided for in RCW 41.80.090.

(4)(a)(i) For the purpose of negotiating agreements for institutions of higher education, the employer shall be the respective governing board of each of the universities, colleges, or community colleges or a designee chosen by the board to negotiate on its behalf.

(ii) A governing board of a university or college may elect to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section, except that:

(A) The governor or the governor's designee and an exclusive bargaining representative shall negotiate one master collective bargaining agreement for all of the bargaining units of employees of a university or college that the representative represents; or

(B) If the parties mutually agree, the governor or the governor's designee and an exclusive bargaining representative shall negotiate one master collective bargaining agree-

ment for all of the bargaining units of employees of more than one university or college that the representative represents.

(iii) A governing board of a community college may elect to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section.

(b) Prior to entering into negotiations under this chapter, the institutions of higher education or their designees shall consult with the director of the office of financial management regarding financial and budgetary issues that are likely to arise in the impending negotiations.

(c)(i) In the case of bargaining agreements reached between institutions of higher education other than the University of Washington and exclusive bargaining representatives agreed to under the provisions of this chapter, if appropriations are necessary to implement the compensation and fringe benefit provisions of the bargaining agreements, the governor shall submit a request for such funds to the legislature according to the provisions of subsection (3) of this section, except as provided in (c)(iii) of this subsection.

(ii) In the case of bargaining agreements reached between the University of Washington and exclusive bargaining representatives agreed to under the provisions of this chapter, if appropriations are necessary to implement the compensation and fringe benefit provisions of a bargaining agreement, the governor shall submit a request for such funds to the legislature according to the provisions of subsection (3) of this section, except as provided in this subsection (4)(c)(ii) and as provided in (c)(iii) of this subsection.

(A) If appropriations of less than ten thousand dollars are necessary to implement the provisions of a bargaining agreement, a request for such funds shall not be submitted to the legislature by the governor unless the request has been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the request is to be considered.

(B) If appropriations of ten thousand dollars or more are necessary to implement the provisions of a bargaining agreement, a request for such funds shall not be submitted to the legislature by the governor unless the request:

(I) Has been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the request is to be considered; and

(II) Has been certified by the director of the office of financial management as being feasible financially for the state.

(C) If the director of the office of financial management does not certify a request under (c)(ii)(B) of this subsection as being feasible financially for the state, the parties shall enter into collective bargaining solely for the purpose of reaching a mutually agreed upon modification of the agreement necessary to address the absence of those requested funds. The legislature may act upon the compensation and fringe benefit provisions of the modified collective bargaining agreement if those provisions are agreed upon and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating budget by the sitting legislature.

(iii) In the case of a bargaining unit of employees of institutions of higher education in which the exclusive bargaining representative is certified during or after the conclusion of a legislative session, the legislature may act upon the compensation and fringe benefit provisions of the unit's initial collective bargaining agreement if those provisions are agreed upon and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating budget by the sitting legislature.

(5) If, after the compensation and fringe benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(6) After the expiration date of a collective bargaining agreement negotiated under this chapter, all of the terms and conditions specified in the collective bargaining agreement remain in effect until the effective date of a subsequently negotiated agreement, not to exceed one year from the expiration date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(7) For the 2013-2015 fiscal biennium, a collective bargaining agreement related to employee health care benefits negotiated between the employer and coalition pursuant to RCW 41.80.020(3) regarding the dollar amount expended on behalf of each employee shall be a separate agreement for which the governor may request funds necessary to implement the agreement. The legislature may act upon a 2013-2015 collective bargaining agreement related to employee health care benefits if an agreement is reached and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating appropriations act by the sitting legislature.

(8)(a) For the 2015-2017 fiscal biennium, the governor may request funds to implement:

(i) Modifications to collective bargaining agreements as set forth in a memorandum of understanding negotiated between the employer and the service employees international union healthcare 1199nw, an exclusive bargaining representative, that was necessitated by an emergency situation or an imminent jeopardy determination by the center for medicare and medicaid services that relates to the safety or health of the clients, employees, or both the clients and employees.

(ii) Unilaterally implemented modifications to collective bargaining agreements, resulting from the employer being prohibited from negotiating with an exclusive bargaining representative due to a pending representation petition, necessitated by an emergency situation or an imminent jeopardy determination by the center for medicare and medicaid services that relates to the safety or health of the clients, employees, or both the clients and employees.

(iii) Modifications to collective bargaining agreements as set forth in a memorandum of understanding negotiated between the employer and the union of physicians of Washington, an exclusive bargaining representative, that was necessitated by an emergency situation or an imminent jeopardy

ard determination by the center for medicare and medicaid services that relates to the safety or health of the clients, employees, or both the clients and employees. If the memorandum of understanding submitted to the legislature as part of the governor's budget document is rejected by the legislature, and the parties reach a new memorandum of understanding by June 30, 2016, within the funds, conditions, and limitations provided in section 204, chapter 36, Laws of 2016 sp. sess., the new memorandum of understanding shall be considered approved by the legislature and may be retroactive to December 1, 2015.

(iv) Modifications to collective bargaining agreements as set forth in a memorandum of understanding negotiated between the employer and the teamsters union local 117, an exclusive bargaining representative, for salary adjustments for the state employee job classifications of psychiatrist, psychiatric social worker, and psychologist.

(b) For the 2015-2017 fiscal biennium, the legislature may act upon the request for funds for modifications to a 2015-2017 collective bargaining agreement under (a)(i), (ii), (iii), and (iv) of this subsection if funds are requested by the governor before final legislative action on the supplemental omnibus appropriations act by the sitting legislature.

(c) The request for funding made under this subsection and any action by the legislature taken pursuant to this subsection is limited to the modifications described in this subsection and may not otherwise affect the original terms of the 2015-2017 collective bargaining agreement.

(d) Subsection (3)(a) and (b) of this section do not apply to requests for funding made pursuant to this subsection. [2017 3rd sp.s. c 23 § 3; 2016 sp.s. c 36 § 923; 2013 2nd sp.s. c 4 § 971. Prior: 2011 1st sp.s. c 50 § 938; 2011 c 344 § 1; 2010 c 104 § 1; 2002 c 354 § 302.]

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Title 42

PUBLIC OFFICERS AND AGENCIES

Chapters

- 42.17A Campaign disclosure and contribution.**
- 42.30 Open public meetings act.**
- 42.32 Meetings.**
- 42.40 State employee whistleblower protection.**
- 42.44 Notaries public.**
- 42.45 Revised uniform law on notarial acts.**
- 42.52 Ethics in public service.**
- 42.56 Public records act.**

Chapter 42.17A RCW

CAMPAIGN DISCLOSURE AND CONTRIBUTION

Sections

42.17A.705 "Executive state officer" defined. (*Effective July 1, 2018.*)

42.17A.705 "Executive state officer" defined. (*Effective July 1, 2018.*) For the purposes of RCW 42.17A.700, "executive state officer" includes:

(1) The chief administrative law judge, the director of agriculture, the director of the department of services for the blind, the secretary of children, youth, and families, the director of the state system of community and technical colleges, the director of commerce, the director of the consolidated technology services agency, the secretary of corrections, the director of ecology, the commissioner of employment security, the chair of the energy facility site evaluation council, the director of enterprise services, the secretary of the state finance committee, the director of financial management, the director of fish and wildlife, the executive secretary of the forest practices appeals board, the director of the gambling commission, the secretary of health, the administrator of the Washington state health care authority, the executive secretary of the health care facilities authority, the executive secretary of the higher education facilities authority, the executive secretary of the horse racing commission, the executive secretary of the human rights commission, the executive secretary of the indeterminate sentence review board, the executive director of the state investment board, the director of labor and industries, the director of licensing, the director of the lottery commission, the director of the office of minority and women's business enterprises, the director of parks and recreation, the executive director of the public disclosure commission, the executive director of the Puget Sound partnership, the director of the recreation and conservation office, the director of retirement systems, the director of revenue, the secretary of social and health services, the chief of the Washington state patrol, the executive secretary of the board of tax appeals, the secretary of transportation, the secretary of the utilities and transportation commission, the director of veterans affairs, the president of each of the regional and state universities and the president of The Evergreen State College, and each district and each campus president of each state community college;

(2) Each professional staff member of the office of the governor;

(3) Each professional staff member of the legislature; and

(4) Central Washington University board of trustees, the boards of trustees of each community college and each technical college, each member of the state board for community and technical colleges, state convention and trade center board of directors, Eastern Washington University board of trustees, Washington economic development finance authority, Washington energy northwest executive board, The Evergreen State College board of trustees, executive ethics board, fish and wildlife commission, forest practices appeals board, forest practices board, gambling commission, Washington health care facilities authority, student achievement council, higher education facilities authority, horse racing commission, state housing finance commission, human rights commission, indeterminate sentence review board, board of industrial insurance appeals, state investment board, commission on judicial conduct, legislative ethics board, life sciences discovery fund authority board of trustees, state liquor and cannabis board, lottery commission, Pacific Northwest electric power and conservation planning council, parks and recreation commission, Washington personnel resources board, board of pilotage commissioners, pollution control hearings board, public disclosure commission, public employees' ben-

efits board, recreation and conservation funding board, salmon recovery funding board, shorelines hearings board, board of tax appeals, transportation commission, University of Washington board of regents, utilities and transportation commission, Washington State University board of regents, and Western Washington University board of trustees. [2017 3rd sp.s. c 6 § 111. Prior: 2015 3rd sp.s. c 1 § 406; 2015 3rd sp.s. c 1 § 317; 2012 c 229 § 582; 2011 1st sp.s. c 43 § 109; 2010 c 204 § 902; 2009 c 565 § 24; prior: 2007 c 341 § 48; 2007 c 241 § 2; 2007 c 15 § 1; 2006 c 265 § 113; 2005 c 424 § 17; prior: 2001 c 36 § 1; 2001 c 9 § 1; 1996 c 186 § 504; prior: 1995 c 399 § 60; 1995 c 397 § 10; prior: 1993 sp.s. c 2 § 18; 1993 c 492 § 488; 1993 c 281 § 43; 1991 c 200 § 404; 1991 c 3 § 293; prior: 1989 1st ex.s. c 9 § 812; 1989 c 279 § 22; 1989 c 158 § 2; 1988 c 36 § 13; 1987 c 504 § 14; 1985 c 6 § 8; 1984 c 34 § 2. Formerly RCW 42.17.2401.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—2015 3rd sp.s. c 1 §§ 101-109, 201-224, 406-408, 410, 501-507, 601, and 602: See note following RCW 43.105.007.

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Effective date—2011 1st sp.s. c 43 § 109: "Section 109 of this act takes effect January 1, 2012." [2011 1st sp.s. c 43 § 111.]

Purpose—2011 1st sp.s. c 43: See note following RCW 43.19.003.

Alphabetization—2010 c 204 § 902: "When RCW 42.17A.705 is codified, the code reviser shall arrange the names of the agencies in each subsection in alphabetical order, arranged according to the first distinctive word of each agency's name." [2010 c 204 § 1101.]

Effective date—2007 c 341: See RCW 90.71.907.

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

Chapter 42.30 RCW OPEN PUBLIC MEETINGS ACT

Sections

42.30.035	Minutes.
42.30.110	Executive sessions.

42.30.035 Minutes. The minutes of all regular and special meetings except executive sessions of such boards, commissions, agencies or authorities shall be promptly recorded and such records shall be open to public inspection. [1953 c 216 § 3. Formerly RCW 42.32.030.]

42.30.110 Executive sessions. (1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

(a)(i) To consider matters affecting national security;

(ii) To consider, if in compliance with any required data security breach disclosure under RCW 19.255.010 and 42.56.590, and with legal counsel available, information

regarding the infrastructure and security of computer and telecommunications networks, security and service recovery plans, security risk assessments and security test results to the extent that they identify specific system vulnerabilities, and other information that if made public may increase the risk to the confidentiality, integrity, or availability of agency security or to information technology infrastructure or assets;

(b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;

(c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;

(d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

(i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

(j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However, final action on these matters shall be taken in a meeting open to the public;

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information;

(l) To consider proprietary or confidential nonpublished information related to the development, acquisition, or implementation of state purchased health care services as provided in RCW 41.05.026;

(m) To consider in the case of the life sciences discovery fund authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(n) To consider in the case of a health sciences and services authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information.

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer. [2017 c 137 § 1; 2014 c 174 § 4; 2011 1st sp.s. c 14 § 14; 2010 1st sp.s. c 33 § 5; 2005 c 424 § 13; 2003 c 277 § 1; 2001 c 216 § 1; 1989 c 238 § 2; 1987 c 389 § 3; 1986 c 276 § 8; 1985 c 366 § 2; 1983 c 155 § 3; 1979 c 42 § 1; 1973 c 66 § 2; 1971 ex.s. c 250 § 11.]

Intent—2014 c 174: See note following RCW 28B.50.902.

Additional notes found at www.leg.wa.gov

Chapter 42.32 RCW MEETINGS

Sections

42.32.030 Recodified as RCW 42.30.035.

42.32.030 Recodified as RCW 42.30.035. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 42.40 RCW STATE EMPLOYEE WHISTLEBLOWER PROTECTION

Sections

42.40.010 Policy.
42.40.020 Definitions.

42.40.010 Policy. It is the policy of the legislature that employees should be encouraged to disclose, to the extent not expressly prohibited by law, improper governmental actions, and it is the intent of the legislature to protect the rights of state employees making these disclosures, regardless of whether an investigation is initiated under RCW 42.40.040. It is also the policy of the legislature that employees should be encouraged to identify rules warranting review or provide information to the rules review committee, and it is the intent of the legislature to protect the rights of these employees. [2017 c 44 § 1; 1995 c 403 § 508; 1982 c 208 § 1.]

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

42.40.020 Definitions. As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

- (1) "Auditor" means the office of the state auditor.
- (2) "Employee" means any individual employed or holding office in any department or agency of state government.
- (3) "Good faith" means the individual providing the information or report of improper governmental activity has a reasonable basis in fact for reporting or providing the information. An individual who knowingly provides or reports, or who reasonably ought to know he or she is providing or reporting, malicious, false, or frivolous information, or information that is provided with reckless disregard for the truth, or who knowingly omits relevant information is not acting in good faith.
- (4) "Gross mismanagement" means the exercise of management responsibilities in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.
- (5) "Gross waste of funds" means to spend or use funds or to allow funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.
- (6)(a) "Improper governmental action" means any action by an employee undertaken in the performance of the employee's official duties:
 - (i) Which is a gross waste of public funds or resources as defined in this section;
 - (ii) Which is in violation of federal or state law or rule, if the violation is not merely technical or of a minimum nature;
 - (iii) Which is of substantial and specific danger to the public health or safety;
 - (iv) Which is gross mismanagement;
 - (v) Which prevents the dissemination of scientific opinion or alters technical findings without scientifically valid justification, unless state law or a common law privilege prohibits disclosure. This provision is not meant to preclude the discretion of agency management to adopt a particular scientific opinion or technical finding from among differing opinions or technical findings to the exclusion of other scientific opinions or technical findings. Nothing in this subsection prevents or impairs a state agency's or public official's ability to manage its public resources or its employees in the performance of their official job duties. This subsection does not apply to de minimis, technical disagreements that are not relevant for otherwise improper governmental activity. Nothing in this provision requires the auditor to contract or consult

with external experts regarding the scientific validity, invalidity, or justification of a finding or opinion; or

(vi) Which violates the administrative procedure act or analogous provisions of law that prohibit ex parte communication regarding cases or matters pending in which an agency is party between the agency's employee and a presiding officer, hearing officer, or an administrative law judge. The availability of other avenues for addressing ex parte communication by agency employees does not bar an investigation by the auditor.

(b) "Improper governmental action" does not include personnel actions, for which other remedies exist, including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the state civil service law, alleged labor agreement violations, reprimands, claims of discriminatory treatment, or any action which may be taken under chapter 41.06 RCW, or other disciplinary action except as provided in RCW 42.40.030.

(7) "Public official" means the attorney general's designee or designees; the director, or equivalent thereof in the agency where the employee works; an appropriate number of individuals designated to receive whistleblower reports by the head of each agency; or the executive ethics board.

(8) "Substantial and specific danger" means a risk of serious injury, illness, peril, or loss, to which the exposure of the public is a gross deviation from the standard of care or competence which a reasonable person would observe in the same situation.

(9) "Use of official authority or influence" includes threatening, taking, directing others to take, recommending, processing, or approving any personnel action such as an appointment, promotion, transfer, assignment including but not limited to duties and office location, reassignment, reinstatement, restoration, reemployment, performance evaluation, determining any material changes in pay, provision of training or benefits, tolerance of a hostile work environment, or any adverse action under chapter 41.06 RCW, or other disciplinary action.

(10)(a) "Whistleblower" means:

(i) An employee who in good faith reports alleged improper governmental action to the auditor or other public official, as defined in subsection (7) of this section; or

(ii) An employee who is perceived by the employer as reporting, whether they did or not, alleged improper governmental action to the auditor or other public official, as defined in subsection (7) of this section.

(b) For purposes of the provisions of this chapter and chapter 49.60 RCW relating to reprisals and retaliatory action, the term "whistleblower" also means:

(i) An employee who in good faith provides information to the auditor or other public official, as defined in subsection (7) of this section, and an employee who is believed to have reported asserted improper governmental action to the auditor or other public official, as defined in subsection (7) of this section, or to have provided information to the auditor or other public official, as defined in subsection (7) of this section, but who, in fact, has not reported such action or provided such information; or

(ii) An employee who in good faith identifies rules warranting review or provides information to the rules review committee, and an employee who is believed to have identified rules warranting review or provided information to the rules review committee but who, in fact, has not done so. [2017 c 44 § 2; 2008 c 266 § 2; 1999 c 361 § 1; 1995 c 403 § 509; 1992 c 118 § 1; 1989 c 284 § 1; 1982 c 208 § 2.]

Findings—Intent—2008 c 266: "The legislature finds and declares that government exists to conduct the people's business, and the people remaining informed about the actions of government contributes to the oversight of how the people's business is conducted. The legislature further finds that many public servants who expose actions of their government that are contrary to the law or public interest face the potential loss of their careers and livelihoods.

It is the policy of the legislature that employees should be encouraged to disclose, to the extent not expressly prohibited by law, improper governmental actions, and it is the intent of the legislature to protect the rights of state employees making these disclosures. It is also the policy of the legislature that employees should be encouraged to identify rules warranting review or provide information to the rules review committee, and it is the intent of the legislature to protect the rights of these employees.

This act shall be broadly construed in order to effectuate the purpose of this act." [2008 c 266 § 1.]

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

Chapter 42.44 RCW NOTARIES PUBLIC

Sections

42.44.010 through 42.44.221 *zzRepealed. (Effective July 1, 2018.)*
42.44.900 through 42.44.903 *zzRepealed. (Effective July 1, 2018.)*

42.44.010 through 42.44.221 Repealed. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

42.44.900 through 42.44.903 Repealed. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 42.45 RCW REVISED UNIFORM LAW ON NOTARIAL ACTS

Sections

42.45.010 Definitions. *(Effective July 1, 2018.)*
42.45.020 Authority to perform notarial act. *(Effective July 1, 2018.)*
42.45.030 Certain notarial acts—Requirements. *(Effective July 1, 2018.)*
42.45.040 Personal appearance. *(Effective July 1, 2018.)*
42.45.050 Identification of individual. *(Effective July 1, 2018.)*
42.45.060 Refusal to perform notarial act. *(Effective July 1, 2018.)*
42.45.070 Individual unable to sign—Signature. *(Effective July 1, 2018.)*
42.45.080 Notarial act in this state. *(Effective July 1, 2018.)*
42.45.090 Notarial act in another state—Effect in this state. *(Effective July 1, 2018.)*
42.45.100 Notarial act under authority of federally recognized Indian tribe. *(Effective July 1, 2018.)*
42.45.110 Notarial act under federal authority. *(Effective July 1, 2018.)*
42.45.120 Foreign notarial act. *(Effective July 1, 2018.)*
42.45.130 Certificate of notarial act. *(Effective July 1, 2018.)*
42.45.140 Short form certificates. *(Effective July 1, 2018.)*
42.45.150 Official stamp. *(Effective July 1, 2018.)*
42.45.160 Stamping device—Security. *(Effective July 1, 2018.)*
42.45.170 Fees. *(Effective July 1, 2018.)*
42.45.180 Journal. *(Effective July 1, 2018.)*
42.45.190 Notarial acts on electronic records—Technology—Notification—Standards. *(Effective July 1, 2018.)*
42.45.200 Commission—Qualifications—Oath—Surety bond—Commission term—Electronic records notary public. *(Effective July 1, 2018.)*

42.45.210 Grounds to deny, refuse to renew, revoke, suspend, or condition commission of notary public. *(Effective July 1, 2018.)*
42.45.220 Database of notaries public. *(Effective July 1, 2018.)*
42.45.230 Prohibited acts. *(Effective July 1, 2018.)*
42.45.240 Validity of notarial acts. *(Effective July 1, 2018.)*
42.45.250 Rules. *(Effective July 1, 2018.)*
42.45.260 Commissions in effect July 1, 2018—Continuation. *(Effective July 1, 2018.)*
42.45.270 Uniform regulation of business and professions act—Application. *(Effective July 1, 2018.)*
42.45.900 Short title. *(Effective July 1, 2018.)*
42.45.901 Application. *(Effective July 1, 2018.)*
42.45.902 Savings. *(Effective July 1, 2018.)*
42.45.903 Application—Construction. *(Effective July 1, 2018.)*
42.45.904 Relation to electronic signatures in global and national commerce act. *(Effective July 1, 2018.)*
42.45.905 Effective date—2017 c 281.

42.45.010 Definitions. (Effective July 1, 2018.) In this chapter:

(1) "Acknowledgment" means a declaration by an individual in the presence of a notarial officer stating that the individual has signed a record of the individual's free will for the purpose stated in the record and, if the record is signed in a representative capacity, the individual also declares that he or she signed the record with proper authority and signed it as the act of the individual or entity identified in the record.

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

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

(4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(5) "Electronic records notary public" means an individual commissioned by the director to perform a notarial act with respect to electronic records. Nothing in chapter 281, Laws of 2017 authorizes an electronic records notary public to provide court reporting services.

(6) "Electronic signature" means an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.

(7) "In a representative capacity" means acting as:

(a) An authorized officer, agent, partner, trustee, or other representative for a person other than an individual;

(b) A public officer, personal representative, guardian, or other representative, in the capacity stated in a record;

(c) An agent or attorney-in-fact for a principal; or

(d) An authorized representative of another in any other capacity.

(8) "Notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this state. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, certifying the occurrence of an event or the performance of an act, and noting a protest of a negotiable instrument if the protest was prepared under the authority of an attorney licensed to practice law in this state or another state, or was prepared under the authority of a financial institution that is regulated by this state, another state, or the federal government.

(9) "Notarial officer" means a notary public or other individual authorized to perform a notarial act.

(10) "Notary public" means an individual commissioned to perform a notarial act by the director.

(11) "Official stamp" means a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record.

(12) "Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in human perceivable form.

(14) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(15) "Signature" means a tangible symbol or an electronic signature that evidences the signing of a record.

(16) "Stamping device" means:

(a) A physical device capable of affixing to or embossing on a tangible record an official stamp; or

(b) An electronic device or process capable of attaching to or logically associating with an electronic record an official stamp.

(17) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(18) "Verification on oath or affirmation" means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true. [2017 c 281 § 2.]

42.45.020 Authority to perform notarial act. (Effective July 1, 2018.) (1) A notarial officer may perform a notarial act authorized by this chapter or by law of this state other than this chapter.

(2)(a) A notarial officer may not perform a notarial act with respect to a record to which the officer or the officer's spouse or domestic partner is a party, or in which any of the above have a direct beneficial interest.

(b) A notarial officer may not notarize the notarial officer's own signature.

(c) A notarial act performed in violation of this subsection (2) is voidable. [2017 c 281 § 4.]

42.45.030 Certain notarial acts—Requirements. (Effective July 1, 2018.) (1) A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.

(2) A notarial officer who takes a verification of a statement on oath or affirmation shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the verification has the identity claimed and that the

signature on the statement verified is the signature of the individual.

(3) A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and signing the record has the identity claimed.

(4) A notarial officer who certifies or attests a copy of a record or an item that was copied shall compare the copy with the original record or item and determine that the copy is a full, true, and accurate transcription or reproduction of the record or item.

(5) A notarial officer may make or note a protest of a negotiable instrument only if the notarial officer is licensed to practice law in this state, acting under the authority of an attorney who is licensed to practice law in this or another state, or acting under the authority of a financial institution regulated by this state, another state, or the federal government. In making or noting a protest of a negotiable instrument the notarial officer or licensed attorney shall determine the matters set forth in RCW 62A.3-505(b). [2017 c 281 § 5.]

42.45.040 Personal appearance. (Effective July 1, 2018.) If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer. [2017 c 281 § 6.]

42.45.050 Identification of individual. (Effective July 1, 2018.) (1) A notarial officer has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(2) A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual:

(a) By means of:

(i) A passport, driver's license, or government-issued nondriver identification card, which is current or expired not more than three years before performance of the notarial act; or

(ii) Another form of government identification issued to an individual, which is current or expired not more than three years before performance of the notarial act, contains the signature or a photograph of the individual, and is satisfactory to the officer; or

(b) By a verification on oath or affirmation of a credible witness personally appearing before the officer and personally known to the officer and who provides satisfactory evidence of his or her identity as described in (a) of this subsection.

(3) A notarial officer may require an individual to provide additional information or identification credentials necessary to assure the officer of the identity of the individual. [2017 c 281 § 7.]

42.45.060 Refusal to perform notarial act. (Effective July 1, 2018.) (1) A notarial officer has the authority to refuse to perform a notarial act if the officer is not satisfied that:

(a) The individual executing the record is competent or has the capacity to execute the record; or

(b) The individual's signature is knowingly and voluntarily made.

(2) A notarial officer has the authority to refuse to perform a notarial act unless refusal is prohibited by law other than this chapter. [2017 c 281 § 8.]

42.45.070 Individual unable to sign—Signature. (Effective July 1, 2018.) Except as otherwise provided in RCW 64.08.100, if an individual is physically unable to sign a record, the individual may direct an individual other than the notarial officer to sign the individual's name on the record. The notarial officer shall insert "signature affixed by (name of other individual) at the direction of (name of individual)" or words of similar import. [2017 c 281 § 9.]

42.45.080 Notarial act in this state. (Effective July 1, 2018.) (1) A notarial act may be performed in this state by:

(a) A notary public of this state;

(b) A judge, clerk, or deputy clerk of a court of this state; or

(c) Any other individual authorized to perform the specific act by the law of this state.

(2) The signature and title of an individual authorized by chapter 281, Laws of 2017 to perform a notarial act in this state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of a notarial officer described in subsection (1)(a) or (b) of this section conclusively establishes the authority of the officer to perform the notarial act. [2017 c 281 § 10.]

42.45.090 Notarial act in another state—Effect in this state. (Effective July 1, 2018.) (1) A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed in that state is performed by:

(a) A notary public of that state;

(b) A judge, clerk, or deputy clerk of a court of that state; or

(c) Any other individual authorized by the law of that state to perform the notarial act.

(2) The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of a notarial officer described in subsection (1)(a) through (c) of this section conclusively establishes the authority of the officer to perform the notarial act. [2017 c 281 § 11.]

42.45.100 Notarial act under authority of federally recognized Indian tribe. (Effective July 1, 2018.) (1) A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe has the same effect as if performed by a notarial officer of this state, if the act performed in the jurisdiction of the tribe is performed by:

(a) A notary public of the tribe;

(b) A judge, clerk, or deputy clerk of a court of the tribe; or

(c) Any other individual authorized by the law of the tribe to perform the notarial act.

(2) The signature and title of an individual performing a notarial act under the authority of and in the jurisdiction of a federally recognized Indian tribe are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of a notarial officer described in subsection (1)(a) through (c) of this section conclusively establishes the authority of the officer to perform the notarial act. [2017 c 281 § 12.]

42.45.110 Notarial act under federal authority. (Effective July 1, 2018.) (1) A notarial act performed under federal law has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed under federal law is performed by:

(a) A judge, clerk, or deputy clerk of a court;

(b) An individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;

(c) An individual designated a notarizing officer by the United States department of state for performing notarial acts overseas; or

(d) Any other individual authorized by federal law to perform the notarial act.

(2) The signature and title of an individual acting under federal authority and performing a notarial act are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of an officer described in subsection (1)(a), (b), or (c) of this section conclusively establishes the authority of the officer to perform the notarial act. [2017 c 281 § 13.]

42.45.120 Foreign notarial act. (Effective July 1, 2018.) (1) In this section, "foreign state" means a government other than the United States, a state, or a federally recognized Indian tribe.

(2) If a notarial act is performed under the authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this state as if performed by a notarial officer of this state.

(3) If the title of office and indication of authority to perform notarial acts in a foreign state appears in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

(4) The signature and official stamp of an individual holding an office described in subsection (3) of this section are prima facie evidence that the signature is genuine and the individual holds the designated title.

(5) An apostille in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign state party to the Hague Convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(6) A consular authentication issued by an individual designated by the United States department of state as a nota-

riking officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office. [2017 c 281 § 14.]

42.45.130 Certificate of notarial act. (Effective July 1, 2018.) (1) A notarial act must be evidenced by a certificate. The certificate must:

- (a) Be executed contemporaneously with the performance of the notarial act;
- (b) Be signed and dated by the notarial officer and, if the notarial officer is a notary public, be signed in the same manner as on file with the department;
- (c) Identify the jurisdiction in which the notarial act is performed;
- (d) Contain the title of office of the notarial officer;
- (e) Be written in English or in dual languages, one of which must be English; and
- (f) If the notarial officer is a notary public, indicate the date of expiration, if any, of the officer's commission.

(2) Regarding notarial act certificates on a tangible record:

- (a) If a notarial act regarding a tangible record is performed by a notary public, an official stamp must be affixed to or embossed on the certificate.
- (b) If a notarial act regarding a tangible record is performed by a notarial officer other than a notary public and the certificate contains the information specified in subsection (1)(b), (c), and (d) of this section, an official stamp may be affixed to or embossed on the certificate.

(3) Regarding notarial act certificates on an electronic record:

- (a) If a notarial act regarding an electronic record is performed by an electronic records notary public, an official stamp must be attached to or logically associated with the certificate.
- (b) If a notarial act regarding an electronic record is performed by a notarial officer other than a notary public and the certificate contains the information specified in subsection (1)(b), (c), and (d) of this section, an official stamp may be attached to or logically associated with the certificate.

(4) A certificate of a notarial act is sufficient if it meets the requirements of subsections (1) through (3) of this section and:

- (a) Is in a short form set forth in RCW 42.45.140;
- (b) Is in a form otherwise permitted by the law of this state;
- (c) Is in a form permitted by the law applicable in the jurisdiction in which the notarial act was performed; or
- (d) Sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in RCW 42.45.030, 42.45.040, and 42.45.050 or law of this state other than this chapter.

(5) By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in RCW 42.45.030, 42.45.040, and 42.45.050.

(6) A notarial officer may not affix the officer's signature to, or logically associate it with, a certificate until the notarial act has been performed.

(7) If a notarial act is performed regarding a tangible record, a certificate must be part of, or securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate must be affixed to, or logically associated with, the electronic record. If the director has established standards pursuant to RCW 42.45.250 for attaching, affixing, or logically associating the certificate, the process must conform to the standards. [2017 c 281 § 15.]

42.45.140 Short form certificates. (Effective July 1, 2018.) The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by RCW 42.45.130 (1) through (4):

(1) For an acknowledgment in an individual capacity:

State of

County of

This record was acknowledged before me on (date) by (name(s) of individuals).

.....
(Signature of notary public)

(Stamp)

.....
(Title of office)

My commission expires:

.....
(date)

(2) For an acknowledgment in a representative capacity:

State of

County of

This record was acknowledged before me on (date) by (name(s) of individuals) as (type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed).

.....
(Signature of notary public)

(Stamp)

.....
(Title of office)

My commission expires:

.....
(date)

(3) For verification on oath or affirmation:

State of

County of

Signed and sworn to (or affirmed) before me on (date) by (name(s) of individuals making statement).

.....
(Signature of notary public)

(Stamp)

.....
(Title of office)

My commission expires:
.....
(date)

(4) For witnessing or attesting a signature:

State of
County of

Signed or attested before me on (date) by (name(s) of individuals).

.....
(Signature of notary public)

(Stamp)

.....
(Title of office)

My commission expires:
.....
(date)

(5) For certifying or attesting a copy of a record:

State of
County of

I certify that this is a true and correct copy of a record in the possession of

Dated:
.....
(Signature of notary public)

(Stamp)

.....
(Title of office)

My commission expires:
.....
(date)

(6) For certifying the occurrence of an event or the performance of any act:

State of
County of

I certify that the event described in this document has occurred or been performed.

Dated:
.....
(Signature of notary public)

(Stamp)

.....
(Title of office)

My commission expires:
.....
(date)

[2017 c 281 § 16.]

42.45.150 Official stamp. (Effective July 1, 2018.) (1)

It is unlawful for any person intentionally to manufacture, give, sell, procure, or possess a seal or stamp evidencing the current appointment of a person as a notary public until the director has issued a notary commission. The official seal or stamp of a notary public must include:

- (a) The words "notary public";
(b) The words "state of Washington";
(c) The notary public's name as commissioned;
(d) The notary public's commission expiration date; and
(e) Any other information required by the director.

(2) The size and form or forms of the seal or stamp shall be prescribed by the director in rule.

(3) The seal or stamp must be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.

(4) The seal or stamp used at the time that a notarial act is performed must be the seal or stamp evidencing the notary public's commission in effect as of such time, even if the notary public has received the seal or stamp evidencing his or her next commission. [2017 c 281 § 17.]

42.45.160 Stamping device—Security. (Effective July 1, 2018.) (1)

A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the device to perform a notarial act. On resignation from, or the revocation or expiration of, the notary public's commission, or on the expiration of the date set forth in the stamping device, the notary public shall disable the stamping device by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable. On the death or adjudication of incompetency of a notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the stamping device shall render it unusable by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable.

(2) The seal or stamp should be kept in a locked and secured area, under the direct and exclusive control of the notary public. If a notary public's stamping device is lost or stolen, the notary public or the notary public's personal representative or guardian shall notify promptly the department on discovering that the device is lost or stolen. Any replacement device must contain a variance from the lost or stolen seal or stamp. [2017 c 281 § 18.]

42.45.170 Fees. (Effective July 1, 2018.) (1)

The director may establish by rule the maximum fees that may be charged by notaries public for various notarial services.

(2) A notary public need not charge fees for notarial acts. [2017 c 281 § 19.]

42.45.180 Journal. (Effective July 1, 2018.) (1)

A notary public shall maintain a journal in which the notary public chronicles all notarial acts that the notary public performs. The notary public shall retain the journal for ten years after the performance of the last notarial act chronicled in the journal. The journal is to be destroyed as required by the director in rule upon completion of the ten-year period.

(2) Notwithstanding any other provision of this chapter requiring a notary public to maintain a journal, a notary pub-

lic who is an attorney licensed to practice law in this state is not required to chronicle a notarial act in a journal if documentation of the notarial act is otherwise maintained by professional practice.

(3) A notary public shall maintain only one tangible journal at a time to chronicle notarial acts, whether those notarial acts are performed regarding tangible or electronic records. The journal must be a permanent, bound register with numbered pages. An electronic records notary public may also maintain an electronic format journal, which can be kept concurrently with the tangible journal. The electronic journal must be in a permanent, tamper-evident electronic format complying with the rules of the director.

(4) An entry in a journal must be made contemporaneously with performance of the notarial act and contain the following information:

- (a) The date and time of the notarial act;
- (b) A description of the record, if any, and type of notarial act;
- (c) The full name and address of each individual for whom the notarial act is performed; and
- (d) Any additional information as required by the director in rule.

(5) The journal shall be kept in a locked and secured area, under the direct and exclusive control of the notary public. Failure to secure the journal may be cause for the director to take administrative action against the commission held by the notary public. If a notary public's journal is lost or stolen, the notary public promptly shall notify the department on discovering that the journal is lost or stolen.

(6) On resignation from, or the revocation or suspension of, a notary public's commission, the notary public shall retain the notary public's journal in accordance with subsection (1) of this section and inform the department where the journal is located. [2017 c 281 § 20.]

42.45.190 Notarial acts on electronic records—Technology—Notification—Standards. (Effective July 1, 2018.) (1) A notary public may not perform notarial acts with respect to electronic records unless the notary public holds a commission as an electronic records notary public.

(2) An electronic records notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records that meet the standards provided in subsection (4) of this section. A person cannot require an electronic records notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

(3) Before an electronic records notary public performs the notary public's initial notarial act with respect to an electronic record, an electronic records notary public shall notify the department that he or she will be performing notarial acts with respect to electronic records and identify the technology the electronic records notary public intends to use.

(4) The director shall establish standards for approval of technology in rule. If the technology conforms to the standards, the director shall approve the use of the technology. [2017 c 281 § 21.]

42.45.200 Commission—Qualifications—Oath—Surety bond—Commission term—Electronic records

notary public. (Effective July 1, 2018.) (1) An individual qualified under subsection (2) of this section may apply to the director for a commission as a notary public. The applicant shall comply with and provide the information required by rules established by the director and pay any application fee.

(2) An applicant for a commission as a notary public must:

- (a) Be at least eighteen years of age;
- (b) Be a citizen or permanent legal resident of the United States;
- (c) Be a resident of or have a place of employment or practice in this state;
- (d) Be able to read and write English; and
- (e) Not be disqualified to receive a commission under RCW 42.45.210.

(3) Before issuance of a commission as a notary public, an applicant for the commission shall execute an oath of office and submit it to the department in the format prescribed by the director in rule.

(4) Before issuance of a commission as a notary public, the applicant for a commission shall submit to the director an assurance in the form of a surety bond in the amount established by the director in rule. The assurance must be issued by a surety or other entity licensed or authorized to write surety bonds in this state. The assurance must be effective for a four-year term or for a term that expires on the date the notary public's commission expires. The assurance must cover acts performed during the term of the notary public's commission and must be in the form prescribed by the director. If a notary public violates law with respect to notaries public in this state, the surety or issuing entity is liable under the assurance. The surety or issuing entity shall give at least thirty days' notice to the department before canceling the assurance. The surety or issuing entity shall notify the department not later than thirty days after making a payment to a claimant under the assurance. A notary public may perform notarial acts in this state only during the period that a valid assurance is on file with the department.

(5) On compliance with this section, the director shall issue a commission as a notary public to an applicant for a term of four years or for a term that expires on the date of expiration of the assurance, whichever comes first.

(6) A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide the notary public any immunity or benefit conferred by law of this state on public officials or employees.

(7) An individual qualified under (a) of this subsection may apply to the director for a commission as an electronic records notary public. The applicant shall comply with and provide the information required by rules established by the director and pay the relevant application fee.

(a) An applicant for a commission as an electronic records notary public must hold a commission as notary public.

(b) An electronic records notary public commission may take the form of an endorsement to the notary public commission if deemed appropriate by the director. [2017 c 281 § 22.]

42.45.210 Grounds to deny, refuse to renew, revoke, suspend, or condition commission of notary public. (Effective July 1, 2018.) (1) In addition to conduct defined

as unprofessional under RCW 18.235.130, the director may take action as provided for in RCW 18.235.110 against a commission as notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public, including:

- (a) Failure to comply with this chapter;
 - (b) A fraudulent, dishonest, or deceitful misstatement or omission in the application for a commission as a notary public submitted to the department;
 - (c) A conviction of the applicant or notary public of any felony or crime involving fraud, dishonesty, or deceit;
 - (d) A finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty, or deceit;
 - (e) Failure by the notary public to discharge any duty required of a notary public, whether by this chapter, rules of the director, or any federal or state law;
 - (f) Use of false or misleading advertising or representation by the notary public representing that the notary public has a duty, right, or privilege that the notary public does not have;
 - (g) Violation by the notary public of a rule of the director regarding a notary public;
 - (h) Denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission in another state;
 - (i) Failure of the notary public to maintain an assurance as provided in RCW 42.45.200(4); or
 - (j) Making or noting a protest of a negotiable instrument without being a person authorized by RCW 42.45.030(5).
- (2) If the director denies, refuses to renew, revokes, suspends, imposes conditions, or otherwise sanctions, a commission as a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance with chapter 34.05 RCW.
- (3) The authority of the director to take disciplinary action on a commission as a notary public does not prevent a person from seeking and obtaining other criminal or civil remedies provided by law. [2017 c 281 § 23.]

42.45.220 Database of notaries public. (Effective July 1, 2018.) The director shall maintain an electronic database of notaries public:

- (1) Through which a person may verify the authority of a notary public to perform notarial acts; and
- (2) Which indicates whether a notary public has notified the director that the notary public will be performing notarial acts on electronic records. [2017 c 281 § 24.]

42.45.230 Prohibited acts. (Effective July 1, 2018.) (1) A commission as a notary public does not authorize an individual to:

- (a) Assist persons in drafting legal records, give legal advice, or otherwise practice law;
- (b) Act as an immigration consultant or an expert on immigration matters;
- (c) Represent a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship, or related matters;
- (d) Receive compensation for performing any of the activities listed in this subsection; or

(e) Provide court reporting services.

(2) A notary public may not engage in false or deceptive advertising.

(3) A notary public, other than an attorney licensed to practice law in this state, or a Washington-licensed limited license legal technician acting within the scope of his or her license, may not use the term "notario" or "notario publico."

(4) A notary public, other than an attorney licensed to practice law in this state or a limited license legal technician acting within the scope of his or her license, may not assist another person in selecting the appropriate certificate required by RCW 42.45.130.

(5) A notary public, other than an attorney licensed to practice law in this state, or a Washington-licensed limited license legal technician acting within the scope of his or her license, may not advertise or represent that the notary public may assist persons in drafting legal records, give legal advice, or otherwise practice law. If a notary public who is not an attorney licensed to practice law in this state, or a Washington-licensed limited license legal technician acting within the scope of his or her license, in any manner advertises or represents that the notary public offers notarial services, whether orally or in a record, including broadcast media, print media, and the internet, the notary public shall include the following statement, or an alternate statement authorized or required by the director, in the advertisement or representation, prominently and in each language used in the advertisement or representation: "I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities." If the form of advertisement or representation is not broadcast media, print media, or the internet and does not permit inclusion of the statement required by this subsection because of size, it must be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

(6) Except as otherwise allowed by law, a notary public may not withhold access to or possession of an original record provided by a person that seeks performance of a notarial act by the notary public. A notary public may not maintain copies or electronic images of documents notarized unless the copies or images are maintained by an attorney or Washington-licensed limited license legal technician acting within his or her scope of practice for the performance of legal services or for other services performed for the client and the copies or images are not maintained solely as part of the notary transaction. [2017 c 281 § 25.]

42.45.240 Validity of notarial acts. (Effective July 1, 2018.) Except as otherwise provided in RCW 42.45.020(2), the failure of a notarial officer to perform a duty or meet a requirement specified in this chapter does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this chapter does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on law of this state other than this chapter or law of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts. Nothing in chap-

ter 281, Laws of 2017 gives the director authority to invalidate a notarial act. [2017 c 281 § 26.]

42.45.250 Rules. (Effective July 1, 2018.) (1) The director may adopt rules necessary to implement this chapter.

(2) In adopting, amending, or repealing rules about notarial acts with respect to electronic records, the director shall consider standards, practices, and customs of other jurisdictions that substantially enact this chapter. [2017 c 281 § 27.]

42.45.260 Commissions in effect July 1, 2018—Continuation. (Effective July 1, 2018.) A commission as a notary public in effect on July 1, 2018, continues until its date of expiration. A notary public who applies to renew a commission as a notary public on or after July 1, 2018, is subject to and shall comply with this chapter. A notary public, in performing notarial acts after July 1, 2018, shall comply with this chapter. [2017 c 281 § 28.]

42.45.270 Uniform regulation of business and professions act—Application. (Effective July 1, 2018.) The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2017 c 281 § 32.]

42.45.900 Short title. (Effective July 1, 2018.) This chapter may be known and cited as the revised uniform law on notarial acts. [2017 c 281 § 1.]

42.45.901 Application. (Effective July 1, 2018.) This chapter applies to a notarial act performed on or after July 1, 2018. [2017 c 281 § 3.]

42.45.902 Savings. (Effective July 1, 2018.) This chapter does not affect the validity or effect of a notarial act performed before July 1, 2018. [2017 c 281 § 29.]

42.45.903 Application—Construction. (Effective July 1, 2018.) In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2017 c 281 § 30.]

42.45.904 Relation to electronic signatures in global and national commerce act. (Effective July 1, 2018.) This chapter modifies, limits, and supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b). [2017 c 281 § 31.]

42.45.905 Effective date—2017 c 281. This act takes effect July 1, 2018. [2017 c 281 § 44.]

Chapter 42.52 RCW ETHICS IN PUBLIC SERVICE

Sections

42.52.180	Use of public resources for political campaigns.
42.52.185	Restrictions on mailings by legislators.
42.52.8023	Exemption—Gina Grant Bull memorial legislative page scholarship account.

42.52.180 Use of public resources for political campaigns. (1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

(2) This section shall not apply to the following activities:

(a) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition as long as (i) required notice of the meeting includes the title and number of the ballot proposition, and (ii) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(b) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry. For the purposes of this subsection, it is not a violation of this section for an elected official to respond to an inquiry regarding a ballot proposition, to make incidental remarks concerning a ballot proposition in an official communication, or otherwise comment on a ballot proposition without an actual, measurable expenditure of public funds. The ethics boards shall adopt by rule a definition of measurable expenditure;

(c) The maintenance of official legislative web sites throughout the year, regardless of pending elections. The web sites may contain any discretionary material which was also specifically prepared for the legislator in the course of his or her duties as a legislator, including newsletters and press releases. The official legislative web sites of legislators seeking reelection or election to any office shall not be altered, other than during a special legislative session, beginning on the first day of the declaration of candidacy filing period specified in RCW 29A.24.050 through the date of certification of the general election of the election year. The web site shall not be used for campaign purposes;

(d) Activities that are part of the normal and regular conduct of the office or agency; and

(e) De minimis use of public facilities by statewide elected officials and legislators incidental to the preparation or delivery of permissible communications, including written and verbal communications initiated by them of their views

on ballot propositions that foreseeably may affect a matter that falls within their constitutional or statutory responsibilities.

(3) As to state officers and employees, this section operates to the exclusion of RCW 42.17A.555. [2017 c 7 § 2; 2011 c 60 § 30; 2010 c 185 § 1; 1995 c 397 § 30; 1994 c 154 § 118.]

Finding—Intent—2017 c 7: "The legislature finds that the prohibition on the use of public resources for campaign purposes serves an important purpose, but that the period prohibiting state legislators from communicating with constituents at public expense is unnecessary once the election, and the campaign itself, has ended. Furthermore, the delay in constituent outreach after the election only hinders a legislator's ability to quickly and effectively respond to requests and keep the public informed about current state issues, and the various deadlines relating to mailed, emailed, and web site communications are confusing and need to be harmonized. For these reasons, the legislature intends to change mailed, emailed, and web site communication deadlines to the same time periods, in order to allow legislators to actively engage with the public on official legislative business in a timely and effective manner." [2017 c 7 § 1.]

Effective date—2017 c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2017]." [2017 c 7 § 4.]

Effective date—2011 c 60: See RCW 42.17A.919.

Additional notes found at www.leg.wa.gov

42.52.185 Restrictions on mailings by legislators. (1) During the period beginning on December 1st of the year before a general election for a state legislator's election to office and continuing through the date of certification of the general election, the legislator may not mail, either by regular mail or email, to a constituent at public expense a letter, newsletter, brochure, or other piece of literature, except for routine legislative correspondence, such as scheduling, and as follows:

(a) The legislator may mail two mailings of newsletters to constituents. All newsletters within each mailing of newsletters must be identical as to their content but not as to the constituent name or address. Both mailings must be mailed before the first day of the declaration of candidacy filing period specified in RCW 29A.24.050.

(b) The legislator may mail an individual letter to (i) an individual constituent who has contacted the legislator regarding the subject matter of the letter during the legislator's current term of office; (ii) an individual constituent who holds a governmental office with jurisdiction over the subject matter of the letter; or (iii) an individual constituent who has received an award or honor of extraordinary distinction of a type that is sufficiently infrequent to be noteworthy to a reasonable person, including, but not limited to: (A) An international or national award such as the Nobel prize or the Pulitzer prize; (B) a state award such as Washington scholar; (C) an Eagle Scout award; and (D) a Medal of Honor.

(c) In those cases where constituents have specifically indicated that they would like to be contacted to receive regular or periodic updates on legislative matters or been added to a distribution list and provided regular opportunities to unsubscribe from that mailing list, legislators may provide such updates by email throughout the legislative session and up until the first day of the declaration of candidacy filing period specified in RCW 29A.24.050. Legislators may also

provide these updates by email during any special legislative session.

(2) A violation of this section constitutes use of the facilities of a public office for the purpose of assisting a campaign under RCW 42.52.180.

(3) The house of representatives and senate shall specifically limit expenditures per member for the total cost of mailings. Those costs include, but are not limited to, production costs, printing costs, and postage costs. The limits imposed under this subsection apply only to the total expenditures on mailings per member and not to any categorical cost within the total.

(4) For purposes of this section:

(a) "Legislator" means a legislator who is a "candidate," as defined in RCW 42.17A.005, for any public office; and

(b) Persons residing outside the legislative district represented by the legislator are not considered to be constituents, but students, military personnel, or others temporarily employed outside of the district who normally reside in the district are considered to be constituents. [2017 c 7 § 3; 2011 c 60 § 31; 2008 c 39 § 2; 1997 c 320 § 1; 1995 c 397 § 5; 1993 c 2 § 25 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.132.]

Finding—Intent—Effective date—2017 c 7: See notes following RCW 42.52.180.

Effective date—2011 c 60: See RCW 42.17A.919.

Findings—Intent—2008 c 39: "The legislature finds that the legislature's ability to communicate with its constituency is of the utmost importance in having a healthy representative democracy. It is the intent of the legislature to provide important information to constituents on an ongoing basis in order to truly be a government of the people and for the people. The legislature finds that this communication will only increase citizen access to legislative issues." [2008 c 39 § 1.]

42.52.8023 Exemption—Gina Grant Bull memorial legislative page scholarship account. This chapter does not prohibit the secretary of the senate, the chief clerk of the house of representatives, or their designee from soliciting and accepting contributions to the Gina Grant Bull memorial legislative page scholarship account created in RCW 44.04.380. Furthermore, this chapter does not prohibit any legislative member or legislative employee from soliciting gifts for the Gina Grant Bull memorial legislative page scholarship account. [2017 c 322 § 4.]

Chapter 42.56 RCW PUBLIC RECORDS ACT

Sections

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42.56.430	Fish and wildlife. (<i>Effective June 30, 2022.</i>)
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42.56.901	through 42.56.903 Decodified.

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

(1) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(2) "Person in interest" means the person who is the subject of a record or any representative designated by that person, except that if that person is under a legal disability, "person in interest" means and includes the parent or duly appointed legal representative.

(3) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives. This definition does not include records that are not otherwise required to be retained by the agency and are held by volunteers who:

- Do not serve in an administrative capacity;
- Have not been appointed by the agency to an agency board, commission, or internship; and
- Do not have a supervisory role or delegated agency authority.

(4) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated. [2017 c 303 § 1; 2010 c 204 § 1005; 2007 c 197 § 1; 2005 c 274 § 101.]

42.56.070 Documents and indexes to be made public—Statement of costs. (1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (8) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

(3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(4) A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an

analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010 that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(7) Each agency may establish, maintain, and make available for public inspection and copying a statement of the actual costs that it charges for providing photocopies or electronically produced copies, of public records and a statement of the factors and manner used to determine the actual costs. Any statement of costs may be adopted by an agency only after providing notice and public hearing.

(a)(i) In determining the actual cost for providing copies of public records, an agency may include all costs directly incident to copying such public records including:

(A) The actual cost of the paper and the per page cost for use of agency copying equipment; and

(B) The actual cost of the electronic production or file transfer of the record and the use of any cloud-based data storage and processing service.

(ii) In determining other actual costs for providing copies of public records, an agency may include all costs directly incident to:

(A) Shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used; and

(B) Transmitting such records in an electronic format, including the cost of any transmission charge and use of any physical media device provided by the agency.

(b) In determining the actual costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and send the requested public records may be included in an agency's costs.

(8) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.05 RCW, the administrative procedure act. [2017 c 304 § 1; 2005 c 274 § 284; 1997 c 409 § 601. Prior: 1995 c 397 § 11; 1995 c 341 § 1; 1992 c 139 § 3; 1989 c 175 § 36; 1987 c 403 § 3; 1975 1st ex.s. c 294 § 14; 1973 c 1 § 26 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.260.]

Intent—Severability—1987 c 403: See notes following RCW 42.56.050.

Exemption for registered trade names: RCW 19.80.065.

Paid family and medical leave information: RCW 50A.04.195(4).

Additional notes found at www.leg.wa.gov

42.56.080 Identifiable records—Facilities for copying—Availability of public records. (1) A public records request must be for identifiable records. A request for all or substantially all records prepared, owned, used, or retained by an agency is not a valid request for identifiable records under this chapter, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of an agency's records.

(2) Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person including, if applicable, on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure. Agencies shall not deny a request for identifiable public records solely on the basis that the request is overbroad. Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(8) or 42.56.240(14), or other statute which exempts or prohibits disclosure of specific information or records to certain persons. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency. Agencies shall honor requests received in person during an agency's normal office hours, or by mail or email, for identifiable public records unless exempted by provisions of this chapter. No official format is required for making a records request; however, agencies may recommend that requestors submit requests using an agency provided form or web page.

(3) An agency may deny a bot request that is one of multiple requests from the requestor to the agency within a twenty-four hour period, if the agency establishes that responding to the multiple requests would cause excessive interference with other essential functions of the agency. For purposes of this subsection, "bot request" means a request for public records that an agency reasonably believes was automatically generated by a computer program or script. [2017 c 304 § 2; 2016 c 163 § 3. Prior: 2005 c 483 § 1; 2005 c 274 § 285; 1987 c 403 § 4; 1975 1st ex.s. c 294 § 15; 1973 c 1 § 27 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.270.]

Finding—Intent—2016 c 163: See note following RCW 42.56.240.

Intent—Severability—1987 c 403: See notes following RCW 42.56.050.

42.56.120 Charges for copying. (1) No fee shall be charged for the inspection of public records or locating public documents and making them available for copying, except as provided in RCW 42.56.240(14) and subsection (3) of this section. A reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment or equipment of the office of the secretary of the senate or the office of the chief clerk of the house of representatives to copy public records, which charges shall not exceed the amount necessary to reimburse the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives for its actual costs directly incident to such copying. When calculating any fees authorized under this section, an agency shall use the most reasonable cost-efficient method available to the agency as part of its normal operations. If any agency translates a record into an alternative electronic format at the request of a requestor, the copy created does not constitute a new public record for purposes of this chapter. Scanning paper records to make electronic copies of such records is a method of copying paper records and does not amount to the creation of a new public record.

(2)(a) Agency charges for actual costs may only be imposed in accordance with the costs established and published by the agency pursuant to RCW 42.56.070(7), and in accordance with the statement of factors and manner used to determine the actual costs. In no event may an agency charge a per page cost greater than the actual cost as established and published by the agency.

(b) An agency need not calculate the actual costs it charges for providing public records if it has rules or regulations declaring the reasons doing so would be unduly burdensome. To the extent the agency has not determined the actual costs of copying public records, the agency may not charge in excess of:

(i) Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records;

(ii) Ten cents per page for public records scanned into an electronic format or for the use of agency equipment to scan the records;

(iii) Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery; and

(iv) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically. The agency shall take reasonable steps to provide the records in the most efficient manner available to the agency in its normal operations; and

(v) The actual cost of any digital storage media or device provided by the agency, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.

(c) The charges in (b) of this subsection may be combined to the extent that more than one type of charge applies to copies produced in response to a particular request.

(d) An agency may charge a flat fee of up to two dollars for any request as an alternative to fees authorized under (a) or (b) of this subsection when the agency reasonably estimates and documents that the costs allowed under this subsection are clearly equal to or more than two dollars. An additional flat fee shall not be charged for any installment after the first installment of a request produced in installments. An agency that has elected to charge the flat fee in this subsection for an initial installment may not charge the fees authorized under (a) or (b) of this subsection on subsequent installments.

(e) An agency shall not impose copying charges under this section for access to or downloading of records that the agency routinely posts on its public internet web site prior to receipt of a request unless the requestor has specifically requested that the agency provide copies of such records through other means.

(f) A requestor may ask an agency to provide, and if requested an agency shall provide, a summary of the applicable charges before any copies are made and the requestor may revise the request to reduce the number of copies to be made and reduce the applicable charges.

(3)(a)(i) In addition to the charge imposed for providing copies of public records and for the use by any person of agency equipment copying costs, an agency may include a customized service charge. A customized service charge may only be imposed if the agency estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the agency for other agency purposes.

(ii) The customized service charge may reimburse the agency up to the actual cost of providing the services in this subsection.

(b) An agency may not assess a customized service charge unless the agency has notified the requestor of the customized service charge to be applied to the request, including an explanation of why the customized service charge applies, a description of the specific expertise, and a reasonable estimate cost of the charge. The notice also must provide the requestor the opportunity to amend his or her request in order to avoid or reduce the cost of a customized service charge.

(4) An agency may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request, including a customized service charge. If an agency makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not

claimed or reviewed, the agency is not obligated to fulfill the balance of the request. An agency may waive any charge assessed for a request pursuant to agency rules and regulations. An agency may enter into any contract, memorandum of understanding, or other agreement with a requestor that provides an alternative fee arrangement to the charges authorized in this section, or in response to a voluminous or frequently occurring request. [2017 c 304 § 3; 2016 c 163 § 4; 2005 c 483 § 2. Prior: 1995 c 397 § 14; 1995 c 341 § 2; 1973 c 1 § 30 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.300.]

Finding—Intent—2016 c 163: See note following RCW 42.56.240.

42.56.130 Other provisions not superseded. The provisions of RCW *42.56.070 (7) and (8) and 42.56.120 that establish or allow agencies to establish the costs charged for photocopies or electronically produced copies of public records do not supersede other statutory provisions, other than in this chapter, authorizing or governing fees for copying public records. [2017 c 304 § 4; 2005 c 274 § 286; 1995 c 341 § 3. Formerly RCW 42.17.305.]

***Reviser's note:** RCW 42.56.070 was amended by 2017 c 304 § 1, deleting subsection (8).

42.56.141 Public records exemptions accountability committee—Wolf depredation information exemption. (Expires June 30, 2022.) By December 1, 2021, the public records exemptions accountability committee, in addition to its duties in RCW 42.56.140, must prepare and submit a report to the legislature that includes recommendations on whether the exemptions created in section 1, chapter 246, Laws of 2017 should be continued or allowed to expire. The report should focus on whether the exemption continues to serve the intent of the legislature in section 1, chapter 246, Laws of 2017 to provide protections of personal information during the period the state establishes and implements new policies regarding wolf management. The committee must consider whether the development of wolf management policy, by the time of the report, has diminished risks of threats to personal safety so that the protection of personal information in section 1, chapter 246, Laws of 2017 is no longer an ongoing necessity. [2017 c 246 § 3.]

Expiration date—2017 c 246: See note following RCW 42.56.430.

42.56.152 Training—Public records officers. (1) Public records officers designated under RCW 42.56.580 and records officers designated under RCW 40.14.040 must complete a training course regarding the provisions of this chapter, and also chapter 40.14 RCW for records retention.

(2) Public records officers must:

(a) Complete training no later than ninety days after assuming responsibilities as a public records officer or records manager; and

(b) Complete refresher training at intervals of no more than four years as long as they maintain the designation.

(3) Training must be consistent with the attorney general's model rules for compliance with the public records act.

(4) Training may be completed remotely with technology including but not limited to internet-based training.

(5) Training must address particular issues related to the retention, production, and disclosure of electronic docu-

ments, including updating and improving technology information services. [2017 c 303 § 2; 2014 c 66 § 4.]

Findings—Short title—Effective date—2014 c 66: See notes following RCW 42.56.150.

42.56.230 Personal information. (Effective July 1, 2018.) The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2)(a) Personal information:

(i) For a child enrolled in licensed child care in any files maintained by the department of children, youth, and families;

(ii) For a child enrolled in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs; or

(iii) For the family members or guardians of a child who is subject to the exemption under this subsection (2) if the family member or guardian has the same last name as the child or if the family member or guardian resides at the same address as the child and disclosure of the family member's or guardian's information would result in disclosure of the personal information exempted under (a)(i) and (ii) of this subsection.

(b) Emergency contact information under this subsection (2) may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation;

(3) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(4) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would: (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial information as defined in RCW 9.35.005 including social security numbers, except when disclosure is expressly required by or governed by other law;

(6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093;

(7)(a) Any record used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicaid.

(b) Information provided under RCW 46.20.111 that indicates that an applicant declined to register with the selective service system.

(c) Any record pertaining to a vehicle license plate, driver's license, or identicaid issued under RCW 46.08.066 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law

enforcement, confidential public health work, public assistance fraud, or child support investigative activity. This exemption does not prevent the release of the total number of vehicle license plates, drivers' licenses, or identicards that, under RCW 46.08.066, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse.

(d) Any record pertaining to a vessel registration issued under RCW 88.02.330 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement activity. This exemption does not prevent the release of the total number of vessel registrations that, under RCW 88.02.330, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse;

(8) All information related to individual claims resolution structured settlement agreements submitted to the board of industrial insurance appeals under RCW 51.04.063, other than final orders from the board of industrial insurance appeals.

Upon request by the legislature, the department of licensing shall provide a report to the legislature containing all of the information in subsection (7)(c) and (d) of this section that is subject to public disclosure; and

(9) Voluntarily submitted information contained in a database that is part of or associated with enhanced 911 emergency communications systems, or information contained or used in emergency notification systems as provided under RCW 38.52.575 and 38.52.577. [2017 3rd sp.s. c 6 § 222. Prior: 2015 c 224 § 2; 2015 c 47 § 1; 2014 c 142 § 1; prior: 2013 c 336 § 3; 2013 c 220 § 1; prior: 2011 c 350 § 2; 2011 c 173 § 1; 2010 c 106 § 102; 2009 c 510 § 8; 2008 c 200 § 5; 2005 c 274 § 403.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—2013 c 336: See note following RCW 46.08.066.

Effective date—2011 c 350: See note following RCW 46.20.111.

Effective date—2010 c 106: See note following RCW 35.102.145.

Effective date—2009 c 510: See RCW 31.45.901.

Finding—Intent—Liberal construction—2009 c 510: See note following RCW 31.45.010.

42.56.240 Investigative, law enforcement, and crime victims. The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

(1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy;

(2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a com-

plaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath;

(3) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

(4) License applications under RCW 9.41.070; copies of license applications or information on the applications may be released to law enforcement or corrections agencies;

(5) Information revealing the identity of child victims of sexual assault who are under age eighteen. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator;

(6) Information contained in a local or regionally maintained gang database as well as the statewide gang database referenced in RCW 43.43.762;

(7) Data from the electronic sales tracking system established in RCW 69.43.165;

(8) Information submitted to the statewide unified sex offender notification and registration program under RCW 36.28A.040(6) by a person for the purpose of receiving notification regarding a registered sex offender, including the person's name, residential address, and email address;

(9) Personally identifying information collected by law enforcement agencies pursuant to local security alarm system programs and vacation crime watch programs. Nothing in this subsection shall be interpreted so as to prohibit the legal owner of a residence or business from accessing information regarding his or her residence or business;

(10) The felony firearm offense conviction database of felony firearm offenders established in RCW 43.43.822;

(11) The identity of a state employee or officer who has in good faith filed a complaint with an ethics board, as provided in RCW 42.52.410, or who has in good faith reported improper governmental action, as defined in RCW 42.40.020, to the auditor or other public official, as defined in RCW 42.40.020;

(12) The following security threat group information collected and maintained by the department of corrections pursuant to RCW 72.09.745: (a) Information that could lead to the identification of a person's security threat group status, affiliation, or activities; (b) information that reveals specific security threats associated with the operation and activities of security threat groups; and (c) information that identifies the number of security threat group members, affiliates, or associates;

(13) The global positioning system data that would indicate the location of the residence of an employee or worker of a criminal justice agency as defined in RCW 10.97.030;

(14) Body worn camera recordings to the extent nondisclosure is essential for the protection of any person's right to privacy as described in RCW 42.56.050, including, but not limited to, the circumstances enumerated in (a) of this sub-

section. A law enforcement or corrections agency shall not disclose a body worn camera recording to the extent the recording is exempt under this subsection.

(a) Disclosure of a body worn camera recording is presumed to be highly offensive to a reasonable person under RCW 42.56.050 to the extent it depicts:

(i)(A) Any areas of a medical facility, counseling, or therapeutic program office where:

(I) A patient is registered to receive treatment, receiving treatment, waiting for treatment, or being transported in the course of treatment; or

(II) Health care information is shared with patients, their families, or among the care team; or

(B) Information that meets the definition of protected health information for purposes of the health insurance portability and accountability act of 1996 or health care information for purposes of chapter 70.02 RCW;

(ii) The interior of a place of residence where a person has a reasonable expectation of privacy;

(iii) An intimate image as defined in RCW 9A.86.010;

(iv) A minor;

(v) The body of a deceased person;

(vi) The identity of or communications from a victim or witness of an incident involving domestic violence as defined in RCW 10.99.020 or sexual assault as defined in RCW 70.125.030, or disclosure of intimate images as defined in RCW 9A.86.010. If at the time of recording the victim or witness indicates a desire for disclosure or nondisclosure of the recorded identity or communications, such desire shall govern; or

(vii) The identifiable location information of a community-based domestic violence program as defined in RCW 70.123.020, or emergency shelter as defined in RCW 70.123.020.

(b) The presumptions set out in (a) of this subsection may be rebutted by specific evidence in individual cases.

(c) In a court action seeking the right to inspect or copy a body worn camera recording, a person who prevails against a law enforcement or corrections agency that withholds or discloses all or part of a body worn camera recording pursuant to (a) of this subsection is not entitled to fees, costs, or awards pursuant to RCW 42.56.550 unless it is shown that the law enforcement or corrections agency acted in bad faith or with gross negligence.

(d) A request for body worn camera recordings must:

(i) Specifically identify a name of a person or persons involved in the incident;

(ii) Provide the incident or case number;

(iii) Provide the date, time, and location of the incident or incidents; or

(iv) Identify a law enforcement or corrections officer involved in the incident or incidents.

(e)(i) A person directly involved in an incident recorded by the requested body worn camera recording, an attorney representing a person directly involved in an incident recorded by the requested body worn camera recording, a person or his or her attorney who requests a body worn camera recording relevant to a criminal case involving that person, or the executive director from either the Washington state commission on African-American affairs, Asian Pacific American affairs, or Hispanic affairs, has the right to obtain

the body worn camera recording, subject to any exemption under this chapter or any applicable law. In addition, an attorney who represents a person regarding a potential or existing civil cause of action involving the denial of civil rights under the federal or state Constitution, or a violation of a United States department of justice settlement agreement, has the right to obtain the body worn camera recording if relevant to the cause of action, subject to any exemption under this chapter or any applicable law. The attorney must explain the relevancy of the requested body worn camera recording to the cause of action and specify that he or she is seeking relief from redaction costs under this subsection (14)(e).

(ii) A law enforcement or corrections agency responding to requests under this subsection (14)(e) may not require the requesting individual to pay costs of any redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of a body worn camera recording.

(iii) A law enforcement or corrections agency may require any person requesting a body worn camera recording pursuant to this subsection (14)(e) to identify himself or herself to ensure he or she is a person entitled to obtain the body worn camera recording under this subsection (14)(e).

(f)(i) A law enforcement or corrections agency responding to a request to disclose body worn camera recordings may require any requester not listed in (e) of this subsection to pay the reasonable costs of redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of the body worn camera recording prior to disclosure only to the extent necessary to comply with the exemptions in this chapter or any applicable law.

(ii) An agency that charges redaction costs under this subsection (14)(f) must use redaction technology that provides the least costly commercially available method of redacting body worn camera recordings, to the extent possible and reasonable.

(iii) In any case where an agency charges a requestor for the costs of redacting a body worn camera recording under this subsection (14)(f), the time spent on redaction of the recording shall not count towards the agency's allocation of, or limitation on, time or costs spent responding to public records requests under this chapter, as established pursuant to local ordinance, policy, procedure, or state law.

(g) For purposes of this subsection (14):

(i) "Body worn camera recording" means a video and/or sound recording that is made by a body worn camera attached to the uniform or eyewear of a law enforcement or corrections officer from a covered jurisdiction while in the course of his or her official duties and that is made on or after June 9, 2016, and prior to July 1, 2019; and

(ii) "Covered jurisdiction" means any jurisdiction that has deployed body worn cameras as of June 9, 2016, regardless of whether or not body worn cameras are being deployed in the jurisdiction on June 9, 2016, including, but not limited to, jurisdictions that have deployed body worn cameras on a pilot basis.

(h) Nothing in this subsection shall be construed to restrict access to body worn camera recordings as otherwise permitted by law for official or recognized civilian and accountability bodies or pursuant to any court order.

(i) Nothing in this section is intended to modify the obligations of prosecuting attorneys and law enforcement under

Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v. Whitley*, 541 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and the relevant Washington court criminal rules and statutes.

(j) A law enforcement or corrections agency must retain body worn camera recordings for at least sixty days and thereafter may destroy the records;

(15) Any records and information contained within the statewide sexual assault kit tracking system established in RCW 43.43.545; and

(16)(a) Survivor communications with, and survivor records maintained by, campus-affiliated advocates.

(b) Nothing in this subsection shall be construed to restrict access to records maintained by a campus-affiliated advocate in the event that:

(i) The survivor consents to inspection or copying;

(ii) There is a clear, imminent risk of serious physical injury or death of the survivor or another person;

(iii) Inspection or copying is required by federal law; or

(iv) A court of competent jurisdiction mandates that the record be available for inspection or copying.

(c) "Campus-affiliated advocate" and "survivor" have the definitions in RCW 28B.112.030; and

(17) Information and records prepared, owned, used, or retained by the Washington association of sheriffs and police chiefs and information and records prepared, owned, used, or retained by the Washington state patrol pursuant to chapter 261, Laws of 2017. [2017 c 261 § 7; 2017 c 72 § 3. Prior: 2016 c 173 § 8; 2016 c 163 § 2; prior: 2015 c 224 § 3; 2015 c 91 § 1; prior: 2013 c 315 § 2; 2013 c 190 § 7; 2013 c 183 § 1; 2012 c 88 § 1; prior: 2010 c 266 § 2; 2010 c 182 § 5; 2008 c 276 § 202; 2005 c 274 § 404.]

Reviser's note: This section was amended by 2017 c 72 § 3 and by 2017 c 261 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2017 c 72: See note following RCW 28B.112.030.

Finding—Intent—2016 c 173: See note following RCW 43.43.545.

Finding—Intent—2016 c 163: "The legislature finds that technological developments present opportunities for additional truth-finding, transparency, and accountability in interactions between law enforcement or corrections officers and the public. The legislature intends to promote transparency and accountability by permitting access to video and/or sound recordings of interactions with law enforcement or corrections officers, while preserving the public's reasonable expectation that the recordings of these interactions will not be publicly disclosed to enable voyeurism or exploitation." [2016 c 163 § 1.]

Finding—2013 c 190: See note following RCW 42.52.410.

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

42.56.250 Employment and licensing. The following employment and licensing information is exempt from public inspection and copying under this chapter:

(1) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination;

(2) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;

(3) Professional growth plans (PGPs) in educator license renewals submitted through the eCert system in the office of the superintendent of public instruction;

(4) The following information held by any public agency in personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency: Residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, driver's license numbers, identicard numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency. For purposes of this subsection, "employees" includes independent provider home care workers as defined in RCW 74.39A.240;

(5) Information that identifies a person who, while an agency employee: (a) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (b) requests his or her identity or any identifying information not be disclosed;

(6) Investigative records compiled by an employing agency conducting an active and ongoing investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment;

(7) Criminal history records checks for board staff finalist candidates conducted pursuant to RCW 43.33A.025;

(8) Except as provided in *RCW 47.64.220, salary and benefit information for maritime employees collected from private employers under *RCW 47.64.220(1) and described in *RCW 47.64.220(2);

(9) Photographs and month and year of birth in the personnel files of employees and workers of criminal justice agencies as defined in RCW 10.97.030. The news media, as defined in RCW 5.68.010(5), shall have access to the photographs and full date of birth. For the purposes of this subsection, news media does not include any person or organization of persons in the custody of a criminal justice agency as defined in RCW 10.97.030; and

(10) The global positioning system data that would indicate the location of the residence of a public employee or volunteer using the global positioning system recording device. [2017 c 38 § 1; 2017 c 16 § 1; 2014 c 106 § 1. Prior: 2010 c 257 § 1; 2010 c 128 § 9; 2006 c 209 § 6; 2005 c 274 § 405.]

Reviser's note: *(1) RCW 47.64.220 was repealed by 2010 c 283 § 20.

(2) This section was amended by 2017 c 16 § 1 and by 2017 c 38 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

42.56.270 Financial, commercial, and proprietary information. The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under *chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), marijuana producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW

28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information;

(21) Market share data submitted by a manufacturer under RCW 70.95N.190(4);

(22) Financial information supplied to the department of financial institutions or to a portal under **RCW 21.20.883, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW 21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities;

(23) Unaggregated or individual notices of a transfer of crude oil that is financial, proprietary, or commercial information, submitted to the department of ecology pursuant to RCW 90.56.565(1)(a), and that is in the possession of the department of ecology or any entity with which the department of ecology has shared the notice pursuant to RCW 90.56.565;

(24) Financial institution and retirement account information, and building security plan information, supplied to the liquor and cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345, when filed by or on behalf of a licensee or prospective licensee for the purpose of obtaining, maintaining, or renewing a license to produce, process, transport, or sell marijuana as allowed under chapter 69.50 RCW;

(25) Marijuana transport information, vehicle and driver identification data, and account numbers or unique access identifiers issued to private entities for traceability system access, submitted by an individual or business to the liquor and cannabis board under the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345 for the purpose of marijuana product traceability. Disclosure to local, state, and federal officials is not considered public disclosure for purposes of this section;

(26) Financial and commercial information submitted to or obtained by the retirement board of any city that is responsible for the management of an employees' retirement system pursuant to the authority of chapter 35.39 RCW, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the retirement fund or to result in private loss to the providers of this information except that (a) the names and commitment amounts of the private funds in which retirement funds are invested and (b) the aggregate quarterly performance results for a retirement fund's portfolio of investments in such funds are subject to disclosure;

(27) Proprietary financial, commercial, operations, and technical and research information and data submitted to or obtained by the liquor and cannabis board in applications for marijuana research licenses under RCW 69.50.372, or in reports submitted by marijuana research licensees in accordance with rules adopted by the liquor and cannabis board under RCW 69.50.372; and

(28) Trade secrets, technology, proprietary information, and financial considerations contained in any agreements or contracts, entered into by a licensed marijuana business under RCW 69.50.395, which may be submitted to or obtained by

the state liquor and cannabis board. [2017 c 317 § 17. Prior: 2016 sp.s. c 9 § 3; 2016 sp.s. c 8 § 1; 2016 c 178 § 1; 2015 c 274 § 24; prior: 2014 c 192 § 6; 2014 c 174 § 5; 2014 c 144 § 6; 2013 c 305 § 14; 2011 1st sp.s. c 14 § 15; 2009 c 394 § 3; 2008 c 306 § 1; prior: 2007 c 470 § 2; (2007 c 470 § 1 expired June 30, 2008); 2007 c 251 § 13; (2007 c 251 § 12 expired June 30, 2008); 2007 c 197 § 4; (2007 c 197 § 3 expired June 30, 2008); prior: 2006 c 369 § 2; 2006 c 341 § 6; 2006 c 338 § 5; 2006 c 302 § 12; 2006 c 209 § 7; 2006 c 183 § 37; 2006 c 171 § 8; 2005 c 274 § 407.]

Reviser's note: *(1) Chapter 70.95H RCW was repealed in its entirety by 2017 3rd sp.s. c 25 § 9.

***(2) RCW 21.20.883 was repealed by 2017 c 113 § 2.

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

Effective date—2015 c 274: See note following RCW 90.56.005.

Intent—2014 c 174: See note following RCW 28B.50.902.

Short title—Findings—Intent—2014 c 144: See notes following RCW 21.20.880.

Effective date—2013 c 305: See note following RCW 70.95N.020.

Intent—2009 c 394: See note following RCW 28B.20.150.

Effective date—2008 c 306 § 1: "Section 1 of this act takes effect June 30, 2008." [2008 c 306 § 2.]

Effective date—2007 c 470 § 2: "Section 2 of this act takes effect June 30, 2008." [2007 c 470 § 4.]

Expiration date—2007 c 470 § 1: "Section 1 of this act expires June 30, 2008." [2007 c 470 § 3.]

Effective date—2007 c 251 § 13: "Section 13 of this act takes effect June 30, 2008." [2007 c 251 § 18.]

Expiration date—2007 c 251 § 12: "Section 12 of this act expires June 30, 2008." [2007 c 251 § 17.]

Captions not law—Severability—2007 c 251: See notes following RCW 35.104.010.

Effective date—2007 c 197 § 4: "Section 4 of this act takes effect June 30, 2008." [2007 c 197 § 11.]

Expiration date—2007 c 197 § 3: "Section 3 of this act expires June 30, 2008." [2007 c 197 § 10.]

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

Additional notes found at www.leg.wa.gov

42.56.330 Public utilities and transportation. (Effective January 1, 2018.) The following information relating to public utilities and transportation is exempt from disclosure under this chapter:

(1) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 or 81.77.210 that a court has determined are confidential under RCW 80.04.095 or 81.77.210;

(2) The addresses, telephone numbers, electronic contact information, and customer-specific utility usage and billing information in increments less than a billing cycle of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order;

(3) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. Participants' names, general

locations, and point of contact may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides;

(4) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons;

(5) The personally identifying information of persons who acquire and use transit passes or other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose personally identifying information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media for the purpose of preventing fraud. As used in this subsection, "personally identifying information" includes acquisition or use information pertaining to a specific, individual transit pass or fare payment media.

(a) Information regarding the acquisition or use of transit passes or fare payment media may be disclosed in aggregate form if the data does not contain any personally identifying information.

(b) Personally identifying information may be released to law enforcement agencies if the request is accompanied by a court order;

(6) Any information obtained by governmental agencies that is collected by the use of a motor carrier intelligent transportation system or any comparable information equipment attached to a truck, tractor, or trailer; however, the information may be given to other governmental agencies or the owners of the truck, tractor, or trailer from which the information is obtained. As used in this subsection, "motor carrier" has the same definition as provided in RCW 81.80.010;

(7) The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. For these purposes aggregate data may include the census tract of the account holder as long as any individual personally identifying information is not released. Personally identifying information may be released to law enforcement agencies only for toll enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order;

(8) The personally identifying information of persons who acquire and use a driver's license or identicard that includes a radio frequency identification chip or similar technology to facilitate border crossing. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. Personally identifying information may be released to law enforcement agencies only for United States customs and border protection enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order; and

(9) Personally identifying information included in safety complaints submitted under chapter 81.61 RCW. [2017 c

333 § 6; 2015 c 224 § 4. Prior: 2014 c 170 § 2; 2014 c 33 § 1; 2012 c 68 § 4; 2010 c 128 § 8; 2008 c 200 § 6; 2007 c 197 § 5; 2006 c 209 § 8; 2005 c 274 § 413.]

Effective date—2017 c 333: See note following RCW 81.61.010.

42.56.355 Interstate medical licensure compact. (1) Information distributed to any Washington health profession board or commission by an interstate health professions licensure compact or member boards as described in RCW 18.71B.080(6) of the interstate medical licensure compact is exempt from disclosure under this chapter. This exemption does not prohibit the requestor from requesting these documents from the state of origin.

(2) This exemption does not pertain to any records created by Washington health profession boards or commissions from the documents described in subsection (1) of this section. Records created by Washington health profession boards or commissions from the documents described in subsection (1) of this section may be exempt under other sections of this chapter. [2017 c 195 § 25.]

42.56.400 Insurance and financial institutions. The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30A.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Documents, materials, or information obtained by the insurance commissioner under RCW 48.31B.015(2) (l) and (m), 48.31B.025, 48.31B.030, and 48.31B.035, all of which are confidential and privileged;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140;

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595;

(16) Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii);

(17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under RCW 48.31.025 and 48.99.017, which are records under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court;

(18) Documents, materials, or information obtained by the insurance commissioner under RCW 48.13.151;

(19) Data, information, and documents provided by a carrier pursuant to section 1, chapter 172, Laws of 2010;

(20) Information in a filing of usage-based insurance about the usage-based component of the rate pursuant to RCW 48.19.040(5)(b);

(21) Data, information, and documents, other than those described in *RCW 48.02.210(2), that are submitted to the office of the insurance commissioner by an entity providing health care coverage pursuant to RCW **28A.400.275 and *48.02.210;

(22) Data, information, and documents obtained by the insurance commissioner under RCW 48.29.017;

(23) Information not subject to public inspection or public disclosure under RCW 48.43.730(5);

(24) Documents, materials, or information obtained by the insurance commissioner under chapter 48.05A RCW;

(25) Documents, materials, or information obtained by the insurance commissioner under RCW 48.74.025, 48.74.028, 48.74.100(6), 48.74.110(2) (b) and (c), and 48.74.120 to the extent such documents, materials, or infor-

mation independently qualify for exemption from disclosure as documents, materials, or information in possession of the commissioner pursuant to a financial conduct examination and exempt from disclosure under RCW 48.02.065; and

(26) Nonpublic personal health information obtained by, disclosed to, or in the custody of the insurance commissioner, as provided in RCW 48.02.068; and

(27) Data, information, and documents obtained by the insurance commissioner under RCW 48.02.230. [2017 3rd sp.s. c 30 § 2; 2017 c 193 § 2. Prior: 2016 c 142 § 20; (2016 c 142 § 19 expired July 1, 2017); 2016 c 122 § 4; prior: 2015 c 122 § 14; 2015 c 122 § 13; 2015 c 17 § 11; 2015 c 17 § 10; prior: 2013 c 277 § 5; 2013 c 65 § 5; 2012 2nd sp.s. c 3 § 8; 2012 c 222 § 2; 2011 c 188 § 21; prior: 2010 c 172 § 2; 2010 c 97 § 3; 2009 c 104 § 23; prior: 2007 c 197 § 7; 2007 c 117 § 36; 2007 c 82 § 17; prior: 2006 c 284 § 17; 2006 c 8 § 210; 2005 c 274 § 420.]

Reviser's note: *(1) RCW 48.02.210 was repealed by 2017 3rd sp.s. c 7 § 2.

***(2) The required report to the insurance commissioner was eliminated by 2017 3rd sp.s. c 7 § 1.

(3) This section was amended by 2017 c 193 § 2 and by 2017 3rd sp.s. c 30 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2017 3rd sp.s. c 30: See note following RCW 48.02.230.

Effective date—2016 c 142 § 20: "Section 20 of this act takes effect July 1, 2017." [2016 c 142 § 23.]

Expiration date—2016 c 142 § 19: "Section 19 of this act expires July 1, 2017." [2016 c 142 § 22.]

Effective date—2016 c 142: See note following RCW 48.74.010.

Intent—2016 c 122: See note following RCW 48.46.243.

Effective dates—2015 c 122: See note following RCW 48.31B.005.

Short title—Effective dates—2015 c 17: See RCW 48.05A.900 and 48.05A.901.

Findings—Goals—Intent—2012 2nd sp.s. c 3: See note following RCW 28A.400.275.

Effective date—2011 c 188: See RCW 48.13.900.

Effective date—2007 c 117: See RCW 48.17.901.

Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8: See notes following RCW 5.64.010.

Additional notes found at www.leg.wa.gov

42.56.420 Security. The following information relating to security is exempt from disclosure under this chapter:

(1) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings pro-

vided to state or local government officials related to domestic preparedness for acts of terrorism;

(2) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, or secure facility for persons civilly confined under chapter 71.09 RCW, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility, secure facility for persons civilly confined under chapter 71.09 RCW, or any individual's safety;

(3) Information compiled by school districts or schools in the development of their comprehensive safe school plans under RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school;

(4) Information regarding the public and private infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities, and other such information the release of which may increase risk to the confidentiality, integrity, or availability of security, information technology infrastructure, or assets;

(5) The system security and emergency preparedness plan required under RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180; and

(6) Personally identifiable information of employees, and other security information, of a private cloud service provider that has entered into a criminal justice information services agreement as contemplated by the United States department of justice criminal justice information services security policy, as authorized by 28 C.F.R. Part 20. [2017 c 149 § 1; 2016 c 153 § 1; 2013 2nd sp.s. c 33 § 9; 2009 c 67 § 1; 2005 c 274 § 422.]

42.56.430 Fish and wildlife. (Effective until June 30, 2022.) The following information relating to fish and wildlife is exempt from disclosure under this chapter:

(1) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data, however, this information may be released to government agencies concerned with the management of fish and wildlife resources;

(2) Sensitive fish and wildlife data. Sensitive fish and wildlife data may be released to the following entities and their agents for fish, wildlife, land management purposes, or scientific research needs: Government agencies, public utilities, and accredited colleges and universities. Sensitive fish and wildlife data may be released to tribal governments. Sensitive fish and wildlife data may also be released to the owner, lessee, or right-of-way or easement holder of the private land to which the data pertains. The release of sensitive fish and wildlife data may be subject to a confidentiality agreement, except upon release of sensitive fish and wildlife

data to the owner, lessee, or right-of-way or easement holder of private land who initially provided the data. Sensitive fish and wildlife data does not include data related to reports of predatory wildlife as specified in RCW 77.12.885. Sensitive fish and wildlife data must meet at least one of the following criteria of this subsection as applied by the department of fish and wildlife:

(a) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(b) Radio frequencies used in, or locational data generated by, telemetry studies; or

(c) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(i) The species has a known commercial or black market value;

(ii) There is a history of malicious take of that species and the species behavior or ecology renders it especially vulnerable;

(iii) There is a known demand to visit, take, or disturb the species; or

(iv) The species has an extremely limited distribution and concentration;

(3) The following information regarding any damage prevention cooperative agreement, or nonlethal preventative measures deployed to minimize wolf interactions with pets and livestock:

(a) The name, telephone number, residential address, and other personally identifying information of any person who has a current damage prevention cooperative agreement with the department, including a pet or livestock owner, and his or her employees or immediate family members, who agrees to deploy, or is responsible for the deployment of, nonlethal, preventative measures; and

(b) The legal description or name of any residential property, ranch, or farm, that is owned, leased, or used by any person included in (a) of this subsection;

(4) The following information regarding a reported depredation by wolves on pets or livestock:

(a) The name, telephone number, residential address, and other personally identifying information of:

(i) Any person who reported the depredation;

(ii) Any pet or livestock owner, and his or her employees or immediate family members, whose pet or livestock was the subject of a reported depredation; and

(iii) Any department of fish and wildlife employee, range rider contractor, or trapper contractor who directly:

(A) Responds to a depredation; or

(B) Assists in the lethal removal of a wolf; and

(b) The legal description, location coordinates, or name that identifies any residential property, or ranch or farm that contains a residence, that is owned, leased, or used by any person included in (a) of this subsection;

(5) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag; however, the department

of fish and wildlife may disclose personally identifying information to:

(a) Government agencies concerned with the management of fish and wildlife resources;

(b) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(c) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040;

(6) Information that the department of fish and wildlife has received or accessed but may not disclose due to confidentiality requirements in the Magnuson-Stevens fishery conservation and management reauthorization act of 2006 (16 U.S.C. Sec. 1861(h)(3) and (i), and Sec. 1881a(b));

(7) The following tribal fish and shellfish harvest information, shared with the department of fish and wildlife:

(a) Fisher name;

(b) Fisher signature;

(c) Total harvest value per species;

(d) Total harvest value;

(e) Price per pound; and

(f) Tribal tax information; and

(8) The following commercial shellfish harvest information, shared with the department of fish and wildlife:

(a) Individual farmer name;

(b) Individual farmer signature;

(c) Total harvest value per species;

(d) Total harvest value;

(e) Price per pound; and

(f) Tax information. [2017 c 246 § 1; 2017 c 71 § 1; 2008 c 252 § 1; 2007 c 293 § 1; 2005 c 274 § 423.]

Reviser's note: This section was amended by 2017 c 71 § 1 and by 2017 c 246 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2017 c 246: "This act expires June 30, 2022." [2017 c 246 § 4.]

42.56.430 Fish and wildlife. (Effective June 30, 2022.)

The following information relating to fish and wildlife is exempt from disclosure under this chapter:

(1) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data, however, this information may be released to government agencies concerned with the management of fish and wildlife resources;

(2) Sensitive fish and wildlife data. Sensitive fish and wildlife data may be released to the following entities and their agents for fish, wildlife, land management purposes, or scientific research needs: Government agencies, public utilities, and accredited colleges and universities. Sensitive fish and wildlife data may be released to tribal governments. Sensitive fish and wildlife data may also be released to the owner, lessee, or right-of-way or easement holder of the private land to which the data pertains. The release of sensitive fish and wildlife data may be subject to a confidentiality agreement, except upon release of sensitive fish and wildlife data to the owner, lessee, or right-of-way or easement holder

of private land who initially provided the data. Sensitive fish and wildlife data does not include data related to reports of predatory wildlife as specified in RCW 77.12.885. Sensitive fish and wildlife data must meet at least one of the following criteria of this subsection as applied by the department of fish and wildlife:

(a) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(b) Radio frequencies used in, or locational data generated by, telemetry studies; or

(c) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(i) The species has a known commercial or black market value;

(ii) There is a history of malicious take of that species and the species behavior or ecology renders it especially vulnerable;

(iii) There is a known demand to visit, take, or disturb the species; or

(iv) The species has an extremely limited distribution and concentration;

(3) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag; however, the department of fish and wildlife may disclose personally identifying information to:

(a) Government agencies concerned with the management of fish and wildlife resources;

(b) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(c) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040;

(4) Information that the department of fish and wildlife has received or accessed but may not disclose due to confidentiality requirements in the Magnuson-Stevens fishery conservation and management reauthorization act of 2006 (16 U.S.C. Sec. 1861(h)(3) and (i), and Sec. 1881a(b));

(5) The following tribal fish and shellfish harvest information, shared with the department of fish and wildlife:

(a) Fisher name;

(b) Fisher signature;

(c) Total harvest value per species;

(d) Total harvest value;

(e) Price per pound; and

(f) Tribal tax information; and

(6) The following commercial shellfish harvest information, shared with the department of fish and wildlife:

(a) Individual farmer name;

(b) Individual farmer signature;

(c) Total harvest value per species;

(d) Total harvest value;

(e) Price per pound; and

(f) Tax information. [2017 c 71 § 1; 2008 c 252 § 1; 2007 c 293 § 1; 2005 c 274 § 423.]

42.56.520 Prompt responses required. (1) Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives. Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond in one of the ways provided in this subsection (1):

- (a) Providing the record;
- (b) Providing an internet address and link on the agency's web site to the specific records requested, except that if the requester notifies the agency that he or she cannot access the records through the internet, then the agency must provide copies of the record or allow the requester to view copies using an agency computer;
- (c) Acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request;
- (d) Acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and asking the requestor to provide clarification for a request that is unclear, and providing, to the greatest extent possible, a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request if it is not clarified; or
- (e) Denying the public record request.

(2) Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(3)(a) In acknowledging receipt of a public record request that is unclear, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives may ask the requestor to clarify what information the requestor is seeking.

(b) If the requestor fails to respond to an agency request to clarify the request, and the entire request is unclear, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives need not respond to it. Otherwise, the agency must respond, pursuant to this section, to those portions of the request that are clear.

(4) Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives for the purposes of judicial review. [2017 c 303 § 3; 2010 c 69 § 2; 1995

c 397 § 15; 1992 c 139 § 6; 1975 1st ex.s. c 294 § 18; 1973 c 1 § 32 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.320.]

Finding—2010 c 69: "The internet provides for instant access to public records at a significantly reduced cost to the agency and the public. Agencies are encouraged to make commonly requested records available on agency web sites. When an agency has made records available on its web site, members of the public with computer access should be encouraged to preserve taxpayer resources by accessing those records online." [2010 c 69 § 1.]

42.56.550 Judicial review of agency actions. (1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request or a reasonable estimate of the charges to produce copies of public records, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(3) Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

(5) For actions under this section against counties, the venue provisions of RCW 36.01.050 apply.

(6) Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis. [2017 c 304 § 5; 2011 c 273 § 1. Prior: 2005 c 483 § 5; 2005 c 274 § 288; 1992 c 139 § 8; 1987 c 403 § 5; 1975 1st ex.s. c 294 § 20; 1973 c 1 § 34 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.340.]

Intent—Severability—1987 c 403: See notes following RCW 42.56.050.

Application of chapter 300, Laws of 2011: See note following RCW 42.56.565.

42.56.570 Explanatory pamphlet—Advisory model rules—Consultation and training services. (1) The attorney general's office shall publish, and update when appropriate, a pamphlet, written in plain language, explaining this chapter.

(2) The attorney general, by February 1, 2006, shall adopt by rule advisory model rules for state and local agencies, as defined in RCW 42.56.010, addressing the following subjects:

- (a) Providing fullest assistance to requestors;
- (b) Fulfilling large requests in the most efficient manner;
- (c) Fulfilling requests for electronic records; and
- (d) Any other issues pertaining to public disclosure as determined by the attorney general.

(3) The attorney general, in his or her discretion, may from time to time revise the model rule[s].

(4) Local agencies should consult the advisory model rules when establishing local ordinances for compliance with the requirements and responsibilities of this chapter.

(5) Until June 30, 2020, the attorney general must establish a consultation program to provide information for developing best practices for local agencies requesting assistance in compliance with this chapter including, but not limited to: Responding to records requests, seeking additional public and private resources for developing and updating technology information services, and mitigating liability and costs of compliance. The attorney general may develop the program in conjunction with the advisory model rule and may collaborate with the chief information officer, the state archivist, and other relevant agencies and organizations in developing and managing the program. The program in this subsection ceases to exist June 30, 2020.

(6) Until June 30, 2020, the state archivist must offer and provide consultation and training services for local agencies on improving record retention practices. [2017 c 303 § 4; 2007 c 197 § 8. Prior: 2005 c 483 § 4; 2005 c 274 § 290; 1992 c 139 § 9. Formerly RCW 42.17.348.]

42.56.640 Vulnerable individuals, in-home caregivers for vulnerable populations. (1) Sensitive personal information of vulnerable individuals and sensitive personal information of in-home caregivers for vulnerable populations is exempt from inspection and copying under this chapter.

(2) The following definitions apply to this section:

(a) "In-home caregivers for vulnerable populations" means: (i) Individual providers as defined in RCW 74.39A.240, (ii) home care aides as defined in RCW 18.88B.010, and (iii) family child care providers as defined in RCW 41.56.030.

(b) "Sensitive personal information" means names, addresses, GPS [global positioning system] coordinates, telephone numbers, email addresses, social security numbers, driver's license numbers, or other personally identifying information.

(c) "Vulnerable individual" has the meaning set forth in RCW 9.35.005. [2017 c 4 § 8 (Initiative Measure No. 1501, approved November 8, 2016).]

Intent—2017 c 4 §§ 8, 10, and 11 (Initiative Measure No. 1501): "It is the intent of part three of this act to protect seniors and vulnerable individuals from identity theft and other financial crimes by preventing the release of public records that could be used to victimize them. Sensitive personal information about in-home caregivers for vulnerable populations is protected

because its release could facilitate identity crimes against seniors, vulnerable individuals, and other vulnerable populations that these caregivers serve." [2017 c 4 § 7 (Initiative Measure No. 1501, approved November 8, 2016).]

Short title—Intent—Construction—2017 c 4 (Initiative Measure No. 1501): See notes following RCW 9.35.005.

42.56.645 Release of public information—2017 c 4 (Initiative Measure No. 1501). [(1)] Nothing in chapter 4, Laws of 2017 shall prevent the release of public information in the following circumstances:

(a) The information is released to a governmental body, including the state's area agencies on aging, and the recipient agrees to protect the confidentiality of the information;

(b) The information concerns individuals who have been accused of or disciplined for abuse, neglect, exploitation, abandonment, or other acts involving the victimization of individuals or other professional misconduct;

(c) The information is being released as part of a judicial or quasi-judicial proceeding and subject to a court's order protecting the confidentiality of the information and allowing it to be used solely in that proceeding;

(d) The information is being provided to a representative certified or recognized under RCW 41.56.080, or as necessary for the provision of fringe benefits to public employees, and the recipient agrees to protect the confidentiality of the information;

(e) The disclosure is required by federal law;

(f) The disclosure is required by a contract between the state and a third party, and the recipient agrees to protect the confidentiality of the information;

(g) The information is released to a person or entity under contract with the state to manage, administer, or provide services to vulnerable residents, or under contract with the state to engage in research or analysis about state services for vulnerable residents, and the recipient agrees to protect the confidentiality of the information; or

(h) Information about specific public employee(s) is released to a bona fide news organization that requests such information to conduct an investigation into, or report upon, the actions of such specific public employee(s).

(2) Nothing in chapter 4, Laws of 2017 shall prevent an agency from providing contact information for the purposes of RCW 74.39A.056(3) and 74.39A.250. Nothing in chapter 4, Laws of 2017 shall prevent an agency from confirming the licensing or certification status of a caregiver on an individual basis to allow consumers to ensure the licensing or certification status of an individual caregiver. [2017 c 4 § 11 (Initiative Measure No. 1501, approved November 8, 2016).]

Intent—2017 c 4 §§ 8, 10, and 11 (Initiative Measure No. 1501): See notes following RCW 42.56.640.

Short title—Intent—Construction—2017 c 4 (Initiative Measure No. 1501): See notes following RCW 9.35.005.

42.56.901 through 42.56.903 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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43.365	Motion picture competitiveness program.
43.374	Washington global health technologies and product development competitiveness.
43.382	Developmental disabilities ombuds.

Chapter 43.01 RCW

STATE OFFICERS—GENERAL PROVISIONS

Sections

43.01.040	Vacations—Computation and accrual—Transfer—Statement of necessity required for extension of unused leave.
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43.01.041	Accrued vacation leave—Payment upon termination of employment.
43.01.044	Vacations—Accumulation of leave in excess of two hundred forty hours authorized without statement of necessity— Requirements of statement of necessity.

43.01.040 Vacations—Computation and accrual—Transfer—Statement of necessity required for extension of unused leave. Each subordinate officer and employee of the several offices, departments, and institutions of the state government shall be entitled under their contract of employment with the state government to not less than eight hours of vacation leave with full pay for each month of employment.

Each such subordinate officer and employee shall be entitled under such contract of employment to not less than eight additional hours of vacation with full pay each year for satisfactorily completing the first two, three, and five continuous years of employment respectively.

Such part-time officers or employees of the state government who are employed on a regular schedule of duration of not less than one year shall be entitled under their contract of employment to that fractional part of the vacation leave that the total number of hours of such employment bears to the total number of hours of full-time employment.

Each subordinate officer and employee of the several offices, departments, and institutions of the state government shall be entitled under his or her contract of employment with the state government to accrue unused vacation leave not to exceed two hundred forty hours. However, employees of the Washington state ferries covered by collective bargaining agreements containing provisions in effect on June 30, 2017, allowing accrual of unused vacation leave not to exceed three hundred twenty hours shall be allowed to continue the higher accrual limit until such time as those provisions are modified through collective bargaining, or the bargaining unit changes its exclusive representative or is decertified. Officers and employees transferring within the several offices, departments, and institutions of the state government shall be entitled to transfer such accrued vacation leave to each succeeding state office, department, or institution. All vacation leave shall be taken at the time convenient to the employing office, department, or institution: PROVIDED, That if a subordinate officer's or employee's request for vacation leave is deferred by reason of the convenience of the employing office, department, or institution, and a statement of the necessity therefor is retained by the agency, then the aforesaid maximum two hundred forty hours of accrued unused vacation leave shall be extended for each month said leave is so deferred. [2017 c 168 § 1; 2017 c 167 § 1; 2011 1st sp.s. c 43 § 449; 2009 c 549 § 5001; 1984 c 184 § 19; 1982 1st ex.s. c 51 § 2; 1965 ex.s. c 13 § 1; 1965 c 8 § 43.01.040. Prior: 1955 c 140 § 1; 1921 c 7 § 133; RRS § 10891.]

Reviser's note: This section was amended by 2017 c 167 § 1 and by 2017 c 168 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2017 c 168: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2017." [2017 c 168 § 2.]

Effective date—2017 c 167: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2017." [2017 c 167 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Military leave of absence: RCW 38.40.060.

Additional notes found at www.leg.wa.gov

43.01.041 Accrued vacation leave—Payment upon termination of employment. Officers and employees referred to in RCW 43.01.040 whose employment is terminated by their death, reduction in force, resignation, dismissal, or retirement, who have been employed for at least six continuous months, and who have accrued vacation leave as specified in RCW 43.01.040 or 43.01.044, shall be paid therefor under their contract of employment, or their estate if they are deceased, or if the employee in case of voluntary resignation has provided adequate notice of termination. Vacation leave accumulated under RCW 43.01.044 is not to be included in the computation of retirement benefits. From July 1, 2011, through June 29, 2013, the amount of pay received by an employee under the provisions of this section shall not be reduced by any temporary salary reduction.

Should the legislature revoke any benefits or rights provided under chapter 292, Laws of 1985, no affected officer or employee shall be entitled thereafter to receive such benefits or exercise such rights as a matter of contractual right. [2017 c 167 § 3; 2011 1st sp.s. c 39 § 13; 1985 c 292 § 1; 1984 c 184 § 20; 1982 1st ex.s. c 51 § 3; 1965 c 8 § 43.01.041. Prior: 1955 c 140 § 2.]

Effective date—2017 c 167: See note following RCW 43.01.040.

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Additional notes found at www.leg.wa.gov

43.01.044 Vacations—Accumulation of leave in excess of two hundred forty hours authorized without statement of necessity—Requirements of statement of necessity. As an alternative, in addition to the provisions of RCW 43.01.040 authorizing the accumulation of vacation leave in excess of two hundred forty hours with the filing of a statement of necessity, vacation leave in excess of two hundred forty hours may also be accumulated as provided in this section but without the filing of a statement of necessity. The accumulation of leave under this alternative method shall be governed by the following provisions:

(1) Each subordinate officer and employee of the several offices, departments, and institutions of state government may accumulate the vacation leave hours between the time two hundred forty hours is accrued and his or her anniversary date of state employment.

(2) All vacation hours accumulated under this section shall be used by the anniversary date and at a time convenient to the employing office, department, or institution. If an officer or employee does not use the excess leave by the anniversary date, then such leave shall be automatically extinguished and considered to have never existed.

(3) This section shall not result in any increase in a retirement allowance under any public retirement system in this state.

(4) Should the legislature revoke any benefits or rights provided under this section, no affected officer or employee shall be entitled thereafter to receive such benefits or exercise such rights as a matter of contractual right.

(5) Vacation leave credit acquired and accumulated under this section shall never, regardless of circumstances, be deferred by the employing office, department, or institution by filing a statement of necessity under the provisions of RCW 43.01.040.

(6) Notwithstanding any other provision of this chapter, on or after July 24, 1983, a statement of necessity for excess leave shall, as [at] a minimum, include the following: (a) The specific number of hours of excess leave; and (b) the date on which it was authorized. A copy of any such authorization shall be sent to the department of retirement systems. [2017 c 167 § 2; 1983 c 283 § 1.]

Effective date—2017 c 167: See note following RCW 43.01.040.

**Chapter 43.03 RCW
SALARIES AND EXPENSES**

Sections

- 43.03.011 Salaries of state elected officials of the executive branch.
- 43.03.012 Salaries of judges.
- 43.03.013 Salaries of members of the legislature.

43.03.011 Salaries of state elected officials of the executive branch. Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 43.03.010 and 43.03.310, the annual salaries of the state elected officials of the executive branch shall be as follows:

- (1) Effective September 1, 2016:
 - (a) Governor \$173,617
 - (b) Lieutenant governor \$101,889
 - (c) Secretary of state \$121,663
 - (d) Treasurer \$140,438
 - (e) Auditor. \$121,663
 - (f) Attorney general. \$159,395
 - (g) Superintendent of public instruction \$134,212
 - (h) Commissioner of public lands. \$132,858
 - (i) Insurance commissioner. \$124,061
- (2) Effective September 1, 2017:
 - (a) Governor \$175,353
 - (b) Lieutenant governor \$102,908
 - (c) Secretary of state \$122,880
 - (d) Treasurer \$143,247
 - (e) Auditor. \$122,880
 - (f) Attorney general. \$160,989
 - (g) Superintendent of public instruction \$135,554
 - (h) Commissioner of public lands. \$135,515
 - (i) Insurance commissioner. \$125,302
- (3) Effective September 1, 2018:
 - (a) Governor \$177,107
 - (b) Lieutenant governor \$103,937
 - (c) Secretary of state \$124,108
 - (d) Treasurer \$144,679
 - (e) Auditor. \$124,108
 - (f) Attorney general. \$162,599
 - (g) Superintendent of public instruction \$136,910
 - (h) Commissioner of public lands. \$138,225
 - (i) Insurance commissioner. \$126,555

(4) The lieutenant governor shall receive the fixed amount of his or her salary plus 1/260th of the difference between his or her salary and that of the governor for each day that the lieutenant governor is called upon to perform the

duties of the governor by reason of the absence from the state, removal, resignation, death, or disability of the governor. [2017 1st sp.s. c 1 § 1; 2015 1st sp.s. c 1 § 1; 2013 c 340 § 1; 2011 c 380 § 1; 2009 c 581 § 1; 2009 c 549 § 5004; 2007 c 524 § 1; 2005 c 519 § 1; 2003 1st sp.s. c 1 § 1; 2001 1st sp.s. c 3 § 1; 1999 sp.s. c 3 § 1; 1997 c 458 § 1; 1995 2nd sp.s. c 1 § 1; 1993 sp.s. c 26 § 1; 1991 sp.s. c 1 § 1; 1989 2nd ex.s. c 4 § 1; 1987 1st ex.s. c 1 § 1, part.]

43.03.012 Salaries of judges. Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 2.04.092, 2.06.062, 2.08.092, 3.58.010, and 43.03.310, the annual salaries of the judges of the state shall be as follows:

- (1) Effective September 1, 2016:
 - (a) Chief justice of the supreme court \$185,661
 - (b) Justices of the supreme court \$183,021
 - (c) Judges of the court of appeals \$174,224
 - (d) Judges of the superior court \$165,870
 - (e) Full-time judges of the district court \$157,933
- (2) Effective September 1, 2017:
 - (a) Chief justice of the supreme court \$189,374
 - (b) Justices of the supreme court \$186,681
 - (c) Judges of the court of appeals \$177,708
 - (d) Judges of the superior court \$169,187
 - (e) Full-time judges of the district court \$161,092
- (3) Effective September 1, 2018:
 - (a) Chief justice of the supreme court \$193,162
 - (b) Justices of the supreme court \$190,415
 - (c) Judges of the court of appeals \$181,263
 - (d) Judges of the superior court \$172,571
 - (e) Full-time judges of the district court \$164,313
- (4) The salary for a part-time district court judge shall be

the proportion of full-time work for which the position is authorized, multiplied by the salary for a full-time district court judge. [2017 1st sp.s. c 1 § 2; 2015 1st sp.s. c 1 § 2; 2013 c 340 § 2; 2011 c 380 § 2; 2009 c 581 § 2; 2007 c 524 § 2; 2005 c 519 § 2; 2003 1st sp.s. c 1 § 2; 2001 1st sp.s. c 3 § 2; 1999 sp.s. c 3 § 2; 1997 c 458 § 2; 1995 2nd sp.s. c 1 § 2; 1993 sp.s. c 26 § 2; 1991 sp.s. c 1 § 2; 1989 2nd ex.s. c 4 § 2; 1987 1st ex.s. c 1 § 1, part.]

43.03.013 Salaries of members of the legislature. Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 43.03.010 and 43.03.310, the annual salary of members of the legislature shall be:

- (1) Effective September 1, 2016:
 - (a) Legislators \$46,839
 - (b) Speaker of the house \$55,738
 - (c) Senate majority leader \$55,738
 - (d) House minority leader \$51,288
 - (e) Senate minority leader \$51,288
- (2) Effective September 1, 2017:
 - (a) Legislators \$47,776
 - (b) Speaker of the house \$56,853
 - (c) Senate majority leader \$56,853
 - (d) House minority leader \$52,314
 - (e) Senate minority leader \$52,314
- (3) Effective September 1, 2018:
 - (a) Legislators \$48,731
 - (b) Speaker of the house \$57,990
 - (c) Senate majority leader \$57,990

- (d) House minority leader \$53,360
- (e) Senate minority leader \$53,360

[2017 1st sp.s. c 1 § 3; 2015 1st sp.s. c 1 § 3; 2013 c 340 § 3; 2011 c 380 § 3; 2009 c 581 § 3; 2007 c 524 § 3; 2005 c 519 § 3; 2003 1st sp.s. c 1 § 3; 2001 1st sp.s. c 3 § 3; 1999 sp.s. c 3 § 3; 1997 c 458 § 3; 1995 2nd sp.s. c 1 § 3; 1993 sp.s. c 26 § 3; 1991 sp.s. c 1 § 3; 1989 2nd ex.s. c 4 § 3; 1987 1st ex.s. c 1 § 1, part.]

**Chapter 43.06A RCW
OFFICE OF THE FAMILY AND CHILDREN'S
OMBUDS**

Sections

- 43.06A.030 Duties. *(Effective July 1, 2018.)*
- 43.06A.060 Admissibility of evidence—Testimony regarding official duties. *(Effective July 1, 2018.)*
- 43.06A.070 Release of identifying information. *(Effective July 1, 2018.)*
- 43.06A.100 Communication with children in custody of department of children, youth, and families or part of a fatality investigation by the department of children, youth, and families—Access to information in possession or control of department of children, youth, and families or state institutions—Limitation on duty of office. *(Effective July 1, 2018.)*

43.06A.030 Duties. (Effective July 1, 2018.) The ombuds shall perform the following duties:

- (1) Provide information as appropriate on the rights and responsibilities of individuals receiving family and children's services, juvenile justice, juvenile rehabilitation, and child early learning, and on the procedures for providing these services;
- (2) Investigate, upon his or her own initiative or upon receipt of a complaint, an administrative act alleged to be contrary to law, rule, or policy, imposed without an adequate statement of reason, or based on irrelevant, immaterial, or erroneous grounds; however, the ombuds may decline to investigate any complaint as provided by rules adopted under this chapter;
- (3) Monitor the procedures as established, implemented, and practiced by the department of children, youth, and families to carry out its responsibilities in delivering family and children's services with a view toward appropriate preservation of families and ensuring children's health and safety;
- (4) Review periodically the facilities and procedures of state institutions serving children, youth, and families, and state-licensed facilities or residences;
- (5) Recommend changes in the procedures for addressing the needs of children, youth, and families;
- (6) Submit annually to the oversight board for children, youth, and families created in RCW 43.216.015 and to the governor by November 1st a report analyzing the work of the department of children, youth, and families, including recommendations;
- (7) Grant the committee access to all relevant records in the possession of the ombuds unless prohibited by law; and
- (8) Adopt rules necessary to implement this chapter. [2017 3rd sp.s. c 6 § 112; 2013 c 23 § 73; 1996 c 131 § 4.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

43.06A.060 Admissibility of evidence—Testimony regarding official duties. (Effective July 1, 2018.) Neither the ombuds nor the ombuds's staff may be compelled, in any judicial or administrative proceeding, to testify or to produce evidence regarding the exercise of the official duties of the ombuds or of the ombuds's staff. All related memoranda, work product, notes, and case files of the ombuds's office are confidential, are not subject to discovery, judicial or administrative subpoena, or other method of legal compulsion, and are not admissible in evidence in a judicial or administrative proceeding. This section shall not apply to the oversight board for children, youth, and families. [2017 3rd sp.s. c 6 § 812; 2013 c 23 § 75; 1998 c 288 § 1.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

43.06A.070 Release of identifying information. (Effective July 1, 2018.) Identifying information about complainants or witnesses shall not be subject to any method of legal compulsion, nor shall such information be revealed to the oversight board for children, youth, and families or the governor except under the following circumstances: (1) The complainant or witness waives confidentiality; (2) under a legislative subpoena when there is a legislative investigation for neglect of duty or misconduct by the ombuds or ombuds's office when the identifying information is necessary to the investigation of the ombuds's acts; or (3) under an investigation or inquiry by the governor as to neglect of duty or misconduct by the ombuds or ombuds's office when the identifying information is necessary to the investigation of the ombuds's acts.

For the purposes of this section, "identifying information" includes the complainant's or witness's name, location, telephone number, likeness, social security number or other identification number, or identification of immediate family members. [2017 3rd sp.s. c 6 § 813; 2013 c 23 § 76; 1998 c 288 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

43.06A.100 Communication with children in custody of department of children, youth, and families or part of a fatality investigation by the department of children, youth, and families—Access to information in possession or control of department of children, youth, and families or state institutions—Limitation on duty of office. (Effective July 1, 2018.) (1) The department of children, youth, and families shall:

(a) Allow the ombuds or the ombuds's designee to communicate privately with any child in the custody of the department of children, youth, and families, or any child who is part of a near fatality investigation by the department of children, youth, and families, for the purposes of carrying out its duties under this chapter;

(b) Permit the ombuds or the ombuds designee physical access to state institutions serving children, and state licensed facilities or residences for the purpose of carrying out its duties under this chapter;

(c) Upon the ombuds's request, grant the ombuds or the ombuds's designee the right to access, inspect, and copy all relevant information, records, or documents in the possession or control of the department of children, youth, and families that the ombuds considers necessary in an investigation; and

(d) Grant the office of the family and children's ombuds unrestricted online access to the child welfare case management information system and the department of children, youth, and families data information system for the purpose of carrying out its duties under this chapter.

(2) For the purposes of this section, "near fatality" means an act that, as certified by a physician, places the child in serious or critical condition.

(3) Nothing in this section creates a duty for the office of the family and children's ombuds under RCW 43.06A.030 as related to children in the care of an early learning program described in RCW 43.216.500 through 43.216.550, a licensed child care center, or a licensed child care home. [2017 3rd sp.s. c 6 § 810; 2015 c 199 § 2; 2013 c 23 § 80; 2008 c 211 § 3; 1999 c 390 § 5.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Short title—2015 c 199: See note following RCW 43.215.490.

Chapter 43.08 RCW STATE TREASURER

Sections

43.08.190 State treasurer's service fund—Creation—Purpose.

43.08.190 State treasurer's service fund—Creation—Purpose. There is hereby created a fund within the state treasury to be known as the "state treasurer's service fund." Such fund shall be used solely for the payment of costs and expenses incurred in the operation and administration of the state treasurer's office.

Moneys shall be allocated monthly and placed in the state treasurer's service fund equivalent to a maximum of one percent of the trust and treasury average daily cash balances from the earnings generated under the authority of RCW 43.79A.040 and 43.84.080 other than earnings generated from investment of balances in funds and accounts specified in RCW 43.79A.040(4)(c). The allocation shall precede the distribution of the remaining earnings as prescribed under RCW 43.79A.040 and 43.84.092. The state treasurer shall establish a uniform allocation rate for all funds and accounts; except that the state treasurer may negotiate a different allocation rate with any state agency that has independent authority over funds not statutorily required to be held in the state treasury or in the custody of the state treasurer. In no event shall the rate be less than the actual costs incurred by the state treasurer's office. If no rate is separately negotiated, the default rate for any funds held shall be the rate set for funds held pursuant to statute.

During the 2013-2015 and 2015-2017 fiscal biennia, the legislature may transfer from the state treasurer's service fund to the state general fund such amounts as reflect the excess fund balance of the fund. During the 2017-2019 fiscal biennium, the legislature may direct the state treasurer to make transfers of money in the state treasurer's service fund to the state general fund. It is the intent of the legislature that this policy will be continued in subsequent biennia. [2017 3rd sp.s. c 1 § 966; 2015 3rd sp.s. c 4 § 953; 2013 2nd sp.s. c 4 § 973; 2011 1st sp.s. c 50 § 941; 2010 c 222 § 3; 2009 c 564 § 926; 2008 c 329 § 912; 2005 c 518 § 925; 2003 1st sp.s. c 25 § 916; 1991 sp.s. c 13 § 83; 1985 c 405 § 506; 1973 c 27 § 2.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Intent—2010 c 222: See note following RCW 43.08.150.

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Additional notes found at www.leg.wa.gov

Chapter 43.09 RCW STATE AUDITOR

Sections

43.09.188	Regulatory fairness act—Performance reviews.
43.09.2856	School district audits—School district compliance with RCW 28A.150.276 and 28A.505.240—Report of findings.
43.09.310	Audit of statewide combined financial statements—Post-audits of state agencies—Periodic audits—Reports—Filing.
43.09.312	Post-audits of state agencies under RCW 43.09.310—Non-compliance—Remediation—Referral to attorney general.
43.09.475	Performance audits of government account.

43.09.188 Regulatory fairness act—Performance reviews. The state auditor shall conduct a performance review of agency compliance with the regulatory fairness act, pursuant to chapter 19.85 RCW. The performance review must be completed no earlier than June 30, 2020, and subsequent reviews must be completed periodically thereafter. Factors used to determine the frequency of subsequent reviews include the degree to which agencies are found to be in compliance with the act. The auditor must report his or her findings to the legislature, and any recommendations, by June 30, 2021, and after every subsequent review. [2017 c 53 § 4.]

43.09.2856 School district audits—School district compliance with RCW 28A.150.276 and 28A.505.240—Report of findings. (1) Beginning with the 2019-20 school year, to ensure that school district local revenues are used solely for purposes of enriching the state's statutory program of basic education, the state auditor's regular financial audits of school districts must include a review of the expenditure of school district local revenues for compliance with RCW 28A.150.276, including the spending plan approved by the superintendent of public instruction under RCW

28A.505.240 and its implementation, and any supplemental contracts entered into under RCW 28A.400.200.

(2) If an audit results in findings that a school district has failed to comply with these requirements, then within ninety days of completing the audit the auditor must report the findings to the superintendent of public instruction, the office of financial management, and the education and operating budget committees of the legislature. [2017 3rd sp.s. c 13 § 503.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

43.09.310 Audit of statewide combined financial statements—Post-audits of state agencies—Periodic audits—Reports—Filing. (1) Except as provided in subsection (2) of this section, the state auditor shall annually audit the statewide combined financial statements prepared by the office of financial management and make post-audits of state agencies. Post-audits of state agencies shall be made at such periodic intervals as is determined by the state auditor. Audits of combined financial statements shall include determinations as to the validity and accuracy of accounting methods, procedures and standards utilized in their preparation, as well as the accuracy of the financial statements themselves. A report shall be made of each such audit and post-audit upon completion thereof, and one copy shall be transmitted to the governor, one to the director of financial management, one to the state agency audited, one to the joint legislative audit and review committee, one each to the standing committees on ways and means of the house and senate, one to the chief clerk of the house, one to the secretary of the senate, and at least one shall be kept on file in the office of the state auditor. A copy of any report containing findings of noncompliance with state law shall be transmitted to the attorney general and shall be subject to the process provided in RCW 43.09.312.

(2) Audits of the department of labor and industries must be coordinated with the audits required under RCW 51.44.115 to avoid duplication of audits. [2017 c 66 § 1; 2005 c 387 § 2; 1996 c 288 § 35; 1995 c 301 § 22; 1981 c 217 § 1; 1979 c 151 § 92; 1975-'76 2nd ex.s. c 17 § 1. Prior: 1975 1st ex.s. c 293 § 1; 1975 1st ex.s. c 193 § 1; 1971 ex.s. c 170 § 2; 1965 c 8 § 43.09.310; prior: 1947 c 114 § 1; 1941 c 196 § 3; Rem. Supp. 1947 § 11018-3.]

Reports of post-audits: RCW 43.88.160.

Additional notes found at www.leg.wa.gov

43.09.312 Post-audits of state agencies under RCW 43.09.310—Noncompliance—Remediation—Referral to attorney general. (1) Within thirty days of receipt of an audit under RCW 43.09.310 containing findings of noncompliance with state law, the subject state agency shall submit a response and a plan for remediation to the office of financial management. Within sixty days of receipt of an audit under RCW 43.09.310 containing findings of noncompliance with state law, the office of financial management shall submit the subject state agency's response and a plan for remediation to the governor, the state auditor, the joint legislative audit and review committee, and the relevant fiscal and policy committees of the senate and house of representatives.

(2) If, at the next succeeding audit of the subject state agency, the state auditor determines that the subject state agency has failed to make substantial progress in remediating

the noncompliance with state law, the state auditor shall notify the entities specified in subsection (1) of this section.

(3) Upon receipt of a notification under subsection (2) of this section, a fiscal or policy committee of the senate or house of representatives may refer the matter to the senate committee on facilities and operations or the executive rules committee of the house of representatives, which committee may refer the matter to the attorney general for appropriate legal action under RCW 43.09.330. [2017 c 66 § 2.]

43.09.475 Performance audits of government account. The performance audits of government account is hereby created in the custody of the state treasurer. Revenue identified in RCW 82.08.020(5) and 82.12.0201 shall be deposited in the account. Money in the account shall be used to fund the performance audits and follow-up performance audits under RCW 43.09.470 and shall be expended by the state auditor in accordance with chapter 1, Laws of 2006. Only the state auditor or the state auditor's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. During the 2013-2015, 2015-2017, and 2017-2019 fiscal biennia, the performance audits of government account may be appropriated for the joint legislative audit and review committee, the legislative evaluation and accountability program committee, the office of financial management, the superintendent of public instruction, the department of fish and wildlife, and audits of school districts. In addition, during the 2013-2015, 2015-2017, and 2017-2019 fiscal biennia the account may be used to fund the office of financial management's contract for the compliance audit of the state auditor and audit activities at the department of revenue. In addition, during the 2015-2017 fiscal biennium, the legislature may transfer from the performance audits of government account to the state general fund such amounts as reflect the excess fund balance of the fund. [2017 3rd sp.s. c 1 § 967; 2016 sp.s. c 36 § 925; 2015 3rd sp.s. c 4 § 954; 2013 2nd sp.s. c 4 § 974; 2011 1st sp.s. c 50 § 942; 2009 c 564 § 929; 2006 c 1 § 5 (Initiative Measure No. 900, approved November 8, 2005).]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2009 c 564: See note following RCW 2.68.020.

Policies and purposes—Construction—Severability—Part headings not law—2006 c 1 (Initiative Measure No. 900): See notes following RCW 43.09.470.

Chapter 43.10 RCW ATTORNEY GENERAL

Sections

43.10.005	Definitions.
43.10.290	Office of military and veteran legal assistance—Created—Definitions—Limitations.
43.10.292	Office of military and veteran legal assistance—Duties.

43.10.294 Office of military and veteran legal assistance—Grants, gifts, donations.

43.10.005 Definitions. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Employer" has the same meaning as and shall be interpreted consistent with how that term is defined in RCW 49.60.040, except that for the purposes of this section only the threshold of employees must be fifteen or more.

(b) "Pregnancy" includes the employee's pregnancy and pregnancy-related health conditions.

(c) "Reasonable accommodation" means:

(i) Providing more frequent, longer, or flexible restroom breaks;

(ii) Modifying a no food or drink policy;

(iii) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, or acquiring or modifying equipment, devices, or an employee's work station;

(iv) Providing seating or allowing the employee to sit more frequently if her job requires her to stand;

(v) Providing for a temporary transfer to a less strenuous or less hazardous position;

(vi) Providing assistance with manual labor and limits on lifting;

(vii) Scheduling flexibility for prenatal visits; and

(viii) Any further pregnancy accommodation an employee may request, and to which an employer must give reasonable consideration in consultation with information provided on pregnancy accommodation by the department of labor and industries or the attending health care provider of the employee.

(d) "Undue hardship" means an action requiring significant difficulty or expense. An employer may not claim undue hardship for the accommodations under (c)(i), (ii), and (iv) of this subsection, or for limits on lifting over seventeen pounds.

(2) It is an unfair practice for any employer to:

(a) Fail or refuse to make reasonable accommodation for an employee for pregnancy, unless the employer can demonstrate that doing so would impose an undue hardship on the employer's program, enterprise, or business;

(b) Take adverse action against an employee who requests, declines, or uses an accommodation under this section that affects the terms, conditions, or privileges of employment;

(c) Deny employment opportunities to an otherwise qualified employee if such denial is based on the employer's need to make reasonable accommodation required by this section;

(d) Require an employee to take leave if another reasonable accommodation can be provided for the employee's pregnancy.

(3) An employer may request that the employee provide written certification from her treating health care professional regarding the need for reasonable accommodation, except for accommodations listed in subsection (1)(d) of this section.

(4)(a) This section does not require an employer to create additional employment that the employer would not otherwise have created, unless the employer does so or would do so for other classes of employees who need accommodation.

(b) This section does not require an employer to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job, unless the employer does so or would do so to accommodate other classes of employees who need accommodation.

(5) The department of labor and industries must provide online education materials explaining the respective rights and responsibilities of employers and employees who have a health condition related to pregnancy or childbirth. The online education materials must be prominently displayed on the department's web site.

(6) The attorney general shall investigate complaints and enforce this section, including by conference and conciliation. In addition to the complaint process with the attorney general, any person believed to be injured by a violation of this section has a civil cause of action in court to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit and reasonable attorneys' fees or any other appropriate remedy authorized by state or federal law.

(7) This section does not preempt, limit, diminish, or otherwise affect any other provision of law relating to sex discrimination or pregnancy, or in any way diminish or limit legal protections or coverage for pregnancy, childbirth, or a pregnancy-related health condition. [2017 c 294 § 3.]

Findings—2017 c 294: See note following RCW 74.09.475.

43.10.290 Office of military and veteran legal assistance—Created—Definitions—Limitations. (1) Subject to the availability of amounts appropriated for this specific purpose, there is hereby created an office of military and veteran legal assistance within the office of the attorney general for the purpose of promoting and facilitating civil legal assistance programs, pro bono services, and self-help services for military service members, veterans, and their family members domiciled or stationed in Washington state.

(2) For the purposes of this section and RCW 43.10.292 and 43.10.294, the following definitions apply:

(a) The term "service member" means an active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.

(b) The term "veteran" has the same meaning as defined in RCW 41.04.005 and 41.04.007.

(c) The term "family member" means the spouse or domestic partner, surviving spouse, surviving domestic partner, and dependent minor children under twenty-one years of age of a living or deceased service member or veteran for whom the service member or veteran provided at least one-half of that person's support in the previous one hundred eighty days before seeking assistance of the programs and services authorized by this chapter.

(3) The attorney general may not directly provide legal assistance, advice, or representation in any context, unless otherwise authorized by law, and the attorney general may not provide legal assistance programs, pro bono services, or self-help services to a service member, veteran, or family member being criminally prosecuted. [2017 c 163 § 1.]

[2017 RCW Supp—page 428]

43.10.292 Office of military and veteran legal assistance—Duties. The office of military and veteran legal assistance shall:

(1) Recruit and train volunteer attorneys and identify service programs willing to perform pro bono services for service members, veterans, and their family members, and create and maintain a registry of the same;

(2) Assess and assign requests for pro bono services to volunteer attorneys and service programs registered with the office; and

(3) Establish an advisory committee that will include, among others, representatives from legal assistance offices on military installations, the office of civil legal aid, the Washington state bar association's legal assistance to military personnel section, the Washington state veterans bar association, relevant office of military service and support organizations, and organizations involved in coordinating, supporting, and delivering civil legal aid and pro bono legal services in Washington state. The committee shall provide advice and assistance regarding program design, operation, volunteer recruitment and support strategies, service delivery objectives and priorities, and funding. [2017 c 163 § 2.]

43.10.294 Office of military and veteran legal assistance—Grants, gifts, donations. The attorney general may apply for and receive grants, gifts, donations, bequests, or other contributions to help support and to be used exclusively for the operations of the office of military and veteran legal assistance. [2017 c 163 § 3.]

Chapter 43.15 RCW

OFFICE OF LIEUTENANT GOVERNOR

Sections

43.15.020 President of the senate—Committee and board appointments and assignments. (*Effective July 1, 2018.*)

43.15.020 President of the senate—Committee and board appointments and assignments. (*Effective July 1, 2018.*) The lieutenant governor serves as president of the senate and is responsible for making appointments to, and serving on, the committees and boards as set forth in this section.

(1) The lieutenant governor serves on the following boards and committees:

(a) Capitol furnishings preservation committee, RCW 27.48.040;

(b) Washington higher education facilities authority, RCW 28B.07.030;

(c) Productivity board, also known as the employee involvement and recognition board, RCW 41.60.015;

(d) State finance committee, RCW 43.33.010;

(e) State capitol committee, RCW 43.34.010;

(f) Washington health care facilities authority, RCW 70.37.030;

(g) State medal of merit nominating committee, RCW 1.40.020;

(h) Medal of valor committee, RCW 1.60.020; and

(i) Association of Washington generals, RCW 43.15.030.

(2) The lieutenant governor, and when serving as president of the senate, appoints members to the following boards and committees:

- (a) Civil legal aid oversight committee, RCW 2.53.010;
- (b) Office of public defense advisory committee, RCW 2.70.030;
- (c) Washington state gambling commission, RCW 9.46.040;
- (d) Sentencing guidelines commission, RCW 9.94A.860;
- (e) State building code council, RCW 19.27.070;
- (f) Financial education public-private partnership, RCW 28A.300.450;
- (g) Joint administrative rules review committee, RCW 34.05.610;
- (h) Capital projects advisory review board, RCW 39.10.220;
- (i) Select committee on pension policy, RCW 41.04.276;
- (j) Legislative ethics board, RCW 42.52.310;
- (k) Washington citizens' commission on salaries, RCW 43.03.305;
- (l) Legislative oral history committee, RCW 44.04.325;
- (m) State council on aging, RCW 43.20A.685;
- (n) State investment board, RCW 43.33A.020;
- (o) Capitol campus design advisory committee, RCW 43.34.080;
- (p) Washington state arts commission, RCW 43.46.015;
- (q) PNWER-Net working subgroup under chapter 43.147 RCW;
- (r) Community economic revitalization board, RCW 43.160.030;
- (s) Washington economic development finance authority, RCW 43.163.020;
- (t) Life sciences discovery fund authority, RCW 43.350.020;
- (u) Joint legislative audit and review committee, RCW 44.28.010;
- (v) Joint committee on energy supply and energy conservation, RCW 44.39.015;
- (w) Legislative evaluation and accountability program committee, RCW 44.48.010;
- (x) Agency council on coordinated transportation, *RCW 47.06B.020;
- (y) Washington horse racing commission, RCW 67.16.014;
- (z) Correctional industries board of directors, RCW 72.09.080;
- (aa) Joint committee on veterans' and military affairs, RCW 73.04.150;
- (bb) Joint legislative committee on water supply during drought, RCW 90.86.020;
- (cc) Statute law committee, RCW 1.08.001; and
- (dd) Joint legislative oversight committee on trade policy, RCW 44.55.020. [2017 3rd sp.s. c 6 § 814; 2015 c 225 § 61; 2011 c 158 § 12. Prior: 2010 1st sp.s. c 7 § 136; 2010 1st sp.s. c 7 § 135; 2010 c 271 § 704; 2009 c 560 § 27; 2008 c 152 § 9; 2006 c 317 § 4.]

*Reviser's note: RCW 47.06B.020 was repealed by 2011 c 60 § 51.

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Transfer of residual funds to manufactured home installation training account—2011 c 158: See note following RCW 43.22A.100.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Purpose—Effective date—2010 c 271: See notes following RCW 43.330.005.

Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560: See notes following RCW 18.06.080.

Findings—Intent—2008 c 152: See note following RCW 13.34.136.

Chapter 43.17 RCW

ADMINISTRATIVE DEPARTMENTS AND AGENCIES—GENERAL PROVISIONS

Sections

- 43.17.010 Departments created. (*Effective July 1, 2018.*)
- 43.17.020 Chief executive officers—Appointment. (*Effective July 1, 2018.*)
- 43.17.410 Sensitive personal information of vulnerable individuals or in-home caregivers for vulnerable populations—Release of information prohibited.

43.17.010 Departments created. (*Effective July 1, 2018.*) There shall be departments of the state government which shall be known as (1) the department of social and health services, (2) the department of ecology, (3) the department of labor and industries, (4) the department of agriculture, (5) the department of fish and wildlife, (6) the department of transportation, (7) the department of licensing, (8) the department of enterprise services, (9) the department of commerce, (10) the department of veterans affairs, (11) the department of revenue, (12) the department of retirement systems, (13) the department of corrections, (14) the department of health, (15) the department of financial institutions, (16) the department of archaeology and historic preservation, (17) the department of children, youth, and families, and (18) the Puget Sound partnership, which shall be charged with the execution, enforcement, and administration of such laws, and invested with such powers and required to perform such duties, as the legislature may provide. [2017 3rd sp.s. c 6 § 109; 2011 1st sp.s. c 43 § 107; 2009 c 565 § 25; 2007 c 341 § 46; 2006 c 265 § 111; 2005 c 333 § 10. Prior: 1993 sp.s. c 2 § 16; 1993 c 472 § 17; 1993 c 280 § 18; 1989 1st ex.s. c 9 § 810; 1987 c 506 § 2; 1985 c 466 § 47; 1984 c 125 § 12; 1981 c 136 § 61; 1979 c 10 § 1; prior: 1977 ex.s. c 334 § 5; 1977 ex.s. c 151 § 20; 1977 c 7 § 1; prior: 1975-'76 2nd ex.s. c 115 § 19; 1975-'76 2nd ex.s. c 105 § 24; 1971 c 11 § 1; prior: 1970 ex.s. c 62 § 28; 1970 ex.s. c 18 § 50; 1969 c 32 § 1; prior: 1967 ex.s. c 26 § 12; 1967 c 242 § 12; 1965 c 156 § 20; 1965 c 8 § 43.17.010; prior: 1957 c 215 § 19; 1955 c 285 § 2; 1953 c 174 § 1; prior: (i) 1937 c 111 § 1, part; RRS § 10760-2, part. (ii) 1935 c 176 § 1; 1933 c 3 § 1; 1929 c 115 § 1; 1921 c 7 § 2; RRS § 10760. (iii) 1945 c 267 § 1, part; Rem. Supp. 1945 § 10459-1, part. (iv) 1947 c 114 § 5; Rem. Supp. 1947 § 10786-10c.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2007 c 341: See RCW 90.71.907.

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

Department of

agriculture: Chapter 43.23 RCW.

archaeology and historic preservation: Chapter 43.334 RCW.

children, youth, and families: Chapter 43.216 RCW.

commerce: Chapter 43.330 RCW.

corrections: Chapter 72.09 RCW.

ecology: Chapter 43.21A RCW.

employment security: Chapter 50.08 RCW.

enterprise services: Chapter 43.19 RCW.

financial institutions: Chapter 43.320 RCW.

fish and wildlife: Chapters 43.300 and 77.04 RCW.

health: Chapter 43.70 RCW.

labor and industries: Chapter 43.22 RCW.

licensing: Chapters 43.24 and 46.01 RCW.

natural resources: Chapter 43.30 RCW.

personnel: Chapter 41.06 RCW.

retirement systems: Chapter 41.50 RCW.

revenue: Chapter 82.01 RCW.

services for the blind: Chapter 74.18 RCW.

social and health services: Chapter 43.20A RCW.

transportation: Chapter 47.01 RCW.

veterans affairs: Chapter 43.60A RCW.

Additional notes found at www.leg.wa.gov

43.17.020 Chief executive officers—Appointment. (*Effective July 1, 2018.*) There shall be a chief executive officer of each department to be known as: (1) The secretary of social and health services, (2) the director of ecology, (3) the director of labor and industries, (4) the director of agriculture, (5) the director of fish and wildlife, (6) the secretary of transportation, (7) the director of licensing, (8) the director of enterprise services, (9) the director of commerce, (10) the director of veterans affairs, (11) the director of revenue, (12) the director of retirement systems, (13) the secretary of corrections, (14) the secretary of health, (15) the director of financial institutions, (16) the director of the department of archaeology and historic preservation, (17) the secretary of children, youth, and families, and (18) the executive director of the Puget Sound partnership.

Such officers, except the director of fish and wildlife, shall be appointed by the governor, with the consent of the senate, and hold office at the pleasure of the governor. The director of fish and wildlife shall be appointed by the fish and wildlife commission as prescribed by RCW 77.04.055. [2017 3rd sp.s. c 6 § 110; 2011 1st sp.s. c 43 § 108; 2009 c 565 § 26; 2007 c 341 § 47; 2006 c 265 § 112. Prior: 2005 c 333 § 11; 2005 c 319 § 2; 1995 1st sp.s. c 2 § 2 (Referendum Bill No. 45, approved November 7, 1995); prior: 1993 sp.s. c 2 § 17; 1993 c 472 § 18; 1993 c 280 § 19; 1989 1st ex.s. c 9 § 811; 1987 c 506 § 3; 1985 c 466 § 48; 1984 c 125 § 13; 1981 c 136 § 62; 1979 c 10 § 2; prior: 1977 ex.s. c 334 § 6; 1977 ex.s. c 151 § 21; 1977 c 7 § 2; prior: 1975-'76 2nd ex.s. c 115 § 20; 1975-'76 2nd ex.s. c 105 § 25; 1971 c 11 § 2; prior: 1970 ex.s. c 62 § 29; 1970 ex.s. c 18 § 51; 1969 c 32 § 2; prior: 1967 ex.s. c 26 § 13; 1967 c 242 § 13; 1965 c 156 § 21; 1965 c 8 § 43.17.020; prior: 1957 c 215 § 20; 1955 c 285 § 3; 1953 c 174 § 2; prior: (i) 1935 c 176 § 2; 1933 c 3 § 2; 1929 c 115 § 2; 1921 c 7 § 3; RRS § 10761. (ii) 1937 c 111 § 1, part; RRS § 10760. (iii) 1945 c 267 § 1, part; Rem. Supp. 1945 § 10459-1, part.]

[2017 RCW Supp—page 430]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2007 c 341: See RCW 90.71.907.

Findings—Intent—2005 c 319: "The legislature finds that it is in the interest of the state to restructure the roles and responsibilities of the state's transportation agencies in order to improve efficiency and accountability. The legislature also finds that continued citizen oversight of the state's transportation system remains an important priority. To achieve these purposes, the legislature intends to provide direct accountability of the department of transportation to the governor, in his or her role as chief executive officer of state government, by making the secretary of transportation a cabinet-level official. Additionally, it is essential to clearly delineate between the separate and distinct roles and responsibilities of the executive and legislative branches of government. The role of executive is to oversee the implementation of transportation programs, while the legislature reserves to itself the role of policymaking. Finally, consolidating public outreach and auditing of the state's transportation agencies under a single citizen-governed entity, the transportation commission, will provide the public with information about the performance of the transportation system and an avenue for direct participation in its oversight." [2005 c 319 § 1.]

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

Additional notes found at www.leg.wa.gov

43.17.410 Sensitive personal information of vulnerable individuals or in-home caregivers for vulnerable populations—Release of information prohibited. (1) To protect vulnerable individuals and their children from identity crimes and other forms of victimization, neither the state nor any of its agencies shall release sensitive personal information of vulnerable individuals or sensitive personal information of in-home caregivers for vulnerable populations, as those terms are defined in RCW 42.56.640. [2017 c 4 § 10 (Initiative Measure No. 1501, approved November 8, 2016).]

Intent—2017 c 4 §§ 8, 10, and 11 (Initiative Measure No. 1501): See note following RCW 42.56.640.

Short title—Intent—Construction—2017 c 4 (Initiative Measure No. 1501): See notes following RCW 9.35.005.

Chapter 43.19 RCW

DEPARTMENT OF ENTERPRISE SERVICES

(Formerly: Department of general administration)

Sections

43.19.003	Definitions.
43.19.642	Biodiesel fuel blends—Use by agencies—Annual report.
43.19.782	Loss prevention review team—Appointment—Duties—Rules—Annual report.
43.19.783	Loss prevention review team—Final report—Use of report and testimony limited.

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

(1) "Department" means the department of enterprise services.

(2) "Director" means the director of enterprise services.

(3) "State agency" means every state agency, office, officer, board, commission, institution, and institution of higher education, including all state universities, regional universi-

ties, The Evergreen State College, and community and technical colleges. [2017 c 318 § 1; 2011 1st sp.s. c 43 § 102.]

Effective date—2011 1st sp.s. c 43: "Except for sections 109, 448, 462, and 732 of this act, this act takes effect October 1, 2011." [2011 1st sp.s. c 43 § 1017.]

Purpose—2011 1st sp.s. c 43: "To maximize the benefits to the public, state government should be operated in an efficient and effective manner. The department of enterprise services is created to provide centralized leadership in efficiently and cost-effectively managing resources necessary to support the delivery of state government services. The mission of the department is to implement a world-class, customer-focused organization that provides valued products and services to government and state residents." [2011 1st sp.s. c 43 § 101.]

43.19.642 Biodiesel fuel blends—Use by agencies—Annual report. (1) Effective June 1, 2006, for agencies complying with the ultra-low sulfur diesel mandate of the United States environmental protection agency for on-highway diesel fuel, agencies shall use biodiesel as an additive to ultra-low sulfur diesel for lubricity, provided that the use of a lubricity additive is warranted and that the use of biodiesel is comparable in performance and cost with other available lubricity additives. The amount of biodiesel added to the ultra-low sulfur diesel fuel shall be not less than two percent.

(2) Except as provided in subsection (5) of this section, effective June 1, 2009, state agencies are required to use a minimum of twenty percent biodiesel as compared to total volume of all diesel purchases made by the agencies for the operation of the agencies' diesel-powered vessels, vehicles, and construction equipment.

(3) All state agencies using biodiesel fuel shall, beginning on July 1, 2016, file annual reports with the department of enterprise services documenting the use of the fuel and a description of how any problems encountered were resolved.

(4) By December 1, 2009, the department of enterprise services shall:

(a) Report to the legislature on the average true price differential for biodiesel by blend and location; and

(b) Examine alternative fuel procurement methods that work to address potential market barriers for in-state biodiesel producers and report these findings to the legislature.

(5) During the 2015-2017 and 2017-2019 fiscal biennia, the Washington state ferries is required to use a minimum of five percent biodiesel as compared to total volume of all diesel purchases made by the Washington state ferries for the operation of the Washington state ferries diesel-powered vessels, as long as the price of a B5 biodiesel blend does not exceed the price of conventional diesel fuel by five percent or more. [2017 c 313 § 703; 2016 c 197 § 2; 2015 1st sp.s. c 10 § 701; 2013 c 306 § 701; 2012 c 86 § 802; 2010 c 247 § 701; 2009 c 470 § 716; 2007 c 348 § 201; 2006 c 338 § 10; 2003 c 17 § 2.]

Effective date—2017 c 313: "Except for sections 705 and 706 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 2017]." [2017 c 313 § 1302.]

Effective date—2015 1st sp.s. c 10: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 11, 2015]." [2015 1st sp.s. c 10 § 1302.]

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—2012 c 86: See note following RCW 47.76.360.

Effective date—2010 c 247: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 2010]." [2010 c 247 § 802.]

Effective date—2009 c 470: See note following RCW 46.68.170.

Findings—2007 c 348: See RCW 43.325.005.

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

Findings—2003 c 17: "The legislature recognizes that:

- (1) Biodiesel is less polluting than petroleum diesel;
- (2) Using biodiesel in neat form or blended with petroleum diesel significantly reduces air toxics and cancer-causing compounds as well as the soot associated with petroleum diesel exhaust;
- (3) Biodiesel degrades much faster than petroleum diesel;
- (4) Biodiesel is less toxic than petroleum fuels;
- (5) The United States environmental protection agency's new emission standards for petroleum diesel that take effect June 1, 2006, will require the addition of a lubricant to ultra-low sulfur diesel to counteract premature wear of injection pumps;
- (6) Biodiesel provides the needed lubricity to ultra-low sulfur diesel;
- (7) Biodiesel use in state-owned diesel-powered vehicles provides a means for the state to comply with the alternative fuel vehicle purchase requirements of the energy policy act of 1992, P.L. 102-486; and
- (8) The state is in a position to set an example of large scale use of biodiesel in diesel-powered vehicles and equipment." [2003 c 17 § 1.]

Additional notes found at www.leg.wa.gov

43.19.782 Loss prevention review team—Appointment—Duties—Rules—Annual report. (1) In consultation with the department and upon delegation, a state agency shall appoint a loss prevention review team when the death of a person, serious injury to a person, or other substantial loss is alleged or suspected to be caused at least in part by the actions of a state agency except when the death, injury, or substantial loss is already being investigated by another federal or state agency, or by the affected state agency, pursuant to the federal or state agency requirements. Any review conducted by another agency or under other requirements must contain elements of subsection (3) of this section and must comply with RCW 43.19.783 to the extent RCW 43.19.783 does not conflict with statutes or rules governing those reviews. The department may also direct a state agency to conduct a loss prevention review after consultation with the affected agency as to the purpose, scope, necessary resources, and intended outcomes of the loss prevention review. The department may provide guidance to the state agency conducting the loss prevention review as requested by the state agency.

(2) A loss prevention review team shall consist of at least three persons, and may include independent consultants, contractors, or state employees, but it shall not include any person directly involved in the loss or risk of loss giving rise to the review, nor any person with testimonial knowledge of the incident to be reviewed. At least one member of the review team shall have expertise relevant to the matter under review, but no more than half of the review team members may be employees of the affected agency.

(3) The loss prevention review team shall review the death, serious injury, or other incident and the circumstances surrounding it, evaluate its causes, and recommend steps to reduce the risk of such incidents occurring in the future. The loss prevention review team shall accomplish these tasks by reviewing relevant documents and interviewing persons with relevant knowledge. The loss prevention review team must submit a report in writing to the director and the head of the

state agency involved in the loss or risk of loss. The report must include the teams' findings, analyze the causes and contributing factors, analyze future risk, include methods that the agency will use to address and mitigate the risks identified, which may include changes to policies or procedures, and any legislative recommendation necessary to address and carry out the risk treatment strategies identified in the subject report and include the manner in which the agency will measure the effectiveness of its changes. The final report shall not disclose the contents of any documents required by law or regulation to be kept private or confidential, or that are subject to legal privilege or exemption.

(4) The director may develop and enact rules to implement the provisions of this chapter that apply to all state agency loss prevention review teams. State agencies must notify the department immediately upon becoming aware of a death, serious injury, or other substantial loss that is alleged or suspected to be caused at least in part by the actions of the state agency.

(5) All state agencies shall provide the loss prevention review team ready access to relevant documents in their possession and ready access to their employees.

(6) The director shall submit an annual report to the legislature identifying the reviews conducted in the past year, providing appropriate metrics on effectiveness and efficiency of the loss prevention review team and programs, and summarizing any determinations of trends in incidents such as reductions or increases in the frequency or magnitude of losses and innovative approaches to mitigating risks identified. [2017 c 318 § 2; 2011 1st sp.s. c 43 § 508; 2002 c 333 § 2. Formerly RCW 43.41.370.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—2002 c 333: "The legislature intends that when the death of a person, serious injury to a person, or other substantial loss is alleged or suspected to be caused at least in part by the actions of a state agency, a loss prevention review shall be conducted. The legislature recognizes the tension inherent in a loss prevention review and the need to balance the prevention of harm to the public with state agencies' accountability to the public. The legislature intends to minimize this tension and to foster open and frank discussions by granting members of the loss prevention review teams protection from having to testify, and by declaring a general rule that the work product of these teams is inadmissible in civil actions or administrative proceedings." [2002 c 333 § 1.]

43.19.783 Loss prevention review team—Final report—Use of report and testimony limited. (1) The final report from the state agency's loss prevention review team to the director shall be made public by the director promptly after review, and shall be subject to public disclosure. The final report shall be subject to discovery in a civil or administrative proceeding. However, the final report shall not be admitted into evidence or otherwise used in a civil or administrative proceeding except pursuant to subsection (2) of this section.

(2) The relevant excerpt or excerpts from the final report of a loss prevention review team may be used to impeach a fact witness in a civil or administrative proceeding only if the party wishing to use the excerpt or excerpts from the report first shows the court by clear and convincing evidence that the witness, in testimony provided in deposition or at trial in the present proceeding, has contradicted his or her previous statements to the loss prevention review team on an issue of

fact material to the present proceeding. In that case, the party may use only the excerpt or excerpts necessary to demonstrate the contradiction. This section shall not be interpreted as expanding the scope of material that may be used to impeach a witness.

(3) No member of a loss prevention review team may be examined in a civil or administrative proceeding as to (a) the work of the loss prevention review team, (b) the incident under review, (c) his or her statements, deliberations, thoughts, analyses, or impressions relating to the work of the loss prevention review team or the incident under review, or (d) the statements, deliberations, thoughts, analyses, or impressions of any other member of the loss prevention review team, or any person who provided information to it, relating to the work of the loss prevention review team or the incident under review.

(4) Any document that exists prior to the appointment of a loss prevention review team, or that is created independently of such a team, does not become inadmissible merely because it is reviewed or used by the loss prevention review team. A person does not become unavailable as a witness merely because the person has been interviewed by or has provided a statement to a loss prevention review team. However, if called as a witness, the person may not be examined regarding the person's interactions with the loss prevention review team, including without limitation whether the loss prevention review team interviewed the person, what questions the loss prevention review team asked, and what answers the person provided to the loss prevention review team. This section shall not be construed as restricting the person from testifying fully in any proceeding regarding his or her knowledge of the incident under review.

(5) Documents prepared by or for the loss prevention review team are inadmissible and may not be used in a civil or administrative proceeding, except that excerpts may be used to impeach the credibility of a witness under the same circumstances that excerpts of the final report may be used pursuant to subsection (2) of this section.

(6) The restrictions set forth in this section shall not apply in a licensing or disciplinary proceeding arising from an agency's effort to revoke or suspend the license of any licensed professional based in whole or in part upon allegations of wrongdoing in connection with the death, injury, or other incident reviewed by the loss prevention review team.

(7) Nothing in RCW 43.19.782 or this section is intended to limit the scope of a legislative inquiry into or review of an incident that is the subject of a loss prevention review.

(8) Nothing in RCW 43.19.782 or in this section affects chapter 70.41 RCW and application of that chapter to state-owned or managed hospitals licensed under chapter 70.41 RCW. [2017 c 318 § 3; 2011 1st sp.s. c 43 § 509; 2002 c 333 § 3. Formerly RCW 43.41.380.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—2002 c 333: See note following RCW 43.19.782.

Chapter 43.20A RCW

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Sections

- 43.20A.090 Deputy secretary—Department personnel director—Assistant secretaries—Appointment—Duties—Salaries. (*Effective July 1, 2018.*)
- 43.20A.360 Committees and councils—Appointment—Memberships—Terms—Vacancies—Travel expenses. (*Effective July 1, 2018.*)
- 43.20A.780 Repealed. (*Effective July 1, 2018.*)
- 43.20A.850 Repealed. (*Effective July 1, 2018.*)

43.20A.090 Deputy secretary—Department personnel director—Assistant secretaries—Appointment—Duties—Salaries. (*Effective July 1, 2018.*) The secretary shall appoint a deputy secretary, a department personnel director and such assistant secretaries as shall be needed to administer the department. The deputy secretary shall have charge and general supervision of the department in the absence or disability of the secretary, and in case of a vacancy in the office of secretary, shall continue in charge of the department until a successor is appointed and qualified, or until the governor shall appoint an acting secretary. The officers appointed under this section, and exempt from the provisions of the state civil service law by the terms of *RCW 41.06.076, shall be paid salaries to be fixed by the governor in accordance with the procedure established by law for the fixing of salaries for officers exempt from the operation of the state civil service law. [2017 3rd sp.s. c 6 § 811; 1994 sp.s. c 7 § 515; 1970 ex.s. c 18 § 7.]

*Reviser's note: RCW 41.06.076 expired June 30, 2005.

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

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

43.20A.360 Committees and councils—Appointment—Memberships—Terms—Vacancies—Travel expenses. (*Effective July 1, 2018.*) (1) The secretary is hereby authorized to appoint such advisory committees or councils as may be required by any federal legislation as a condition to the receipt of federal funds by the department. The secretary may appoint statewide committees or councils in the following subject areas: (a) Health facilities; (b) blind services; (c) medical and health care; (d) drug abuse and alcoholism; (e) social services; (f) economic services; (g) vocational services; (h) rehabilitative services; and (i) on such other subject matters as are or come within the department's responsibilities. The statewide councils shall have representation from both major political parties and shall have substantial consumer representation. Such committees or councils shall be constituted as required by federal law or as the secretary in his or her discretion may determine. The members of the committees or councils shall hold office for three years except in the case of a vacancy, in which event appointment shall be only for the remainder of the unexpired term for which the vacancy occurs. No member shall serve more than two consecutive terms.

(2) Members of such state advisory committees or councils may be paid their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [2017 3rd sp.s. c 6 § 328; 2001 c 291 § 101. Prior: 1989 1st ex.s. c 9 § 214; 1989 c 11 § 14; 1984 c 259 § 1; 1981 c 151 § 6; 1977 c 75 § 45; 1975-'76 2nd ex.s. c 34 § 98; 1971 ex.s. c 189 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

43.20A.780 Repealed. (*Effective July 1, 2018.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.20A.850 Repealed. (*Effective July 1, 2018.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.20B RCW

REVENUE RECOVERY FOR DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Sections

- 43.20B.430 Residential habilitation centers—Costs of services—Initial notice and finding of responsibility—Service—Adjudicative proceeding.
- 43.20B.435 State residential habilitation centers—Costs of services—Modification or vacation of initial finding of responsibility.
- 43.20B.635 Overpayments of assistance—Orders to withhold property of debtor—Procedures.

43.20B.430 Residential habilitation centers—Costs of services—Initial notice and finding of responsibility—Service—Adjudicative proceeding. In all cases where a determination is made that the estate of a resident of a residential habilitation center is able to pay all or any portion of the charges, an initial notice and finding of responsibility shall be served on the guardian of the resident's estate, or if no guardian has been appointed then to the resident, the resident's spouse, or other person acting in a representative capacity and having property in his or her possession belonging to a resident. The initial notice shall set forth the amount the department has determined that such estate is able to pay, not to exceed the charge as fixed in accordance with RCW 43.20B.420, and the responsibility for payment to the department shall commence twenty-eight days after service of such notice and finding of responsibility. Service of the initial notice shall be in the manner prescribed for the service of a summons in a civil action or may be served by certified mail, return receipt requested. The return receipt signed by addressee only is prima facie evidence of service. An application for an adjudicative proceeding from the determination of responsibility may be made to the secretary by the guardian of the resident's estate, or if no guardian has been appointed then by the resident, the resident's spouse, or other person acting in a representative capacity and having property in his or her possession belonging to a resident of a state school, within such twenty-eight day period. The application must be written and served on the secretary by registered or certified

mail, or by personal service. If no application is filed, the notice and finding of responsibility shall become final. If an application is filed, the execution of notice and finding of responsibility shall be stayed pending the final adjudicative order. The hearing shall be conducted in a local department office or other location in Washington convenient to the appellant. The proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW. [2017 c 269 § 3; 1989 c 175 § 99; 1988 c 176 § 905; 1987 c 75 § 26; 1985 c 245 § 6; 1982 c 189 § 7; 1979 c 141 § 239; 1970 ex.s. c 75 § 1; 1967 c 141 § 5. Formerly RCW 72.33.670.]

Additional notes found at www.leg.wa.gov

43.20B.435 State residential habilitation centers—Costs of services—Modification or vacation of initial finding of responsibility. The secretary, upon application of the guardian of the estate of the resident, and after investigation, or upon investigation without application, may, if satisfied of the financial ability or inability of such person to make payments in accordance with the initial finding of responsibility as provided for in RCW 43.20B.430, modify or vacate such initial finding of responsibility, and enter a new finding of responsibility. The secretary's determination to modify or vacate findings of responsibility shall be served by regular mail. A new finding of responsibility shall be appealable in the same manner and in accordance with the same procedure for appeals of initial findings of responsibility. [2017 c 269 § 4; 1979 c 141 § 240; 1967 c 141 § 7. Formerly RCW 72.33.680.]

Additional notes found at www.leg.wa.gov

43.20B.635 Overpayments of assistance—Orders to withhold property of debtor—Procedures. (1) After service of a notice of debt for an overpayment as provided for in RCW 43.20B.630, stating the debt accrued, the secretary may issue to any person, firm, corporation, association, political subdivision, or department of the state, an order to withhold and deliver property of any kind including, but not restricted to, earnings which are due, owing, or belonging to the debtor, when the secretary has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision, or department of the state property which is due, owing, or belonging to the debtor.

(2)(a) The order to withhold and deliver shall state the amount of the debt, and shall state in summary the terms of this section, RCW 6.27.150 and 6.27.160, chapters 6.13 and 6.15 RCW, 15 U.S.C. 1673, and other state or federal exemption laws applicable generally to debtors.

(b) The order to withhold and deliver shall be served by regular mail or, with a party's agreement, electronically.

(3)(a) Any person, firm, corporation, association, political subdivision, or department of the state upon whom service has been made shall answer the order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein.

(b) The secretary may require further and additional answers to be completed by the person, firm, corporation, association, political subdivision, or department of the state.

(c) If any such person, firm, corporation, association, political subdivision, or department of the state possesses any

property which may be subject to the claim of the department of social and health services, such property shall be withheld immediately upon receipt of the order to withhold and deliver and shall, after the twenty-day period, upon demand, be delivered forthwith to the secretary.

(d) The secretary shall hold the property in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability. In the alternative, there may be furnished to the secretary a good and sufficient bond, satisfactory to the secretary, conditioned upon final determination of liability.

(e) Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, association, political subdivision, or department of the state subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the secretary. Delivery to the secretary, subject to the exemptions under RCW 6.27.150 and 6.27.160, chapters 6.13 and 6.15 RCW, 15 U.S.C. 1673, and other state or federal law applicable generally to debtors, of the money or other property held or claimed satisfies the requirement of the order to withhold and deliver. Delivery to the secretary serves as full acquittance, and the state warrants and represents that it shall defend and hold harmless for such actions persons delivering money or property to the secretary pursuant to this chapter. The state also warrants and represents that it shall defend and hold harmless for such actions persons withholding money or property pursuant to this chapter.

(4)(a) The secretary shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed a copy of the order to withhold and deliver to the debtor at the debtor's last known post office address or, with a party's agreement serve the order upon the debtor electronically on or before the date of service of the order to withhold and deliver.

(b) The copy of the order shall be mailed or served together with a concise explanation of the right to petition for a hearing on any issue related to the collection. This requirement is not jurisdictional, but, if the copy is not mailed or served as provided in this section, or if any irregularity appears with respect to the mailing or service electronically, the superior court, on its discretion on motion of the debtor promptly made and supported by affidavit showing that the debtor has suffered substantial injury due to the failure to mail the copy or serve the copy electronically, may set aside the order to withhold and deliver and award to the debtor an amount equal to the damages resulting from the secretary's failure to serve on or mail to the debtor the copy. [2017 c 269 § 5; 1990 c 100 § 1; 1987 c 75 § 37; 1981 c 163 § 2. Formerly RCW 74.04.710.]

Chapter 43.21A RCW

DEPARTMENT OF ECOLOGY

Sections

- 43.21A.150 Director to consult with other states, federal government, and Canadian provinces—Authority to receive and disburse grants, funds, and gifts—Department's web site list of inter-agency agreements.
- 43.21A.731 Chehalis board.

43.21A.150 Director to consult with other states, federal government, and Canadian provinces—Authority to receive and disburse grants, funds, and gifts—Department's web site list of interagency agreements. (1) The director, whenever it is lawful and feasible to do so, shall consult and cooperate with the federal government, as well as with other states and Canadian provinces, in the study and control of environmental problems. On behalf of the department, the director is authorized to accept, receive, disburse, and administer grants or other funds or gifts from any source, including private individuals or agencies, the federal government, and other public agencies, for the purpose of carrying out the provisions of this chapter.

(2)(a) Beginning December 31, 2017, the director must list on the department's web site information regarding the current interagency agreements to which the department is a party or in which the department is a participant.

(b) The list must identify each agreement, the type of agreement, parties to the agreement, the effective date of the agreement, and a brief description of the agreement. The list must include all interagency agreements involving the department and other state agencies, local governments, special purpose districts, the federal government and federal government agencies, and the agencies of other states.

(c) For the initial list, the department must by December 31, 2017, list all grant agreements and federal agreements where information is readily extractable from the department's data systems. For those data systems that, because of their age, require programming support to extract and format data for publishing to the internet, the department must complete listing the required information according to the following schedule:

(i) By June 30, 2018, all contract, loan, and grant agreements;

(ii) By December 31, 2018, all agreements pertaining to funds receivable for work performed by the department, leases, and nonfinancial interagency agreements.

(d) Beginning December 1, 2018, the department must annually update the web site to include new interagency agreements that the department has entered into and must identify the agreements that have been updated within the past year.

(e) For the purposes of this section, the term "interagency agreement" includes but is not limited to memoranda of understanding, grant contracts, and advisory or nonbinding agreements.

(f) For purposes of this section, the information posted on the department's web site is considered to function as a report to the legislature because the report acts as a mechanism of keeping the legislature apprised of the department's interagency agreements. [2017 c 47 § 2; 1970 ex.s. c 62 § 15.]

Findings—Intent—2017 c 47: "The legislature finds that department of ecology pursues its mission of environmental protection within a complicated framework of national, state, and local authorities and responsibilities, and that the department of ecology's roles within this framework are not always readily intelligible to the public. Furthermore, the legislature finds that promoting the transparency of department of ecology activities will bolster the understanding and trust in the agency held by legislators and the Washingtonians they represent. Therefore, it is the intent of the legislature to require the department of ecology to maintain a list of the department's participation in interagency agreements on its web site for the purposes of

improving public understanding of the extent and implications of those agreements." [2017 c 47 § 1.]

43.21A.731 Chehalis board. (1) The Chehalis board is created consisting of seven voting members.

(2)(a) Four members of the board must be voting members who are appointed through the governor. The governor shall invite the Confederated Tribes of the Chehalis Reservation and the Quinault Indian Nation to each designate a voting member of the board. In addition, the governor shall appoint two members of the board, subject to confirmation by the senate. Three board members must be selected by the Chehalis basin flood authority. No member may have a direct financial interest in the actions of the board. The governor shall appoint one of the flood authority appointees as the chair. The voting members of the board must be appointed for terms of four years, except that one member appointed by the governor and one member appointed by the flood authority initially must be appointed for terms of two years, and one member appointed by the governor and two members appointed by the flood authority must initially be appointed for terms of three years. In making the appointments, each appointing authority shall seek a board membership that collectively provides the expertise necessary to provide strong oversight for implementation of the Chehalis basin strategy, that provides extensive knowledge of local government processes and functions, and that has an understanding of issues relevant to reducing flood damages and restoring aquatic species.

(b) In addition to the seven voting members of the board, the following five state officials must serve as ex officio non-voting members of the board: The director of the department of fish and wildlife, the executive director of the Washington state conservation commission, the secretary of the department of transportation, the director of the department of ecology, and the commissioner of public lands. The state officials serving in an ex officio capacity may designate a representative of their respective agencies to serve on the board in their behalf. These designations must be made in writing and in such a manner as is specified by the board.

(3) Staff support to the board must be provided by the department. For administrative purposes, the board is located within the department.

(4) Members of the board who do not represent state agencies must be compensated as provided by RCW 43.03.250. Members of the board shall be reimbursed for travel expenses as provided by RCW 43.03.050 and 43.03.060.

(5) The board is responsible for oversight of a long-term strategy resulting from the department's programmatic environmental impact statement for the Chehalis river basin to reduce flood damages and restore aquatic species habitat.

(6) The board is responsible for overseeing the implementation of the strategy and developing biennial and supplemental budget recommendations to the governor. [2017 c 27 § 1; 2016 c 194 § 2.]

Effective date—2017 c 27: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2017]." [2017 c 27 § 2.]

Chapter 43.21C RCW

STATE ENVIRONMENTAL POLICY

Sections

- 43.21C.0311 Final environmental impact statements—Expeditious manner—Time limit—Reports.
 43.21C.440 Planned action—Defined—Authority of a county, city, or town—Community meetings.

43.21C.0311 Final environmental impact statements—Expeditious manner—Time limit—Reports. (1) A lead agency shall aspire to prepare a final environmental impact statement required by RCW 43.21C.030(2) in as expeditious a manner as possible while not compromising the integrity of the analysis.

(a) For even the most complex government decisions associated with a broad scope of possible environmental impacts, a lead agency shall aspire to prepare a final environmental impact statement required by RCW 43.21C.030(2) within twenty-four months of a threshold determination of a probable significant, adverse environmental impact.

(b) Wherever possible, a lead agency shall aspire to far outpace the twenty-four month time limit established in this section for more commonplace government decisions associated with narrower and more easily identifiable environmental impacts.

(2) Beginning December 31, 2018, and every two years thereafter, the department of ecology must submit a report on the environmental impact statements produced by state agencies and local governments to the appropriate committees of the legislature. The report must include data on the average time, and document the range of time, it took to complete environmental impact statements within the previous two years.

(3) Nothing in this section creates any civil liability for a lead agency or creates a new cause of action against a lead agency. [2017 c 289 § 2.]

Finding—Intent—2017 c 289: "The legislature finds that the analysis of environmental impacts required under the state environmental policy act adds value to government decision-making processes in Washington state and helps minimize the potential environmental harm coming from those government decisions. However, the legislature also recognizes that excessive delays in the environmental impact analysis process adds uncertainty and burdensome costs to those seeking to do business in the state of Washington. Therefore, it is the intent of the legislature to promote timely completion of state environmental policy act processes. In doing so, the legislature intends to restore balance between the need to carefully consider environmental impacts and the need to maintain the economic competitiveness of state businesses." [2017 c 289 § 1.]

43.21C.440 Planned action—Defined—Authority of a county, city, or town—Community meetings. (1) For purposes of this chapter, a planned action means one or more types of development or redevelopment that meet the following criteria:

(a) Are designated as planned actions by an ordinance or resolution adopted by a county, city, or town planning under RCW 36.70A.040;

(b) In conjunction with, or to implement, a comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or a fully contained community, a master planned resort, a master planned development, or a phased project, have had the significant impacts adequately addressed:

(i) In an environmental impact statement under the requirements of this chapter; or

(ii) In a threshold determination or, where one is appropriate, in an environmental impact statement under the requirements of this chapter, if the planned action contains mixed use or residential development and encompasses an area that:

(A) Is within one-half mile of a major transit stop; or

(B) Will be within one-half mile of a major transit stop no later than five years from the date of the designation of the planned action;

(c) Have had project level significant impacts adequately addressed in a threshold determination or, where one is required under (b) of this subsection or where otherwise appropriate, an environmental impact statement, unless the impacts are specifically deferred for consideration at the project level pursuant to subsection (3)(b) of this section;

(d) Are subsequent or implementing projects for the proposals listed in (b) of this subsection;

(e) Are located within an urban growth area designated pursuant to RCW 36.70A.110;

(f) Are not essential public facilities, as defined in RCW 36.70A.200, unless an essential public facility is accessory to or part of a residential, office, school, commercial, recreational, service, or industrial development that is designated a planned action under this subsection; and

(g) Are consistent with a comprehensive plan or subarea plan adopted under chapter 36.70A RCW.

(2) A county, city, or town shall define the types of development included in the planned action and may limit a planned action to:

(a) A specific geographic area that is less extensive than the jurisdictional boundaries of the county, city, or town; or

(b) A time period identified in the ordinance or resolution adopted under this subsection.

(3)(a) A county, city, or town shall determine during permit review whether a proposed project is consistent with a planned action ordinance adopted by the jurisdiction. To determine project consistency with a planned action ordinance, a county, city, or town may utilize a modified checklist pursuant to the rules adopted to implement RCW 43.21C.110, a form that is designated within the planned action ordinance, or a form contained in agency rules adopted pursuant to RCW 43.21C.120.

(b) A county, city, or town is not required to make a threshold determination and may not require additional environmental review, for a proposal that is determined to be consistent with the development or redevelopment described in the planned action ordinance, except for impacts that are specifically deferred to the project level at the time of the planned action ordinance's adoption. At least one community meeting must be held before the notice is issued for the planned action ordinance. Notice for the planned action and notice of the community meeting required by this subsection (3)(b) must be mailed or otherwise verifiably provided to: (i) All affected federally recognized tribal governments; and (ii) agencies with jurisdiction over the future development anticipated for the planned action. The determination of consistency, and the adequacy of any environmental review that was specifically deferred, are subject to the type of adminis-

trative appeal that the county, city, or town provides for the proposal itself consistent with RCW 36.70B.060.

(4) For a planned action ordinance that encompasses the entire jurisdictional boundary of a county, city, or town, at least one community meeting must be held before the notice is issued for the planned action ordinance. Notice for the planned action ordinance and notice of the community meeting required by this subsection must be mailed or otherwise verifiably provided to:

(a) All property owners of record within the county, city, or town;

(b) All affected federally recognized tribal governments; and

(c) All agencies with jurisdiction over the future development anticipated for the planned action.

(5) For purposes of this section, "major transit stop" means a commuter rail stop, a stop on a rail or fixed guideway or transitway system, or a stop on a high capacity transportation service funded or expanded under chapter 81.104 RCW. [2017 3rd sp.s. c 16 § 7; 2012 1st sp.s. c 1 § 303.]

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

Chapter 43.22 RCW

DEPARTMENT OF LABOR AND INDUSTRIES

Sections

43.22.498 Deposit of moneys from RCW 43.22.335 through 43.22.430 and 43.22.432 through 43.22.495.

43.22.498 Deposit of moneys from RCW 43.22.335 through 43.22.430 and 43.22.432 through 43.22.495. All moneys, except fines and penalties, received or collected under the terms of RCW 43.22.335 through 43.22.430 and 43.22.432 through 43.22.495 must be deposited into the construction registration inspection account. All fines and penalties received or collected under the terms of RCW 43.22.335 through 43.22.430 and 43.22.432 through 43.22.495 shall be deposited in the general fund. [2017 3rd sp.s. c 11 § 2.]

Effective date—2017 3rd sp.s. c 11: See note following RCW 51.44.190.

Chapter 43.22A RCW

MOBILE AND MANUFACTURED HOME INSTALLATION

Sections

43.22A.190 Penalty.

43.22A.190 Penalty. (1) A person found to have committed an infraction under this chapter may be assessed a monetary penalty of two hundred fifty dollars for the first infraction and not more than one thousand dollars for a second or subsequent infraction. The department shall set by rule a schedule of monetary penalties for infractions imposed under this chapter.

(2) The administrative law judge may waive, reduce, or suspend the monetary penalty imposed for the infraction.

(3) Monetary penalties collected under this chapter shall be deposited into the manufactured home installation training account created in RCW 43.22A.100 for the purposes specified in this chapter. [2017 c 10 § 1; 2007 c 432 § 5; 1994 c 284 § 31. Formerly RCW 43.63B.170.]

Chapter 43.24 RCW

DEPARTMENT OF LICENSING

Sections

43.24.150 Business and professions account. (*Effective July 1, 2018.*)

43.24.150 Business and professions account. (*Effective July 1, 2018.*) (1) The business and professions account is created in the state treasury. All receipts from business or professional licenses, registrations, certifications, renewals, examinations, or civil penalties assessed and collected by the department from the following chapters must be deposited into the account:

(a) Chapter 18.11 RCW, auctioneers;

(b) Chapter 18.16 RCW, cosmetologists, barbers, and manicurists;

(c) Chapter 18.145 RCW, court reporters;

(d) Chapter 18.165 RCW, private investigators;

(e) Chapter 18.170 RCW, security guards;

(f) Chapter 18.185 RCW, bail bond agents;

(g) Chapter 18.280 RCW, home inspectors;

(h) Chapter 19.16 RCW, collection agencies;

(i) Chapter 19.31 RCW, employment agencies;

(j) Chapter 19.105 RCW, camping resorts;

(k) Chapter 19.138 RCW, sellers of travel;

(l) Chapter 42.45 RCW, notaries public;

(m) Chapter 64.36 RCW, timeshares;

(n) Chapter 67.08 RCW, boxing, martial arts, and wrestling;

(o) Chapter 18.300 RCW, body art, body piercing, and tattooing;

(p) Chapter 79A.60 RCW, whitewater river outfitters;

(q) Chapter 19.158 RCW, commercial telephone solicitation; and

(r) Chapter 19.290 RCW, scrap metal businesses.

Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for expenses incurred in carrying out these business and professions licensing activities of the department. Any residue in the account must be accumulated and may not revert to the general fund at the end of the biennium. However, during the 2013-2015 fiscal biennium the legislature may transfer to the state general fund such amounts as reflect the excess fund balance in the account.

(2) The director must biennially prepare a budget request based on the anticipated costs of administering the business and professions licensing activities listed in subsection (1) of this section, which must include the estimated income from these business and professions fees. [2017 c 281 § 40; 2013 2nd sp.s. c 4 § 978; 2013 2nd sp.s. c 4 § 977; 2013 c 322 § 30; 2011 c 298 § 25. Prior: 2009 c 429 § 4; 2009 c 412 § 21; 2009 c 370 § 19; 2008 c 119 § 22; 2005 c 25 § 1.]

Effective date—2017 c 281: See RCW 42.45.905.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Effective date—2009 c 412 §§ 1-21: See RCW 18.300.901.

Short title—Implementation—2009 c 412: See RCW 18.300.900 and 18.300.902.

Effective date—2009 c 370 §§ 17 and 19: See note following RCW 18.96.210.

Finding—2009 c 370: See note following RCW 18.96.010.

Additional notes found at www.leg.wa.gov

Chapter 43.30 RCW

DEPARTMENT OF NATURAL RESOURCES

Sections

43.30.111	Local wildland fire liaison.
43.30.325	Deposit of money and fees—Natural resources deposit fund—Repayments.
43.30.575	Wildfire areas—Funding wildfire risk reduction in certain counties.
43.30.8351	Repealed.

43.30.111 Local wildland fire liaison. (1) The commissioner must appoint a local wildland fire liaison that reports directly to the commissioner or the supervisor and generally represents the interests and concerns of landowners and the general public during any fire suppression activities of the department.

(2) The role of the local wildland fire liaison is to:

(a) Provide advice to the commissioner on issues such as access to land during fire suppression activities, the availability of local fire suppression assets, environmental concerns, and landowner interests; and

(b) Fulfill other duties as assigned by the commissioner or the legislature, including the recruitment of local wildland fire suppression contractors as provided in RCW 76.04.181.

(3) In appointing the local wildland fire liaison, the commissioner must consult with county legislative authorities either directly or through an organization that represents the interests of county legislative authorities.

(4) All requirements in this section are subject to the availability of amounts appropriated for the specific purposes described. [2017 c 104 § 2; 2015 c 182 § 1.]

Effective date—2017 c 104: See note following RCW 76.04.181.

43.30.325 Deposit of money and fees—Natural resources deposit fund—Repayments. (1) The department shall deposit daily all moneys and fees collected or received by the commissioner and the department in the discharge of official duties as follows:

(a) The department shall pay moneys received as advance payments, deposits, and security from successful bidders under RCW 79.15.100 and 79.11.150 to the state treasurer for deposit under (b) of this subsection. Moneys received from unsuccessful bidders shall be returned as provided in RCW 79.11.150;

(b) The department shall pay all moneys received on behalf of a trust fund or account to the state treasurer for deposit in the trust fund or account after making the deduction authorized under RCW 79.64.110, 79.22.050, 79.64.040, and 79.15.520, except as provided in RCW 79.64.130;

(c) The natural resources deposit fund is hereby created. The state treasurer is the custodian of the fund. All moneys or

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sums which remain in the custody of the commissioner of public lands awaiting disposition or where the final disposition is not known shall be deposited into the natural resources deposit fund. Disbursement from the fund shall be on the authorization of the commissioner or the commissioner's designee, without necessity of appropriation;

(d) If it is required by law that the department repay moneys disbursed under (a) and (b) of this subsection the state treasurer shall transfer such moneys, without necessity of appropriation, to the department upon demand by the department from those trusts and accounts originally receiving the moneys.

(2) Money shall not be deemed to have been paid to the state upon any sale or lease of land until it has been paid to the state treasurer. [2017 c 248 § 4. Prior: 2003 c 334 § 125; 2003 c 313 § 9; 1981 2nd ex.s. c 4 § 1; 1965 c 8 § 43.85.130; prior: (i) 1911 c 51 § 1; RRS § 5555. (ii) 1909 c 133 § 1, part; 1907 c 96 § 1, part; RRS § 5501, part. Formerly RCW 43.85.130.]

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Moneys received and invested prior to December 1, 1981: "Moneys received as deposits from successful bidders, advance payments, and security under RCW 79.01.132 and 79.01.204, which have been invested prior to December 1, 1981, in time deposits, shall be subject to RCW 43.85.130 as each time deposit matures." [1981 2nd ex.s. c 4 § 2.]

Additional notes found at www.leg.wa.gov

43.30.575 Wildfire areas—Funding wildfire risk reduction in certain counties. Subject to the availability of amounts appropriated for this specific purpose, in order to prevent homelessness in any county located east of the crest of the Cascade mountain range that shares a common border with Canada and has a population of one hundred thousand or less, the department shall, to strengthen the local capacity for controlling risk to life and property that may result from wildfires, administer to these counties, funding for radio communication equipment; and fire protection service providers within these counties to provide residential wildfire risk reduction activities, including education and outreach, technical assistance, fuel mitigation and other residential risk reduction measures. For the purposes of this section, fire protection service providers include fire departments, fire districts, emergency management services, and regional fire protection service authorities. The department must prioritize funding to counties authorized in this section serving a disproportionately higher percentage of low-income residents, as defined in RCW 84.36.042, that are located in areas of higher wildfire risk, and whose fire protection service providers have a shortage of reliable equipment and resources. [2017 c 280 § 1.]

Effective date—2017 c 280: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2017]." [2017 c 280 § 3.]

43.30.8351 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.31 RCW

DEPARTMENT OF COMMERCE

(Formerly: Department of community, trade, and economic development)

Sections

43.31.088	Repealed.
43.31.522	Repealed.
43.31.524	Repealed.
43.31.565	Early learning facilities grant and loan program—Definitions.
43.31.567	Early learning facilities grant and loan program—Review of existing licensing standards by department of early learning—Preapproval under existing licensing standards.
43.31.569	Early learning facilities grant and loan program—Early learning facilities revolving account—Early learning facilities development account.
43.31.571	Early learning facilities grant and loan program—Oversight, in consultation with the department of early learning—Head state agency—Use of funds.
43.31.573	Early learning facilities grant and loan program—State matching funds for grants or loans—Participation by nongovernmental private-public partnerships—Monitoring performance.
43.31.575	Early learning facilities grant and loan program—Eligible organizations—Requirements.
43.31.577	Early learning facilities grant and loan program—Eligible activities.
43.31.579	Early learning facilities grant and loan program—Private or local government matching funding—School districts' ranked and prioritized list of projects.
43.31.581	Early learning facilities grant and loan program—Committee of facilities experts—Advice regarding prioritization methodology—Liability insurance.
43.31.583	Early learning facilities grant and loan program—Report.
43.31.800	Repealed.
43.31.805	Repealed.
43.31.810	Repealed.
43.31.820	Repealed.
43.31.830	Repealed.
43.31.832	Repealed.
43.31.833	Repealed.
43.31.834	Repealed.
43.31.840	Repealed.
43.31.850	Repealed.

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

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

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

43.31.565 Early learning facilities grant and loan program—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout *chapter 12, Laws of 2017 3rd sp. sess.:

- (1) "Department" means the department of commerce.
- (2) "Director" means the director of commerce.
- (3) "Early learning facility" means a facility providing regularly scheduled care for a group of children one month of age through twelve years of age for periods of less than twenty-four hours. [2017 3rd sp.s. c 12 § 3.]

***Reviser's note:** Chapter 12, Laws of 2017 3rd sp.s. consists of RCW 43.31.565 through 43.31.583 and the 2017 3rd sp.s. c 12 amendments to RCW 43.84.092 and 43.185.050.

Findings—Intent—2017 3rd sp.s. c 12: "The legislature finds that there is a significant and critical need for additional early learning facilities to meet the state's commitment to providing high quality early learning opportunities to low-income children, including the legal mandate to provide preschool opportunities through the early childhood education and assistance program to all eligible children by 2023.

The legislature further finds that private and public partnerships and investments are critical to meeting the need for increased classrooms neces-

sary to deliver high quality early learning opportunities to low-income children across Washington.

The legislature intends to provide state financial assistance to leverage local and private resources to enable early childhood education and assistance program contractors and child care providers to expand, remodel, purchase, or construct early learning facilities and classrooms necessary to support state-funded early learning opportunities for low-income children." [2017 3rd sp.s. c 12 § 1.]

Effective date—2017 3rd sp.s. c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 6, 2017]." [2017 3rd sp.s. c 12 § 15.]

43.31.567 Early learning facilities grant and loan program—Review of existing licensing standards by department of early learning—Preapproval under existing licensing standards. The *department of early learning, in consultation with stakeholders, shall review existing licensing standards including, but not limited to, plumbing, fixtures, and playground equipment, related to facility requirements to eliminate potential barriers to licensing while ensuring the health and safety of children in early learning programs. The department must create a process by which projects for eligible organizations and school districts receiving grants or loans from the early learning facilities revolving account or the early learning facilities development account created in RCW 43.31.569 can be preapproved under existing licensing standards related to facility requirements. The licensing standards accepted in the preapproval are the licensing standards that must be met upon project completion. [2017 3rd sp.s. c 12 § 2.]

***Reviser's note:** The department of early learning was abolished and its powers, duties, and functions were transferred to the department of children, youth, and families by 2017 3rd sp.s. c 6 § 802, effective July 1, 2018.

Findings—Intent—Effective date—2017 3rd sp.s. c 12: See notes following RCW 43.31.565.

43.31.569 Early learning facilities grant and loan program—Early learning facilities revolving account—Early learning facilities development account. (1) The early learning facilities revolving account and the early learning facilities development account are created in the state treasury.

(2) Revenues to the early learning facilities revolving account shall consist of appropriations by the legislature, early learning facilities grant and loan repayments, taxable bond proceeds, and all other sources deposited in the account.

(3) Revenues to the early learning facilities development account shall consist of tax exempt bond proceeds.

(4) Expenditures from the accounts shall be used, in combination with other private and public funding, for state matching funds for the planning, renovation, purchase, and construction of early learning facilities as established in RCW 43.31.573 through 43.31.583 and 43.84.092.

(5) Expenditures from the accounts are subject to appropriation and the allotment provisions of chapter 43.88 RCW. [2017 3rd sp.s. c 12 § 4.]

Findings—Intent—Effective date—2017 3rd sp.s. c 12: See notes following RCW 43.31.565.

43.31.571 Early learning facilities grant and loan program—Oversight, in consultation with the department of early learning—Head state agency—Use of funds. (1) The department, in consultation with the *depart-

ment of early learning, shall oversee the early learning facilities revolving account and the early learning facilities development account, and is the lead state agency for the early learning facilities grant and loan program.

(2) It is the intent of the legislature that state funds invested in the accounts be matched by private or local government funding. Every effort shall be made to maximize funding available for early learning facilities from public schools, community colleges, education[al] service districts, local governments, and private funders.

(3) Amounts used for program administration by the department may not exceed an average of four percent of the appropriated funds.

(4) Commitment of state funds for construction, purchase, or renovation of early learning facilities may be given only after private or public match funds are committed. Private or public match funds may consist of cash, equipment, land, buildings, or like-kind. In determining the level of match required, the department shall take into consideration the financial need of the applicant and the economic conditions of the location of the proposed facility. [2017 3rd sp.s. c 12 § 5.]

***Reviser's note:** The department of early learning was abolished and its powers, duties, and functions were transferred to the department of children, youth, and families by 2017 3rd sp.s. c 6 § 802, effective July 1, 2018.

Findings—Intent—Effective date—2017 3rd sp.s. c 12: See notes following RCW 43.31.565.

43.31.573 Early learning facilities grant and loan program—State matching funds for grants or loans—Participation by nongovernmental private-public partnerships—Monitoring performance. (1) The department must expend moneys from the early learning facilities revolving account to provide state matching funds for early learning facilities grants or loans to provide classrooms necessary for children to participate in the early childhood education and assistance program and working connections child care.

(2) The department must expend moneys from the early learning facilities development account to provide state matching funds for early learning facilities grants to provide classrooms necessary for children to participate in the early childhood education and assistance program and working connections child care.

(3) Funds expended from the accounts as specified in subsections (1) and (2) of this section may fund projects only for:

(a) Eligible organizations identified in RCW 43.31.575; and

(b) School districts.

(4)(a) Beginning August 1, 2017, the department shall:

(i) In consultation with the office of the superintendent of public instruction, implement and administer the early learning facilities grant and loan program for school districts as described in RCW 43.31.579(3) and 43.31.581(1); and

(ii) Contract with one or more nongovernmental private-public partnerships that are certified by the community development financial institutions fund to implement and administer grants and loans funded through the early learning facilities revolving account or for a grant funded through the early learning facilities development account, for eligible organizations. Any nongovernmental private-public partnership

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that is certified by the community development financial institutions fund that is seeking early learning fund resources must demonstrate an ability to raise funding from private and other public entities for early learning facilities construction projects.

(b) The department may allow the application of an eligible organization for a grant or loan from the early learning facilities revolving account or for a grant from the early learning facilities development account created in RCW 43.31.569 to be considered without the involvement of the nongovernmental private-public partnership that is certified by the community development financial institutions fund if a nongovernmental private-public partnership certified by the community development financial institutions fund is not reasonably available to the location of the proposed facility or if the eligible organization has sufficient ability and capacity to proceed with a project absent the involvement of a nongovernmental private-public partnership that is certified by the community development financial institutions fund.

(5) The department shall monitor performance of the early learning facilities grant and loan program. Any nongovernmental private-public partnership that is certified by the community development financial institutions fund receiving state funds for purposes of chapter 12, Laws of 2017 3rd sp. sess. shall provide annual reports, beginning July 1, 2018, to the department. The reports must include, but are not limited to, the following:

(a) A list of projects funded through the early learning facilities grant and loan program for eligible organizations to include:

- (i) Name;
- (ii) Location;
- (iii) Grant or loan amount;
- (iv) Private match amount;
- (v) Public match amount;
- (vi) Number of early learners served; and
- (vii) Other elements as required by the department;

(b) A demonstration of sufficient investment of private match funds; and

(c) A description of how the projects met the criteria described in RCW 43.31.581. [2017 3rd sp.s. c 12 § 6.]

Findings—Intent—Effective date—2017 3rd sp.s. c 12: See notes following RCW 43.31.565.

43.31.575 Early learning facilities grant and loan program—Eligible organizations—Requirements. (1) Organizations eligible to receive funding from the early learning facilities grant and loan program include:

(a) Early childhood education and assistance program providers;

(b) Working connections child care providers who are eligible to receive state subsidies;

(c) Licensed early learning centers not currently participating in the early childhood education and assistance program, but intending to do so;

(d) Developers of housing and community facilities;

(e) Community and technical colleges;

(f) Educational service districts;

(g) Local governments;

(h) Federally recognized tribes in the state; and

(i) Religiously affiliated entities.

(2) To be eligible to receive funding from the early learning facilities grant and loan program for activities described in RCW 43.31.577 (1) (b) and (c) and (2), eligible organizations and school districts must:

(a) Commit to being an active participant in good standing with the early achievers program as defined by *chapter 43.215 RCW;

(b) Demonstrate that projects receiving construction, purchase, or renovation grants or loans less than two hundred thousand dollars must also:

(i) Demonstrate that the project site is under the applicant's control for a minimum of ten years, either through ownership or a long-term lease; and

(ii) Commit to using the facility funded by the grant or loan for the purposes of providing preschool or child care for a minimum of ten years;

(c) Demonstrate that projects receiving construction, purchase, or renovation grants or loans of two hundred thousand dollars or more must also:

(i) Demonstrate that the project site is under the applicant's control for a minimum of twenty years, either through ownership or a long-term lease; and

(ii) Commit to using the facility funded by the grant or loan for the purposes of providing preschool or child care for a minimum of twenty years.

(3) To be eligible to receive funding from the early learning facilities grant and loan program for activities described in RCW 43.31.577 (1) (b) and (c) and (2), religiously affiliated entities must use the facility to provide child care and education services consistent with subsection (4)(a) of this section.

(4)(a) Upon receiving a grant or loan, the recipient must continue to be an active participant and in good standing with the early achievers program.

(b) If the recipient does not meet the conditions specified in (a) of this subsection, the grants shall be repaid to the early learning facilities revolving account or the early learning facilities development account, as directed by the department. So long as an eligible organization continues to provide an early learning program in the facility, the facility is used as authorized, and the eligible organization continues to be an active participant and in good standing with the early achievers program, the grant repayment is waived.

(c) The department, in consultation with the **department of early learning, must adopt rules to implement this section. [2017 3rd sp.s. c 12 § 7.]

Reviser's note: *(1) All sections not repealed or decodified in chapter 43.215 RCW were recodified in chapter 43.216 RCW by 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

** (2) The department of early learning was abolished and its powers, duties, and functions were transferred to the department of children, youth, and families by 2017 3rd sp.s. c 6 § 802, effective July 1, 2018.

Findings—Intent—Effective date—2017 3rd sp.s. c 12: See notes following RCW 43.31.565.

43.31.577 Early learning facilities grant and loan program—Eligible activities. (1) Activities eligible for funding through the early learning facilities grant and loan program for eligible organizations include:

(a) Facility predesign grants or loans of no more than ten thousand dollars to allow eligible organizations to secure professional services or consult with organizations certified by

the community development financial institutions fund to plan for and assess the feasibility of early learning facilities projects or receive other technical assistance to design and develop projects for construction funding;

(b) Grants or loans of no more than one hundred thousand dollars for minor renovations or repairs of existing early learning facilities; and

(c) Major construction and renovation grants or loans and grants or loans for facility purchases of no more than eight hundred thousand dollars to create or expand early learning facilities.

(2) Activities eligible for funding through the early learning facilities grant and loan program for school districts include major construction, purchase, and renovation grants or loans of no more than eight hundred thousand dollars to create or expand early learning facilities that received priority and ranking as described in RCW 43.31.581.

(3) Beginning July 1, 2018, amounts in this section must be increased annually by the United States implicit price deflator for state and local government construction provided by the office of financial management. [2017 3rd sp.s. c 12 § 8.]

Findings—Intent—Effective date—2017 3rd sp.s. c 12: See notes following RCW 43.31.565.

43.31.579 Early learning facilities grant and loan program—Private or local government matching funding—School districts' ranked and prioritized list of projects. (1) It is the intent of the legislature that state funds invested in the early learning facilities grant and loan program be matched by private or local government funding. Every effort shall be made to maximize funding available for early learning facilities from public schools, community colleges, education[a] service districts, local governments, and private funders.

(2) In the administration of the early learning facilities grant and loan program for eligible organizations, any non-governmental private-public partnership that is certified by the community development financial institutions fund contracted with the department shall award grants or loans as described in RCW 43.31.577, that meet the criteria described in RCW 43.31.581, through an application process or in compliance with state and federal requirements of the funding source.

(3) In the administration of the early learning facilities grant and loan program for school districts, the department, in coordination with the office of the superintendent of public instruction, shall submit a ranked and prioritized list of proposed purchases and major construction or renovation of early learning facilities projects for school districts subject to the prioritization methodology described in RCW 43.31.581 to the office of financial management and the relevant legislative committees by December 15, 2017, and by September 15th of even-numbered years thereafter. [2017 3rd sp.s. c 12 § 9.]

Findings—Intent—Effective date—2017 3rd sp.s. c 12: See notes following RCW 43.31.565.

43.31.581 Early learning facilities grant and loan program—Committee of facilities experts—Advice regarding prioritization methodology—Liability insur-

ance. (1) The department shall convene a committee of early learning facilities experts to advise the department regarding the prioritization methodology of applications for projects described in RCW 43.31.577 including no less than one representative each from the *department of early learning, the Washington state housing finance commission, an organization certified by the community development financial institutions fund, and the office of the superintendent of public instruction.

(2) When developing a prioritization methodology under this section, the committee shall consider, but is not limited to:

(a) Projects that add part-day, full-day, or extended day early childhood education and assistance program slots in areas with the highest unmet need;

(b) Projects benefiting low-income children;

(c) Projects located in low-income neighborhoods;

(d) Projects that provide more access to the early childhood education and assistance program as a ratio of the children eligible to participate in the program;

(e) Projects that are geographically disbursed relative to statewide need;

(f) Projects that include new or renovated kitchen facilities equipped to support the use of from scratch, modified scratch, or other cooking methods that enhance overall student nutrition;

(g) Projects that balance mixed-use development and rural locations; and

(h) Projects that maximize resources available from the state with funding from other public and private organizations, including the use of state lands or facilities.

(3) Committee members shall serve without compensation, but may request reimbursement for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(4) Committee members are not liable to the state, the early learning facilities revolving account, the early learning facilities development account, or to any other person, as a result of their activities, whether ministerial or discretionary, as members except for willful dishonesty or intentional violation of the law.

(5) The department may purchase liability insurance for members and may indemnify these persons against the claims of others. [2017 3rd sp.s. c 12 § 10.]

***Reviser's note:** The department of early learning was abolished and its powers, duties, and functions were transferred to the department of children, youth, and families by 2017 3rd sp.s. c 6 § 802, effective July 1, 2018.

Findings—Intent—Effective date—2017 3rd sp.s. c 12: See notes following RCW 43.31.565.

43.31.583 Early learning facilities grant and loan program—Report. When funding is provided in the previous biennium, the department, in collaboration with the *department of early learning, shall submit a report no later than December 1st of even-numbered years, to the governor and the appropriate committees of the legislature that provides an update on the status of the early learning facilities grant and loan program that includes, but is not limited to:

(1) The total amount of funds, by grant and loan, spent or contracted to be spent; and

(2) A list of projects awarded funding including, but not limited to, information about whether the project is a renova-

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tion or new construction or some other category, where the project is located, and the number of slots the project supports. [2017 3rd sp.s. c 12 § 11.]

***Reviser's note:** The department of early learning was abolished and its powers, duties, and functions were transferred to the department of children, youth, and families by 2017 3rd sp.s. c 6 § 802, effective July 1, 2018.

Findings—Intent—Effective date—2017 3rd sp.s. c 12: See notes following RCW 43.31.565.

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

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

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

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

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

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

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

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

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

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

Chapter 43.31A RCW ECONOMIC ASSISTANCE ACT OF 1972

Sections

43.31A.400 Decodified.

43.31A.400 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.41 RCW OFFICE OF FINANCIAL MANAGEMENT

Sections

43.41.035 Decodified.

43.41.390 Repealed.

43.41.393 Technical plan of the K-20 telecommunications system and ongoing system enhancements—Contents.

43.41.400 Education data center. (*Effective July 1, 2018.*)

43.41.433 Information technology investment account.

43.41.450 Office of financial management central service account.

43.41.455 State agency office relocation pool account.

43.41.460 Military recruitment program for veterans—Development—Report.

43.41.901 Decodified.

43.41.940 Decodified.

43.41.950 Decodified.

43.41.981 Decodified.

43.41.035 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

43.41.393 Technical plan of the K-20 telecommunications system and ongoing system enhancements—Contents. The office, in conjunction with the K-20 network users, shall maintain a technical plan of the K-20 telecommunications system and ongoing system enhancements. The office shall ensure that the technical plan adheres to the goals and objectives established under RCW 43.105.054. The technical plan shall provide for:

(1) A telecommunications backbone connecting educational service districts, the main campuses of public baccalaureate institutions, all of the campuses of public research institutions, and the main campuses of community colleges and technical colleges.

(2)(a) Connection to the K-20 network by entities that include, but need not be limited to: School districts, public higher education off-campus and extension centers, and campuses of community colleges and technical colleges, as prioritized by the chief information officer; (b) distance education facilities and components for entities listed in this subsection and subsection (1) of this section; and (c) connection for independent nonprofit institutions of higher education, provided that:

(i) The office and each independent nonprofit institution of higher education to be connected agree in writing to terms and conditions of connectivity. The terms and conditions shall ensure, among other things, that the provision of K-20 services does not violate Article VIII, section 5 of the state Constitution and that the institution shall adhere to K-20 network policies; and

(ii) The office determines that inclusion of the independent nonprofit institutions of higher education will not significantly affect the network's eligibility for federal universal service fund discounts or subsidies.

(3) Subsequent phases may include, but need not be limited to, connections to public libraries, state and local governments, community resource centers, and the private sector. [2017 c 52 § 14; 2015 3rd sp.s. c 1 § 215; 2011 1st sp.s. c 43 § 720. Formerly RCW 43.41A.095.]

Effective date—2015 3rd sp.s. c 1 §§ 101-109, 201-224, 406-408, 410, 501-507, 601, and 602: See note following RCW 43.105.007.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.41.400 Education data center. (Effective July 1, 2018.) (1) An education data center shall be established in the office of financial management. The education data center shall jointly, with the legislative evaluation and accountability program committee, conduct collaborative analyses of early learning, K-12, and higher education programs and education issues across the P-20 system, which includes the department of children, youth, and families, the superintendent of public instruction, the professional educator standards board, the state board of education, the state board for com-

munity and technical colleges, the workforce training and education coordinating board, the student achievement council, public and private nonprofit four-year institutions of higher education, and the employment security department. The education data center shall conduct collaborative analyses under this section with the legislative evaluation and accountability program committee and provide data electronically to the legislative evaluation and accountability program committee, to the extent permitted by state and federal confidentiality requirements. The education data center shall be considered an authorized representative of the state educational agencies in this section under applicable federal and state statutes for purposes of accessing and compiling student record data for research purposes.

(2) The education data center shall:

(a) In consultation with the legislative evaluation and accountability program committee and the agencies and organizations participating in the education data center, identify the critical research and policy questions that are intended to be addressed by the education data center and the data needed to address the questions;

(b) Coordinate with other state education agencies to compile and analyze education data, including data on student demographics that is disaggregated by distinct ethnic categories within racial subgroups, and complete P-20 research projects;

(c) Collaborate with the legislative evaluation and accountability program committee and the education and fiscal committees of the legislature in identifying the data to be compiled and analyzed to ensure that legislative interests are served;

(d) Annually provide to the K-12 data governance group a list of data elements and data quality improvements that are necessary to answer the research and policy questions identified by the education data center and have been identified by the legislative committees in (c) of this subsection. Within three months of receiving the list, the K-12 data governance group shall develop and transmit to the education data center a feasibility analysis of obtaining or improving the data, including the steps required, estimated time frame, and the financial and other resources that would be required. Based on the analysis, the education data center shall submit, if necessary, a recommendation to the legislature regarding any statutory changes or resources that would be needed to collect or improve the data;

(e) Monitor and evaluate the education data collection systems of the organizations and agencies represented in the education data center ensuring that data systems are flexible, able to adapt to evolving needs for information, and to the extent feasible and necessary, include data that are needed to conduct the analyses and provide answers to the research and policy questions identified in (a) of this subsection;

(f) Track enrollment and outcomes through the public centralized higher education enrollment system;

(g) Assist other state educational agencies' collaborative efforts to develop a long-range enrollment plan for higher education including estimates to meet demographic and workforce needs;

(h) Provide research that focuses on student transitions within and among the early learning, K-12, and higher education sectors in the P-20 system;

(i) Prepare a regular report on the educational and workforce outcomes of youth in the juvenile justice system, using data disaggregated by age, and by ethnic categories and racial subgroups in accordance with RCW 28A.300.042; and

(j) Make recommendations to the legislature as necessary to help ensure the goals and objectives of this section and RCW 28A.655.210 and 28A.300.507 are met.

(3) The department of children, youth, and families, superintendent of public instruction, professional educator standards board, state board of education, state board for community and technical colleges, workforce training and education coordinating board, student achievement council, public four-year institutions of higher education, department of social and health services, and employment security department shall work with the education data center to develop data-sharing and research agreements, consistent with applicable security and confidentiality requirements, to facilitate the work of the center. The education data center shall also develop data-sharing and research agreements with the administrative office of the courts to conduct research on educational and workforce outcomes using data maintained under RCW 13.50.010(12) related to juveniles. Private, non-profit institutions of higher education that provide programs of education beyond the high school level leading at least to the baccalaureate degree and are accredited by the Northwest association of schools and colleges or their peer accreditation bodies may also develop data-sharing and research agreements with the education data center, consistent with applicable security and confidentiality requirements. The education data center shall make data from collaborative analyses available to the education agencies and institutions that contribute data to the education data center to the extent allowed by federal and state security and confidentiality requirements applicable to the data of each contributing agency or institution. [2017 3rd sp.s. c 6 § 223; 2016 c 72 § 108; 2012 c 229 § 585; 2009 c 548 § 201; 2007 c 401 § 3.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Finding—Intent—2016 c 72: See note following RCW 28A.600.015.

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Intent—2009 c 548: See RCW 28A.150.1981.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Findings—2007 c 401: See note following RCW 28A.300.500.

43.41.433 Information technology investment account. (1) The information technology investment account is created in the custody of the state treasurer. All receipts from legislative appropriations and transfers must be deposited into the account. Only the director of financial management or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Any residual balance of funds remaining in the information technology investment revolving account created in

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section 705, chapter 4, Laws of 2015 3rd sp. sess. and reenacted in subsection (1) of this section shall be transferred to the information technology investment account created in subsection (1) of this section after June 30, 2017. [2017 3rd sp.s. c 1 § 950.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

43.41.450 Office of financial management central service account. The office of financial management central service account is created in the state treasury. The account is to be used by the office as a revolving fund for the payment of salaries, wages, and other costs required for the operation and maintenance of statewide budgeting, accounting, forecasting, and functions and activities in the office. All receipts from agency fees and charges for services collected from public agencies must be deposited into the account. The director shall fix the terms and charges to agencies based on each agency's share of the office statewide cost allocation plan for federal funds. Moneys in the account may be spent only after appropriation. During the 2017-2019 fiscal biennium, the account may be used as a revolving fund for the payment of salaries, wages, and other costs related to policy activities in the office. The legislature intends to continue the use of the revolving fund for policy activities during the 2019-2021 biennium. [2017 3rd sp.s. c 1 § 968; 2016 sp.s. c 36 § 927.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

43.41.455 State agency office relocation pool account. The state agency office relocation pool account is created in the custody of the state treasurer. All receipts from legislative appropriations and transfers must be deposited in the account. Expenditures from the account may be used only for state agency costs related to relocation of state agency offices. Authorized expenditures include lease payments and costs of relocation, equipment, furniture, and tenant improvements. Only the director of the office of financial management or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2017 3rd sp.s. c 1 § 949.]

Reviser's note: 2017 3rd sp.s. c 1 § 949 directed that this section be added to chapter 43.31 RCW. This section has been codified in chapter 43.41 RCW, which relates more directly to the office of financial management.

Effective date—2017 3rd sp.s. c 1: "Except for section 990 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 30, 2017]." [2017 3rd sp.s. c 1 § 1903.]

43.41.460 Military recruitment program for veterans—Development—Report. (1) The office shall develop a military recruitment program that targets veterans and gives them credit for their knowledge, skills, and leadership abilities. In developing the program, the office shall consult with the department of enterprise services, department of veteran[s] affairs, the state military transition council, the veterans employee resource group, and other interested stakeholders. Program development must include, but is not limited to,

identifying: (a) Public and private military recruitment programs and ways those programs can be used in Washington; (b) similar military and state job classes and develop a system to provide veterans with experience credit for similar work; and (c) barriers to state employment and opportunities to better utilize veterans experience.

(2) The office shall report to the legislature with a draft plan by January 1, 2018, that includes draft bill language if necessary. [2017 c 192 § 4.]

Findings—2017 c 192: "The legislature finds that:

(1) Washington state provides a stated preference for hiring veterans and provides a scoring preference for hiring and promotional opportunities to veterans in the form of enhanced test scores;

(2) Few agencies outside of law enforcement use tests in hiring or promotion;

(3) Veterans have experience that is broader than law enforcement and the state can benefit by recruiting people with this experience;

(4) Veterans leave service with experience in transportation, teaching and education, logistics, computer technology, health care, media and communications, construction and engineering, and administrative support;

(5) Many state agencies and other public employers are struggling to fill and retain employees in key positions;

(6) Many public and private employers have developed veteran hiring and recruitment programs that take advantage of the broad experience that veterans bring to the job market." [2017 c 192 § 3.]

Findings—2017 c 192: See note following RCW 43.60A.100.

43.41.901 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.41.940 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.41.950 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.41.981 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.42 RCW

OFFICE OF REGULATORY ASSISTANCE

Sections

43.42.010 Office created—Appointment of director—Duties.

43.42.010 Office created—Appointment of director—Duties. (1) The office of regulatory assistance is created in the office of financial management and must be administered by the office of the governor to help improve the regulatory system and assist citizens, businesses, and project proponents.

(2) The governor must appoint a director. The director may employ a deputy director and a confidential secretary and such staff as are necessary, or contract with another state agency pursuant to chapter 39.34 RCW for support in carrying out the purposes of this chapter.

(3) The office must offer to:

(a) Act as the central point of contact for the project proponent in communicating about defined issues;

(b) Conduct project scoping as provided in RCW 43.42.050;

(c) Verify that the project proponent has all the information needed to correctly apply for all necessary permits;

(d) Provide general coordination services;

(e) Coordinate the efficient completion among participating agencies of administrative procedures, such as collecting fees or providing public notice;

(f) Maintain contact with the project proponent and the permit agencies to promote adherence to agreed schedules;

(g) Assist in resolving any conflict or inconsistency among permit requirements and conditions;

(h) Coordinate, to the extent practicable, with relevant federal permit agencies and tribal governments;

(i) Facilitate meetings;

(j) Manage a fully coordinated permit process, as provided in RCW 43.42.060; and

(k) Help local jurisdictions comply with the requirements of chapter 36.70B RCW.

(4) The office must also:

(a) Provide information to local jurisdictions about best permitting practices, methods to improve communication with, and solicit early involvement of, state agencies when needed, and effective means of assessing and communicating expected project timelines and costs;

(b) Maintain and furnish information as provided in RCW 43.42.040;

(c) Act as the central entity to collaborate with and provide support to state agencies in meeting the requirements of the regulatory fairness act, chapter 19.85 RCW. Support must include, but is not limited to:

(i) Providing online guidance and tools. Online guidance and tools may include templates and resources to assist agency employees with consistent compliance with the regulatory fairness act, chapter 19.85 RCW. In providing online guidance and tools the office must consult the office of the attorney general. The office will make the online guidance and tools available by December 31, 2017;

(ii) Providing access to available data for agencies to complete cost calculations pursuant to chapter 19.85 RCW; and

(iii) Facilitating sharing of information among agencies and between agencies and business associations;

(d) Provide the following by September 1, 2009, and biennially thereafter, to the governor and the appropriate committees of the legislature:

(i) A performance report including:

(A) Information regarding use of the office's voluntary cost-reimbursement services as provided in RCW 43.42.070;

(B) The number and type of projects or initiatives where the office provided services including the key agencies with which the office partnered;

(C) Specific information on any difficulty encountered in providing services or implementing programs, processes, or assistance tools; and

(D) Trend reporting that allows comparisons between statements of goals and performance targets and the achievement of those goals and targets; and

(ii) Recommendations on system improvements including, but not limited to, recommendations on improving environmental permitting by making it more time efficient and cost-effective for all participants in the process. [2017 c 53 § 3; 2012 c 196 § 1; 2011 c 149 § 2; 2009 c 97 § 4. Prior: 2007 c 231 § 5; 2007 c 94 § 2; 2003 c 71 § 2; 2002 c 153 § 2.]

Effective date—2011 c 149: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect June 29, 2011." [2011 c 149 § 4.]

Findings—Recommendations—Reports encouraged—2007 c 231: See note following RCW 43.155.070.

Additional notes found at www.leg.wa.gov

Chapter 43.43 RCW WASHINGTON STATE PATROL

Sections

43.43.120	Patrol retirement system—Definitions.
43.43.400	Aquatic invasive species inspection and training.
43.43.754	DNA identification system—Biological samples—Collection, use, testing—Scope and application of section.
43.43.823	Incorporation of denied firearm transaction records—Removal of record, when required—Notice—Rules.
43.43.830	Background checks—Access to children or vulnerable persons—Definitions.
43.43.832	Background checks—Disclosure of information—Sharing of criminal background information by health care facilities. (<i>Effective until July 1, 2018.</i>)
43.43.832	Background checks—Disclosure of information—Sharing of criminal background information by health care facilities. (<i>Effective July 1, 2018.</i>)
43.43.837	Fingerprint-based background checks—Requirements for applicants and service providers—Shared background checks—Fees—Rules to establish financial responsibility. (<i>Effective July 1, 2018.</i>)
43.43.838	Record checks—Transcript of conviction record—Fees—Immunity—Rules. (<i>Effective July 1, 2018.</i>)
43.43.839	Fingerprint identification account.

43.43.120 Patrol retirement system—Definitions. As used in this section and RCW 43.43.130 through 43.43.320, unless a different meaning is plainly required by the context:

(1) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality table as may be adopted and such interest rate as may be determined by the director.

(2) "Annual increase" means as of July 1, 1999, seventy-seven cents per month per year of service which amount shall be increased each subsequent July 1st by three percent, rounded to the nearest cent.

(3)(a) "Average final salary," for members commissioned prior to January 1, 2003, shall mean the average monthly salary received by a member during the member's last two years of service or any consecutive two-year period of service, whichever is the greater, as an employee of the Washington state patrol; or if the member has less than two years of service, then the average monthly salary received by the member during the member's total years of service.

(b) "Average final salary," for members commissioned on or after January 1, 2003, shall mean the average monthly salary received by a member for the highest consecutive sixty service credit months; or if the member has less than sixty months of service, then the average monthly salary received by the member during the member's total months of service.

(c) In calculating average final salary under (a) or (b) of this subsection, the department of retirement systems shall include:

(i) Any compensation forgone by the member during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or voluntary leave without pay, temporary reduction in pay implemented prior to December 11, 2010, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the chief; and

(ii) Any compensation forgone by a member during the 2011-2013 fiscal biennium as a result of reduced work hours, mandatory leave without pay, temporary layoffs, or reductions to current pay if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the chief. Reductions to current pay shall not include elimination of previously agreed upon future salary reductions.

(4) "Beneficiary" means any person in receipt of retirement allowance or any other benefit allowed by this chapter.

(5)(a) "Cadet," for a person who became a member of the retirement system after June 12, 1980, is a person who has passed the Washington state patrol's entry-level oral, written, physical performance, and background examinations and is, thereby, appointed by the chief as a candidate to be a commissioned officer of the Washington state patrol.

(b) "Cadet," for a person who became a member of the retirement system before June 12, 1980, is a trooper cadet, patrol cadet, or employee of like classification, employed for the express purpose of receiving the on-the-job training required for attendance at the state patrol academy and for becoming a commissioned trooper. "Like classification" includes: Radio operators or dispatchers; persons providing security for the governor or legislature; patrol officers; drivers' license examiners; weighmasters; vehicle safety inspectors; central wireless operators; and warehouse workers.

(6) "Contributions" means the deduction from the compensation of each member in accordance with the contribution rates established under chapter 41.45 RCW.

(7) "Current service" shall mean all service as a member rendered on or after August 1, 1947.

(8) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(9) "Director" means the director of the department of retirement systems.

(10) "Domestic partners" means two adults who have registered as domestic partners under RCW 26.60.040.

(11) "Employee" means any commissioned employee of the Washington state patrol.

(12) "Insurance commissioner" means the insurance commissioner of the state of Washington.

(13) "Lieutenant governor" means the lieutenant governor of the state of Washington.

(14) "Member" means any person included in the membership of the retirement fund.

(15) "Plan 2" means the Washington state patrol retirement system plan 2, providing the benefits and funding provisions covering commissioned employees who first become members of the system on or after January 1, 2003.

(16) "Prior service" shall mean all services rendered by a member to the state of Washington, or any of its political subdivisions prior to August 1, 1947, unless such service has been credited in another public retirement or pension system operating in the state of Washington.

(17) "Regular interest" means interest compounded annually at such rates as may be determined by the director.

(18) "Retirement board" means the board provided for in this chapter.

(19) "Retirement fund" means the Washington state patrol retirement fund.

(20) "Retirement system" means the Washington state patrol retirement system.

(21)(a) "Salary," for members commissioned prior to July 1, 2001, shall exclude any overtime earnings related to RCW 47.46.040, or any voluntary overtime, earned on or after July 1, 2001, and prior to July 1, 2017. On or after July 1, 2017, salary shall exclude overtime earnings in excess of seventy hours per year in total related to either RCW 47.46.040 or any voluntary overtime.

(b) "Salary," for members commissioned on or after July 1, 2001, shall exclude any overtime earnings related to RCW 47.46.040 or any voluntary overtime, earned prior to July 1, 2017, lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, holiday pay, or any form of severance pay. On or after July 1, 2017, salary shall exclude overtime earnings in excess of seventy hours per year in total related to either RCW 47.46.040 or any voluntary overtime.

(c) The addition of overtime earnings related to RCW 47.46.040 or any voluntary overtime earned on or after July 1, 2017, in chapter 181, Laws of 2017 is a benefit improvement that increases the member maximum contribution rate under RCW 41.45.0631(1) by 1.10 percent.

(22) "Service" shall mean services rendered to the state of Washington or any political subdivisions thereof for which compensation has been paid. Full time employment for seventy or more hours in any given calendar month shall constitute one month of service. An employee who is reinstated in accordance with RCW 43.43.110 shall suffer no loss of service for the period reinstated subject to the contribution requirements of this chapter. Only months of service shall be counted in the computation of any retirement allowance or other benefit provided for herein. Years of service shall be determined by dividing the total number of months of service by twelve. Any fraction of a year of service as so determined shall be taken into account in the computation of such retirement allowance or benefit.

(23) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(24) "State treasurer" means the treasurer of the state of Washington.

Unless the context expressly indicates otherwise, words importing the masculine gender shall be extended to include the feminine gender and words importing the feminine gender shall be extended to include the masculine gender. [2017 c 181 § 1; 2011 1st sp.s. c 5 § 6; 2010 2nd sp.s. c 1 § 907; 2010 1st sp.s. c 32 § 9. Prior: 2009 c 549 § 5124; 2009 c 522 § 1; 2001 c 329 § 3; 1999 c 74 § 1; 1983 c 81 § 1; 1982 1st ex.s. c 52 § 24; 1980 c 77 § 1; 1973 1st ex.s. c 180 § 1; 1969 c 12 § 1; 1965 c 8 § 43.43.120; prior: 1955 c 244 § 1; 1953 c 262 § 1; 1951 c 140 § 1; 1947 c 250 § 1; Rem. Supp. 1947 § 6362-81.]

Effective date—2011 1st sp.s. c 5: See note following RCW 41.26.030.

Effective date—2010 2nd sp.s. c 1: See note following RCW 38.52.105.

Intent—Conflict with federal requirements—Effective date—2010 1st sp.s. c 32: See notes following RCW 42.04.060.

Additional notes found at www.leg.wa.gov

43.43.400 Aquatic invasive species inspection and training. (1) Money in the aquatic invasive species manage-

ment account created in RCW 77.135.200 may be used by the Washington state patrol for aquatic invasive species inspection training and to inspect for the presence of aquatic invasive species on aquatic conveyances that are required to stop at a Washington state patrol port of entry weigh station.

(2) Unless the context clearly requires otherwise, the definitions in both RCW 77.08.010 and 77.135.010 apply throughout this section. [2017 3rd sp.s. c 17 § 102; 2014 c 202 § 306; 2011 c 171 § 8; 2011 c 169 § 3; 2007 c 350 § 1; 2005 c 464 § 5.]

Findings—2014 c 202: See note following RCW 77.135.010.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Findings—Intent—2005 c 464: See note following RCW 88.02.560.

43.43.754 DNA identification system—Biological samples—Collection, use, testing—Scope and application of section. (1) A biological sample must be collected for purposes of DNA identification analysis from:

(a) Every adult or juvenile individual convicted of a felony, or any of the following crimes (or equivalent juvenile offenses):

(i) Assault in the fourth degree where domestic violence as defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041, 9.94A.030);

(ii) Assault in the fourth degree with sexual motivation (RCW 9A.36.041, 9.94A.835);

(iii) Communication with a minor for immoral purposes (RCW 9.68A.090);

(iv) Custodial sexual misconduct in the second degree (RCW 9A.44.170);

(v) Failure to register (*RCW 9A.44.130 for persons convicted on or before June 10, 2010, and RCW 9A.44.132 for persons convicted after June 10, 2010);

(vi) Harassment (RCW 9A.46.020);

(vii) Patronizing a prostitute (RCW 9A.88.110);

(viii) Sexual misconduct with a minor in the second degree (RCW 9A.44.096);

(ix) Stalking (RCW 9A.46.110);

(x) Violation of a sexual assault protection order granted under chapter 7.90 RCW; and

(b) Every adult or juvenile individual who is required to register under RCW 9A.44.130.

(2) If the Washington state patrol crime laboratory already has a DNA sample from an individual for a qualifying offense, a subsequent submission is not required to be submitted.

(3) Biological samples shall be collected in the following manner:

(a) For persons convicted of any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense who do not serve a term of confinement in a department of corrections facility, and do serve a term of confinement in a city or county jail facility, the city or county shall be responsible for obtaining the biological samples.

(b) The local police department or sheriff's office shall be responsible for obtaining the biological samples for:

(i) Persons convicted of any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense who do not serve a term of confinement in a

department of corrections facility, and do not serve a term of confinement in a city or county jail facility; and

(ii) Persons who are required to register under RCW 9A.44.130.

(c) For persons convicted of any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense, who are serving or who are to serve a term of confinement in a department of corrections facility or a department of social and health services facility, the facility holding the person shall be responsible for obtaining the biological samples. For those persons incarcerated before June 12, 2008, who have not yet had a biological sample collected, priority shall be given to those persons who will be released the soonest.

(4) Any biological sample taken pursuant to RCW 43.43.752 through 43.43.758 may be retained by the forensic laboratory services bureau, and shall be used solely for the purpose of providing DNA or other tests for identification analysis and prosecution of a criminal offense or for the identification of human remains or missing persons. Nothing in this section prohibits the submission of results derived from the biological samples to the federal bureau of investigation combined DNA index system.

(5) The forensic laboratory services bureau of the Washington state patrol is responsible for testing performed on all biological samples that are collected under subsection (1) of this section, to the extent allowed by funding available for this purpose. The director shall give priority to testing on samples collected from those adults or juveniles convicted of a felony or adjudicated guilty of an equivalent juvenile offense that is defined as a sex offense or a violent offense in RCW 9.94A.030. Known duplicate samples may be excluded from testing unless testing is deemed necessary or advisable by the director.

(6) This section applies to:

(a) All adults and juveniles to whom this section applied prior to June 12, 2008;

(b) All adults and juveniles to whom this section did not apply prior to June 12, 2008, who:

(i) Are convicted on or after June 12, 2008, of an offense listed in subsection (1)(a) of this section; or

(ii) Were convicted prior to June 12, 2008, of an offense listed in subsection (1)(a) of this section and are still incarcerated on or after June 12, 2008; and

(c) All adults and juveniles who are required to register under RCW 9A.44.130 on or after June 12, 2008, whether convicted before, on, or after June 12, 2008.

(7) This section creates no rights in a third person. No cause of action may be brought based upon the noncollection or nonanalysis or the delayed collection or analysis of a biological sample authorized to be taken under RCW 43.43.752 through 43.43.758.

(8) The detention, arrest, or conviction of a person based upon a database match or database information is not invalidated if it is determined that the sample was obtained or placed in the database by mistake, or if the conviction or juvenile adjudication that resulted in the collection of the biological sample was subsequently vacated or otherwise altered in any future proceeding including but not limited to posttrial or postfact-finding motions, appeals, or collateral attacks.

(9) A person commits the crime of refusal to provide DNA if the person has a duty to register under RCW 9A.44.130 and the person willfully refuses to comply with a legal request for a DNA sample as required under this section. The refusal to provide DNA is a gross misdemeanor. [2017 c 272 § 4; 2015 c 261 § 10; 2008 c 97 § 2; 2002 c 289 § 2; 1999 c 329 § 2; 1994 c 271 § 402; 1990 c 230 § 3; 1989 c 350 § 4.]

***Reviser's note:** 2010 c 267 removed from RCW 9A.44.130 provisions relating to the crime of "failure to register" as a sex offender or kidnapping offender, and placed similar provisions in RCW 9A.44.132.

Finding—2017 c 272: See note following RCW 9A.36.041.

Findings—1999 c 329: "The legislature finds it necessary to expand the current pool of convicted offenders who must have a blood sample drawn for purposes of DNA identification analysis. The legislature further finds that there is a high rate of recidivism among certain types of violent and sex offenders and that drawing blood is minimally intrusive. Creating an expanded DNA data bank bears a rational relationship to the public's interest in enabling law enforcement to better identify convicted violent and sex offenders who are involved in unsolved crimes, who escape to reoffend, and who reoffend after release." [1999 c 329 § 1.]

Finding—1994 c 271: "The legislature finds that DNA identification analysis is an accurate and useful law enforcement tool for identifying and prosecuting sexual and violent offenders. The legislature further finds no compelling reason to exclude juvenile sexual and juvenile violent offenders from DNA identification analysis." [1994 c 271 § 401.]

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Finding—Funding limitations—1989 c 350: See notes following RCW 43.43.752.

Additional notes found at www.leg.wa.gov

43.43.823 Incorporation of denied firearm transaction records—Removal of record, when required—

Notice—Rules. (1) Upon receipt of the information from the Washington association of sheriffs and police chiefs pursuant to RCW 36.28A.400, the Washington state patrol must incorporate the information into its electronic database accessible to law enforcement agencies and officers, including federally recognized Indian tribes, that have a connection to the Washington state patrol electronic database.

(2) Upon receipt of documentation that a person has appealed a background check denial, the Washington state patrol shall immediately remove the record of the person initially reported pursuant to RCW 36.28A.400 from its electronic database accessible to law enforcement agencies and officers. The Washington state patrol must keep a separate record of the person's information for a period of one year or until such time as the appeal has been resolved. Every twelve months, the Washington state patrol shall notify the person that the person must provide documentation that his or her appeal is still pending or the record of the person's background check denial will be put back in its electronic database accessible to law enforcement agencies and officers. At any time, upon receipt of documentation that a person's appeal has been granted, the Washington state patrol shall remove any record of the person's denied firearms purchase or transfer application from its electronic database accessible to law enforcement agencies and officers.

(3) Upon receipt of satisfactory proof that a person who was reported to the Washington state patrol pursuant to RCW 36.28A.400 is no longer ineligible to possess a firearm under state or federal law, the Washington state patrol must remove

any record of the person's denied firearms purchase or transfer application from its electronic database accessible to law enforcement agencies and officers.

(4) Upon receipt of notification from the Washington association of sheriffs and police chiefs that a person originally denied the purchase or transfer of a firearm as the result of a background check or completed and submitted firearm purchase or transfer application that indicates the applicant is ineligible to possess a firearm under state or federal law has subsequently been approved for the purchase or transfer, the Washington state patrol must remove any record of the person's denied firearms purchase or transfer application from its electronic database accessible to law enforcement agencies and officers within five business days.

(5) The Washington state patrol shall generate and distribute a notice form to all firearm dealers, to be provided by the dealers to applicants denied the purchase or transfer of a firearm as a result of a background check that indicates the applicant is ineligible to possess a firearm. The notice form must contain the following statements:

State law requires that I transmit the following information to the Washington association of sheriffs and police chiefs as a result of your firearm purchase or transfer denial within two days of the denial:

- (a) Identifying information of the applicant;
- (b) The date of the application and denial of the application;
- (c) Other information as prescribed by the Washington association of sheriffs and police chiefs.

If you believe this denial is in error, and you do not exercise your right to appeal, you may be subject to criminal investigation by the Washington state patrol and/or a local law enforcement agency.

The notice form shall also contain information directing the applicant to a web site describing the process of appealing a national instant criminal background check system denial through the federal bureau of investigation and refer the applicant to local law enforcement for information on a denial based on a state background check. The notice form shall also contain a phone number for a contact at the Washington state patrol to direct the person to resources regarding an individual's right to appeal a background check denial.

(6) The Washington state patrol may adopt rules as are necessary to carry out the purposes of this section. [2017 c 261 § 3.]

43.43.830 Background checks—Access to children or vulnerable persons—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.43.830 through 43.43.845.

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults, juveniles, or children, or which provides child day care, early learning, or early childhood education services.

(2) "Applicant" means:

(a) Any prospective employee who will or may have unsupervised access to children under sixteen years of age or

developmentally disabled persons or vulnerable adults during the course of his or her employment or involvement with the business or organization;

(b) Any prospective volunteer who will have regularly scheduled unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults during the course of his or her employment or involvement with the business or organization under circumstances where such access will or may involve groups of (i) five or fewer children under twelve years of age, (ii) three or fewer children between twelve and sixteen years of age, (iii) developmentally disabled persons, or (iv) vulnerable adults;

(c) Any prospective adoptive parent, as defined in RCW 26.33.020; or

(d) Any prospective custodian in a nonparental custody proceeding under chapter 26.10 RCW.

(3) "Business or organization" means a person, business, or organization licensed in this state, any agency of the state, or other governmental entity, that educates, trains, treats, supervises, houses, or provides recreation to developmentally disabled persons, vulnerable adults, or children under sixteen years of age, or that provides child day care, early learning, or early learning childhood education services, including but not limited to public housing authorities, school districts, and educational service districts.

(4) "Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

(5) "Client" or "resident" means a child, person with developmental disabilities, or vulnerable adult applying for housing assistance from a business or organization.

(6) "Conviction record" means "conviction record" information as defined in RCW 10.97.030 and *10.97.050 relating to a crime committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(7) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnapping; first, second, or third degree assault; fourth degree assault (if a violation of RCW 9A.36.041(3)); first, second, or third degree assault of a child; first, second, or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary;

first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; endangerment with a controlled substance; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; first or second degree custodial sexual misconduct; malicious harassment; first, second, or third degree child molestation; first or second degree sexual misconduct with a minor; commercial sexual abuse of a minor; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; criminal abandonment; or any of these crimes as they may be renamed in the future.

(8) "Crimes relating to drugs" means a conviction of a crime to manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance.

(9) "Crimes relating to financial exploitation" means a conviction for first, second, or third degree extortion; first, second, or third degree theft; first or second degree robbery; forgery; or any of these crimes as they may be renamed in the future.

(10) "Financial exploitation" means "financial exploitation" as defined in RCW 74.34.020.

(11) "Health care facility" means a nursing home licensed under chapter 18.51 RCW, a [an] assisted living facility licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(12) "Peer counselor" means a nonprofessional person who has equal standing with another person, providing advice on a topic about which the nonprofessional person is more experienced or knowledgeable, and who is a counselor for a peer counseling program that contracts with or is otherwise approved by the department, another state or local agency, or the court.

(13) "Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization.

With regard to peer counselors, "unsupervised" does not include incidental contact with children under age sixteen at the location at which the peer counseling is taking place. "Incidental contact" means minor or casual contact with a child in an area accessible to and within visual or auditory range of others. It could include passing a child while walking down a hallway but would not include being alone with a child for any period of time in a closed room or office.

(14) "Vulnerable adult" means "vulnerable adult" as defined in chapter 74.34 RCW, except that for the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves. [2017 c 272 § 5; 2012 c 44 § 1. Prior: 2011 c 253 § 5; 2007 c 387 § 9; 2005 c 421 § 1; 2003 c 105 § 5; 2002 c

229 § 3; 1999 c 45 § 5; 1998 c 10 § 1; 1996 c 178 § 12; 1995 c 250 § 1; 1994 c 108 § 1; 1992 c 145 § 16; prior: 1990 c 146 § 8; 1990 c 3 § 1101; prior: 1989 c 334 § 1; 1989 c 90 § 1; 1987 c 486 § 1.]

*Reviser's note: RCW 10.97.050 was amended by 2012 c 125 § 2, eliminating the limitation on what may be included in a conviction record.

Finding—2017 c 272: See note following RCW 9A.36.041.

At-risk children volunteer program: RCW 43.150.080.

State hospitals: RCW 72.23.035.

Additional notes found at www.leg.wa.gov

43.43.832 Background checks—Disclosure of information—Sharing of criminal background information by health care facilities. (Effective until July 1, 2018.) (1) The Washington state patrol identification and criminal history section shall disclose conviction records as follows:

(a) An applicant's conviction record, upon the request of a business or organization as defined in RCW 43.43.830, a developmentally disabled person, or a vulnerable adult as defined in RCW 43.43.830 or his or her guardian;

(b) The conviction record of an applicant for certification, upon the request of the Washington professional educator standards board;

(c) Any conviction record to aid in the investigation and prosecution of child, developmentally disabled person, and vulnerable adult abuse cases and to protect children and adults from further incidents of abuse, upon the request of a law enforcement agency, the office of the attorney general, prosecuting authority, or the department of social and health services; and

(d) A prospective client's or resident's conviction record, upon the request of a business or organization that qualifies for exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) and that provides emergency shelter or transitional housing for children, persons with developmental disabilities, or vulnerable adults.

(2) The secretary of the department of social and health services must establish rules and set standards to require specific action when considering the information received pursuant to subsection (1) of this section, and when considering additional information including but not limited to civil adjudication proceedings as defined in RCW 43.43.830 and any out-of-state equivalent, in the following circumstances:

(a) When considering persons for state employment in positions directly responsible for the supervision, care, or treatment of children, vulnerable adults, or individuals with mental illness or developmental disabilities provided that: For persons residing in a home that will be utilized to provide foster care for dependent youth, a criminal background check will be required for all persons aged sixteen and older and the department of social and health services may require a criminal background check for persons who are younger than sixteen in situations where it may be warranted to ensure the safety of youth in foster care;

(b) When considering persons for state positions involving unsupervised access to vulnerable adults to conduct comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(c) When licensing agencies or facilities with individuals in positions directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults, including but not limited to agencies or facilities licensed under chapter 74.15 or 18.51 RCW;

(d) When contracting with individuals or businesses or organizations for the care, supervision, case management, or treatment, including peer counseling, of children, developmentally disabled persons, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW;

(e) When individual providers are paid by the state or providers are paid by home care agencies to provide in-home services involving unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW.

(3) The director of the department of early learning shall investigate the conviction records, pending charges, and other information including civil adjudication proceeding records of current employees and of any person actively being considered for any position with the department who will or may have unsupervised access to children, or for state positions otherwise required by federal law to meet employment standards. "Considered for any position" includes decisions about (a) initial hiring, layoffs, reallocations, transfers, promotions, or demotions, or (b) other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer.

(4) The director of the department of early learning shall adopt rules and investigate conviction records, pending charges, and other information including civil adjudication proceeding records, in the following circumstances:

(a) When licensing or certifying agencies with individuals in positions that will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood education services, including but not limited to licensees, agency staff, interns, volunteers, contracted providers, and persons living on the premises who are sixteen years of age or older;

(b) When authorizing individuals who will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood learning education services in licensed or certified agencies, including but not limited to licensees, agency staff, interns, volunteers, contracted providers, and persons living on the premises who are sixteen years of age or older;

(c) When contracting with any business or organization for activities that will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood learning education services;

(d) When establishing the eligibility criteria for individual providers to receive state paid subsidies to provide child day care or early learning services that will or may involve unsupervised access to children.

(5) Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis pending

completion of the state background investigation. Whenever a national criminal record check through the federal bureau of investigation is required by state law, a person may be employed or engaged as a volunteer or independent contractor on a conditional basis pending completion of the national check. The Washington personnel resources board shall adopt rules to accomplish the purposes of this subsection as it applies to state employees.

(6)(a) For purposes of facilitating timely access to criminal background information and to reasonably minimize the number of requests made under this section, recognizing that certain health care providers change employment frequently, health care facilities may, upon request from another health care facility, share copies of completed criminal background inquiry information.

(b) Completed criminal background inquiry information may be shared by a willing health care facility only if the following conditions are satisfied: The licensed health care facility sharing the criminal background inquiry information is reasonably known to be the person's most recent employer, no more than twelve months has elapsed from the date the person was last employed at a licensed health care facility to the date of their current employment application, and the criminal background information is no more than two years old.

(c) If criminal background inquiry information is shared, the health care facility employing the subject of the inquiry must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in RCW 43.43.842 since the completion date of the most recent criminal background inquiry.

(d) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in RCW 43.43.842, subsequent to the completion date of their most recent criminal background inquiry, shall be prohibited from relying on the applicant's previous employer's criminal background inquiry information. A new criminal background inquiry shall be requested pursuant to RCW 43.43.830 through 43.43.842.

(e) Health care facilities that share criminal background inquiry information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this subsection.

(f) Health care facilities shall transmit and receive the criminal background inquiry information in a manner that reasonably protects the subject's rights to privacy and confidentiality. [2017 3rd sp.s. c 20 § 5. Prior: 2012 c 44 § 2; 2012 c 10 § 41; 2011 c 253 § 6; 2007 c 387 § 10; 2006 c 263 § 826; 2005 c 421 § 2; 2000 c 87 § 1; 1997 c 392 § 524; 1995 c 250 § 2; 1993 c 281 § 51; 1990 c 3 § 1102; prior: 1989 c 334 § 2; 1989 c 90 § 2; 1987 c 486 § 2.]

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

Application—2012 c 10: See note following RCW 18.20.010.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Additional notes found at www.leg.wa.gov

43.43.832 Background checks—Disclosure of information—Sharing of criminal background information by health care facilities. (Effective July 1, 2018.) (1) The Washington state patrol identification and criminal history section shall disclose conviction records as follows:

(a) An applicant's conviction record, upon the request of a business or organization as defined in RCW 43.43.830, a developmentally disabled person, or a vulnerable adult as defined in RCW 43.43.830 or his or her guardian;

(b) The conviction record of an applicant for certification, upon the request of the Washington professional educator standards board;

(c) Any conviction record to aid in the investigation and prosecution of child, developmentally disabled person, and vulnerable adult abuse cases and to protect children and adults from further incidents of abuse, upon the request of a law enforcement agency, the office of the attorney general, prosecuting authority, or the department of social and health services; and

(d) A prospective client's or resident's conviction record, upon the request of a business or organization that qualifies for exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) and that provides emergency shelter or transitional housing for children, persons with developmental disabilities, or vulnerable adults.

(2) The secretary of the department of social and health services and the secretary of children, youth, and families must establish rules and set standards to require specific action when considering the information received pursuant to subsection (1) of this section, and when considering additional information including but not limited to civil adjudication proceedings as defined in RCW 43.43.830 and any out-of-state equivalent, in the following circumstances:

(a) When considering persons for state employment in positions directly responsible for the supervision, care, or treatment of children, vulnerable adults, or individuals with mental illness or developmental disabilities provided that: For persons residing in a home that will be utilized to provide foster care for dependent youth, a criminal background check will be required for all persons aged sixteen and older and the department of social and health services may require a criminal background check for persons who are younger than sixteen in situations where it may be warranted to ensure the safety of youth in foster care;

(b) When considering persons for state positions involving unsupervised access to vulnerable adults to conduct comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(c) When licensing agencies or facilities with individuals in positions directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults, including but not limited to agencies or facilities licensed under chapter 74.15 or 18.51 RCW;

(d) When contracting with individuals or businesses or organizations for the care, supervision, case management, or treatment, including peer counseling, of children, developmentally disabled persons, or vulnerable adults, including but

not limited to services contracted for under chapter 18.20, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW;

(e) When individual providers are paid by the state or providers are paid by home care agencies to provide in-home services involving unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW.

(3) The secretary of the department of children, youth, and families shall investigate the conviction records, pending charges, and other information including civil adjudication proceeding records of current employees and of any person actively being considered for any position with the department who will or may have unsupervised access to children, or for state positions otherwise required by federal law to meet employment standards. "Considered for any position" includes decisions about (a) initial hiring, layoffs, reallocations, transfers, promotions, or demotions, or (b) other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer.

(4) The secretary of the department of children, youth, and families shall adopt rules and investigate conviction records, pending charges, and other information including civil adjudication proceeding records, in the following circumstances:

(a) When licensing or certifying agencies with individuals in positions that will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood education services, including but not limited to licensees, agency staff, interns, volunteers, contracted providers, and persons living on the premises who are sixteen years of age or older;

(b) When authorizing individuals who will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood learning education services in licensed or certified agencies, including but not limited to licensees, agency staff, interns, volunteers, contracted providers, and persons living on the premises who are sixteen years of age or older;

(c) When contracting with any business or organization for activities that will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood learning education services;

(d) When establishing the eligibility criteria for individual providers to receive state paid subsidies to provide child day care or early learning services that will or may involve unsupervised access to children.

(5) Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis pending completion of the state background investigation. Whenever a national criminal record check through the federal bureau of investigation is required by state law, a person may be employed or engaged as a volunteer or independent contractor on a conditional basis pending completion of the national check. The Washington personnel resources board shall adopt rules to accomplish the purposes of this subsection as it applies to state employees.

Additional notes found at www.leg.wa.gov

(6)(a) For purposes of facilitating timely access to criminal background information and to reasonably minimize the number of requests made under this section, recognizing that certain health care providers change employment frequently, health care facilities may, upon request from another health care facility, share copies of completed criminal background inquiry information.

(b) Completed criminal background inquiry information may be shared by a willing health care facility only if the following conditions are satisfied: The licensed health care facility sharing the criminal background inquiry information is reasonably known to be the person's most recent employer, no more than twelve months has elapsed from the date the person was last employed at a licensed health care facility to the date of their current employment application, and the criminal background information is no more than two years old.

(c) If criminal background inquiry information is shared, the health care facility employing the subject of the inquiry must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in RCW 43.43.842 since the completion date of the most recent criminal background inquiry.

(d) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in RCW 43.43.842, subsequent to the completion date of their most recent criminal background inquiry, shall be prohibited from relying on the applicant's previous employer's criminal background inquiry information. A new criminal background inquiry shall be requested pursuant to RCW 43.43.830 through 43.43.842.

(e) Health care facilities that share criminal background inquiry information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this subsection.

(f) Health care facilities shall transmit and receive the criminal background inquiry information in a manner that reasonably protects the subject's rights to privacy and confidentiality. [2017 3rd sp.s. c 20 § 5; 2017 3rd sp.s. c 6 § 224. Prior: 2012 c 44 § 2; 2012 c 10 § 41; 2011 c 253 § 6; 2007 c 387 § 10; 2006 c 263 § 826; 2005 c 421 § 2; 2000 c 87 § 1; 1997 c 392 § 524; 1995 c 250 § 2; 1993 c 281 § 51; 1990 c 3 § 1102; prior: 1989 c 334 § 2; 1989 c 90 § 2; 1987 c 486 § 2.]

Reviser's note: This section was amended by 2017 3rd sp.s. c 6 § 224 and by 2017 3rd sp.s. c 20 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Application—2012 c 10: See note following RCW 18.20.010.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

43.43.837 Fingerprint-based background checks—Requirements for applicants and service providers—Shared background checks—Fees—Rules to establish financial responsibility. (Effective July 1, 2018.) (1) Except as provided in subsection (2) of this section, in order to determine the character, competence, and suitability of any applicant or service provider to have unsupervised access, the secretary of the department of social and health services and the secretary of the department of children, youth, and families may require a fingerprint-based background check through both the Washington state patrol and the federal bureau of investigation at any time, but shall require a fingerprint-based background check when the applicant or service provider has resided in the state less than three consecutive years before application, and:

(a) Is an applicant or service provider providing services to children or people with developmental disabilities under RCW 74.15.030;

(b) Is an individual residing in an applicant or service provider's home, facility, entity, agency, or business or who is authorized by the department of social and health services or the department of children, youth, and families to provide services to children or people with developmental disabilities under RCW 74.15.030; or

(c) Is an applicant or service provider providing in-home services funded by:

(i) Medicaid personal care under RCW 74.09.520;

(ii) Community options program entry system waiver services under RCW 74.39A.030;

(iii) Chore services under RCW 74.39A.110; or

(iv) Other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department of social and health services.

(2) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January 7, 2012, are subject to background checks under RCW 74.39A.056.

(3) To satisfy the shared background check requirements provided for in RCW 43.216.270 and 43.20A.710, the department of children, youth, and families and the department of social and health services shall share federal fingerprint-based background check results as permitted under the law. The purpose of this provision is to allow both departments to fulfill their joint background check responsibility of checking any individual who may have unsupervised access to vulnerable adults, children, or juveniles. Neither department may share the federal background check results with any other state agency or person.

(4) The secretary of the department of children, youth, and families shall require a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation when the department seeks to approve an applicant or service provider for a foster or adoptive placement of children in accordance with federal and state law. Fees charged by the Washington state patrol and the federal bureau of investigation for fingerprint-based background checks shall be paid by the department of children, youth, and families for

applicant and service providers providing foster care as required in RCW 74.15.030.

(5) Any secure facility operated by the department of social and health services or the department of children, youth, and families under chapter 71.09 RCW shall require applicants and service providers to undergo a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation.

(6) Service providers and service provider applicants who are required to complete a fingerprint-based background check may be hired for a one hundred twenty-day provisional period as allowed under law or program rules when:

(a) A fingerprint-based background check is pending; and

(b) The applicant or service provider is not disqualified based on the immediate result of the background check.

(7) Fees charged by the Washington state patrol and the federal bureau of investigation for fingerprint-based background checks shall be paid by the applicable department for applicants or service providers providing:

(a) Services to people with a developmental disability under RCW 74.15.030;

(b) In-home services funded by medicaid personal care under RCW 74.09.520;

(c) Community options program entry system waiver services under RCW 74.39A.030;

(d) Chore services under RCW 74.39A.110;

(e) Services under other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department of social and health services or the department of children, youth, and families; and

(f) Services in, or to residents of, a secure facility under RCW 71.09.115.

(8) Service providers licensed under RCW 74.15.030 must pay fees charged by the Washington state patrol and the federal bureau of investigation for conducting fingerprint-based background checks.

(9) Department of children, youth, and families service providers licensed under RCW 74.15.030 may not pass on the cost of the background check fees to their applicants unless the individual is determined to be disqualified due to the background information.

(10) The department of social and health services and the department of children, youth, and families shall develop rules identifying the financial responsibility of service providers, applicants, and the department for paying the fees charged by law enforcement to roll, print, or scan fingerprints-based for the purpose of a Washington state patrol or federal bureau of investigation fingerprint-based background check.

(11) For purposes of this section, unless the context plainly indicates otherwise:

(a) "Applicant" means a current or prospective department of social and health services, department of children, youth, and families, or service provider employee, volunteer, student, intern, researcher, contractor, or any other individual who will or may have unsupervised access because of the nature of the work or services he or she provides. "Applicant"

includes but is not limited to any individual who will or may have unsupervised access and is:

(i) Applying for a license or certification from the department of social and health services or the department of children, youth, and families;

(ii) Seeking a contract with the department of social and health services, the department of children, youth, and families, or a service provider;

(iii) Applying for employment, promotion, reallocation, or transfer;

(iv) An individual that a department of social and health services or the department of children, youth, and families client or guardian of a department of social and health services or department of children, youth, and families client chooses to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department of social and health services or the department of children, youth, and families for services rendered; or

(v) A department of social and health services or department of children, youth, and families applicant who will or may work in a department-covered position.

(b) "Authorized" means the department of social and health services or the department of children, youth, and families grants an applicant, home, or facility permission to:

(i) Conduct licensing, certification, or contracting activities;

(ii) Have unsupervised access to vulnerable adults, juveniles, and children;

(iii) Receive payments from a department of social and health services or department of children, youth, and families program; or

(iv) Work or serve in a department of social and health services or department of children, youth, and families-covered position.

(c) "Secretary" means the secretary of the department of social and health services.

(d) "Secure facility" has the meaning provided in RCW 71.09.020.

(e) "Service provider" means entities, facilities, agencies, businesses, or individuals who are licensed, certified, authorized, or regulated by, receive payment from, or have contracts or agreements with the department of social and health services or the department of children, youth, and families to provide services to vulnerable adults, juveniles, or children. "Service provider" includes individuals whom a department of social and health services or department of children, youth, and families client or guardian of a department of social and health services or department of children, youth, and families client may choose to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department of social and health services or the department of children, youth, and families for services rendered. "Service provider" does not include those certified under *chapter 70.96A RCW. [2017 3rd sp.s. c 6 § 225; 2012 c 164 § 506; 2011 1st sp.s. c 31 § 17; 2011 c 253 § 2; 2009 c 580 § 6; 2007 c 387 § 1.]

*Reviser's note: Chapter 70.96A RCW was repealed and/or recodified in its entirety pursuant to 2016 sp.s. c 29 §§ 301, effective April 1, 2018, 601, and 701.

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

43.43.838 Record checks—Transcript of conviction record—Fees—Immunity—Rules. (Effective July 1, 2018.) (1) After January 1, 1988, and notwithstanding any provision of RCW 43.43.700 through 43.43.810 to the contrary, the state patrol shall furnish a transcript of the conviction record pertaining to any person for whom the state patrol or the federal bureau of investigation has a record upon the written request of:

- (a) The subject of the inquiry;
- (b) Any business or organization for the purpose of conducting evaluations under RCW 43.43.832;
- (c) The department of social and health services;
- (d) Any law enforcement agency, prosecuting authority, or the office of the attorney general;
- (e) The department of social and health services for the purpose of meeting responsibilities set forth in chapter 18.51, 18.20, or 72.23 RCW, or any later-enacted statute which purpose is to regulate or license a facility which handles vulnerable adults; or

(f) The department of children, youth, and families for the purpose of meeting responsibilities in chapters 43.216 and 74.15 RCW. However, access to conviction records pursuant to this subsection (1)(f) does not limit or restrict the ability of [the] department of children, youth, and families to obtain additional information regarding conviction records and pending charges as provided in RCW 74.15.030(2)(b).

(2) The state patrol shall by rule establish fees for disseminating records under this section to recipients identified in subsection (1)(a) and (b) of this section. The state patrol shall also by rule establish fees for disseminating records in the custody of the national crime information center. The revenue from the fees shall cover, as nearly as practicable, the direct and indirect costs to the state patrol of disseminating the records. No fee shall be charged to a nonprofit organization for the records check. Record checks requested by school districts and educational service districts using only name and date of birth will be provided free of charge.

(3) No employee of the state, employee of a business or organization, or the business or organization is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information under RCW 43.43.830 through 43.43.840 or 43.43.760.

(4) Before July 26, 1987, the state patrol shall adopt rules and forms to implement this section and to provide for security and privacy of information disseminated under this section, giving first priority to the criminal justice requirements of this chapter. The rules may include requirements for users, audits of users, and other procedures to prevent use of civil adjudication record information or criminal history record information inconsistent with this chapter.

(5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an employer to make an inquiry not specifically authorized by this chapter, or be construed to affect the policy of the state declared in chapter 9.96A RCW. [2017 3rd sp.s.

c 6 § 226; 2009 c 170 § 1; 2007 c 17 § 5; 2005 c 421 § 5; 1995 c 29 § 1; 1992 c 159 § 7; 1990 c 3 § 1104. Prior: 1989 c 334 § 4; 1989 c 90 § 4; 1987 c 486 § 5.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Findings—1992 c 159: See note following RCW 28A.400.303.

Additional notes found at www.leg.wa.gov

43.43.839 Fingerprint identification account. The fingerprint identification account is created in the custody of the state treasurer. All receipts from incremental charges of fingerprint checks requested for noncriminal justice purposes and electronic background requests shall be deposited in the account. Receipts for fingerprint checks by the federal bureau of investigation may also be deposited in the account. Expenditures from the account may be used only for the cost of record checks. Only the chief of the state patrol or the chief's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW. No appropriation is required for expenditures prior to July 1, 1997. After June 30, 1997, the account shall be subject to appropriation. During the 2015-2017 and 2017-2019 fiscal biennia, funds in the account may be used for expenditures related to the upgrade of the state patrol's criminal history system. During the 2015-2017 fiscal biennium, the legislature may transfer from the fingerprint identification account to the sexual assault kit account and the account may be used for building the sexual assault kit tracking system in such amounts as reflect the excess fund balance of the account. During the 2017-2019 fiscal biennium, the account may be used for building the sexual assault kit tracking system. [2017 3rd sp.s. c 1 § 969; 2016 sp.s. c 36 § 928; 2015 3rd sp.s. c 4 § 955; 2014 c 221 § 916; 2010 1st sp.s. c 37 § 922; 1995 c 169 § 2; 1992 c 159 § 8.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective date—2014 c 221: See note following RCW 28A.710.260.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Findings—1992 c 159: See note following RCW 28A.400.303.

Chapter 43.44 RCW STATE FIRE PROTECTION

Sections

43.44.060 Statistical information and reports—National fire incident reporting system.

43.44.060 Statistical information and reports—National fire incident reporting system. (1) The chief of each organized fire department, or the sheriff or other designated county official having jurisdiction over areas not within the jurisdiction of any fire department, shall report statistical information and data to the chief of the Washington state patrol, through the director of fire protection, on each fire

occurring within the official's jurisdiction and, within two business days, report any death resulting from fire.

(2) Reports submitted pursuant to subsection (1) of this section shall be consistent with the national fire incident reporting system developed by the United States fire administration and rules established by the chief of the Washington state patrol, through the director of fire protection. Rules established by the chief of the Washington state patrol, through the director of fire protection, must require fire departments to report data on the age of any structure involved in a fire when that information is available through property records or other methods.

(3) Subject to availability of amounts appropriated for this specific purpose, the chief of the Washington state patrol, through the director of fire protection, shall administer the national fire incident reporting system including, but not limited to, the following responsibilities:

(a) Purchasing equipment, including software, needed for the operation of the reporting system;

(b) Establishing procedures, standards, and guidelines pertaining to the statistical information and data reported by fire departments through the reporting system;

(c) Providing training and education to fire departments pertaining to the reporting system; and

(d) Employing staff to administer the reporting system, as needed.

(4) The chief of the Washington state patrol, through the director of fire protection, and the department of natural resources shall jointly determine the statistical information to be reported on fires on land under the jurisdiction of the department of natural resources.

(5) The chief of the Washington state patrol, through the director of fire protection, shall analyze the information and data reported, compile a report, and distribute a copy annually by July 1st to each chief fire official in the state. Upon request, the chief of the Washington state patrol, through the director of fire protection, shall also furnish a copy of the report to any other interested person at cost.

(6) For purposes of this section, "national fire incident reporting system" or "reporting system" means the national fire incident reporting system or the state equivalent as selected by the chief of the Washington state patrol, through the director of fire protection. [2017 c 308 § 1; 2010 1st sp.s. c 7 § 50; 1999 c 231 § 1; 1995 c 369 § 29; 1986 c 266 § 72; 1985 c 470 § 22; 1980 c 181 § 2. Formerly RCW 48.48.065.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Additional notes found at www.leg.wa.gov

Chapter 43.46 RCW

ARTS COMMISSION

Sections

- 43.46.100 Creative districts—Definitions.
- 43.46.105 Creative districts—Designation—Certification.
- 43.46.110 Creative districts—Applications for certification—Review—Approval, rejection, revocation—Additional powers of commission.
- 43.46.115 Creative districts—Coordinator.

43.46.100 Creative districts—Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the Washington state arts commission.

(2) "Coordinator" means the employee of the Washington state arts commission who is responsible for performing the specific tasks under RCW 43.46.115.

(3) "Creative district" means a land area designated by a local government in accordance with RCW 43.46.105 that contains either a hub of cultural facilities, creative industries, or arts-related businesses, or multiple vacant properties in close proximity that would be suitable for redevelopment as a creative district.

(4) "Local government" means a city, county, or town.

(5) "State-certified creative district" means a creative district whose application for certification has been approved by the commission. [2017 c 240 § 2.]

Findings—Intent—2017 c 240: "(1) The legislature finds that:

(a) A creative district is a designated, geographical, mixed-use area of a community in which a high concentration of cultural facilities, creative businesses, or arts-related businesses serve as a collective anchor of public attraction;

(b) In certain cases, multiple vacant properties in close proximity may exist within a community that would be suitable for redevelopment as a creative district;

(c) Creative districts are a highly adaptable economic development tool that is able to take a community's unique conditions, assets, needs, and opportunities into account and thereby address the needs of large, small, rural, and urban areas;

(d) Creative districts may be home to both nonprofit and for-profit creative industries and organizations;

(e) The arts and culture transcend boundaries of race, age, gender, language, and social status; and

(f) Creative districts promote and improve communities in particular and the state more generally in many ways. Specifically, such districts:

(i) Attract artists and creative entrepreneurs to a community and thereby infuse the community with energy and innovation and enhance the economic and civic capital of the community;

(ii) Create a hub of economic activity that helps an area become an appealing place to live, visit, and conduct business, complements adjacent businesses, creates new economic opportunities and jobs in both the cultural sector and other local industries, and attracts new businesses and assists in the recruitment of employees;

(iii) Establish marketable tourism assets that highlight the distinct identity of communities, attract in-state, out-of-state, and international visitors, and become especially attractive destinations for cultural, recreational, and business travelers;

(iv) Revitalize and beautify neighborhoods, cities, and larger regions, reverse urban decay, promote the preservation of historic buildings, and facilitate a healthy mixture of business and residential activity that contributes to reduced vacancy rates and enhanced property values;

(v) Provide a focal point for celebrating and strengthening a community's unique cultural identity, providing communities with opportunities to highlight existing cultural amenities as well as mechanisms to recruit and establish new artists, creative industries, and organizations;

(vi) Provide artists with a creative area in which they can live and work, with living spaces that enable them to work in artistic fields and find affordable housing close to their place of employment; and

(vii) Enhance property values. Successful creative districts combine improvements to public spaces such as parks, waterfronts, and pedestrian corridors, alongside property development. The redevelopment of abandoned properties and historic sites and recruiting businesses to occupy vacant spaces can also contribute to reduced vacancy rates and enhanced property values.

(2) It is the intent of the legislature that the state provide leadership, technical support, and the infrastructure to local communities desirous of creating their own creative districts by, among other things, certifying districts, offering available incentives to encourage business development, exploring new incentives that are directly related to creative enterprises, facilitating local access to state assistance, enhancing the visibility of creative districts, providing technical assistance and planning help, ensuring

broad and equitable program benefits, and fostering a supportive climate for the arts and culture, thereby contributing to the development of healthy communities across the state and improving the quality of life of the state's residents." [2017 c 240 § 1.]

43.46.105 Creative districts—Designation—Certification. (1) A local government may designate a creative district within its territorial boundaries subject to certification as a state-certified creative district by the commission. Two or more local governments may jointly apply for certification of a creative district that extends across a common boundary.

(2) In order to receive certification as a state-certified creative district, a creative district must:

- (a) Be a geographically contiguous area;
- (b) Be distinguished by physical, artistic, or cultural resources that play a vital role in the quality and life of a community, including its economic and cultural development;
- (c) Be the site of a concentration of artistic or cultural activity, a major arts or cultural institution or facility, arts and entertainment businesses, an area with arts and cultural activities, or artistic or cultural production;
- (d) Be engaged in the promotional, preservation, and educational aspects of the arts and culture of the community and contribute to the public through interpretive, educational, or recreational uses; and

(e) Satisfy any additional criteria required by the commission that in its discretion will further the purposes of RCW 43.46.100 through 43.46.115. Any additional eligibility criteria must be posted by the commission on its public web site.

(3) The commission may grant certification to a creative district that does not qualify for certification under subsection (2) of this section if the land area proposed for certification contains multiple vacant properties in close proximity that would be suitable, as determined by the commission, for redevelopment as a creative district. [2017 c 240 § 3.]

Findings—Intent—2017 c 240: See note following RCW 43.46.100.

43.46.110 Creative districts—Applications for certification—Review—Approval, rejection, revocation—Additional powers of commission. (1) Subject to the availability of amounts appropriated for this specific purpose, the commission may create a process for review of applications submitted by local governments or federally recognized Indian tribes for certification of state-certified creative districts. The application must be submitted on a standard form developed and approved by the commission.

(2) After reviewing an application for certification, the commission must approve or reject the application or return it to the applicant with a request for changes or additional information. The commission may request that an applicant provide relevant information supporting an application. Rejected applicants may reapply at any time in coordination with program guidelines.

(3) Certification must be based upon the criteria specified in RCW 43.46.105.

(4) If the commission approves an application for certification, it must notify the applicant in writing and must specify the terms and conditions of the commission's approval, including the terms and conditions set forth in the application and as modified by written agreement between the applicant and the commission.

(5) Upon approval by the commission of an application for certification, a creative district becomes a state-certified creative district with all of the attendant benefits under RCW 43.46.100 through 43.46.115.

(6) The commission may revoke a certification previously granted for failure by a local government to comply with the requirements of this section or an agreement executed pursuant to this section.

(7) In addition to any powers explicitly granted to the commission under RCW 43.46.100 through 43.46.115, the commission is granted such additional powers as are necessary to carry out the purposes of RCW 43.46.100 through 43.46.115. Where authorized by law, such powers may include offering incentives to state-certified creative districts to encourage business development, exploring new incentives that are directly related to creative enterprises, facilitating local access to state economic development assistance, enhancing the visibility of state-certified creative districts, providing state-certified creative districts with technical assistance and planning aid, ensuring broad and equitable program benefits, and fostering a supportive climate for the arts and culture within the state.

(8) The creation of a district under this section may not be used to prohibit any particular business or the development of residential real property within the boundaries of the district or to impose a burden on the operation or use of any particular business or parcel of residential real property located within the boundaries of the district. [2017 c 240 § 4.]

Findings—Intent—2017 c 240: See note following RCW 43.46.100.

43.46.115 Creative districts—Coordinator. Subject to the availability of amounts appropriated for this specific purpose, the commission may appoint a coordinator. The coordinator must:

(1) Review applications for certification and make a recommendation to the commission for action;

(2) Administer and promote the application process for the certification of creative districts;

(3) With the approval of the commission, develop standards and policies for the certification of state-certified creative districts. Any approved standards and policies must be posted on the commission's public web site;

(4) Require periodic written reports from any state-certified creative district for the purpose of reviewing the activities of the district, including the compliance of the district with the policies and standards developed under this section and with the conditions of an approved application for certification;

(5) Identify available public and private resources, including any applicable economic development incentives and other tools, that support and enhance the development and maintenance of creative districts and, with the assistance of the commission, ensure that such programs and services are accessible to creative districts; and

(6) With the approval of the commission, develop such additional procedures as may be necessary to administer this section. Any approved procedures must be posted on the commission's public web site. [2017 c 240 § 5.]

Findings—Intent—2017 c 240: See note following RCW 43.46.100.

Chapter 43.59 RCW
TRAFFIC SAFETY COMMISSION

Sections

43.59.160 Cooper Jones bicyclist safety advisory council. (*Expires June 30, 2019.*)

43.59.160 Cooper Jones bicyclist safety advisory council. (*Expires June 30, 2019.*) (1) Within amounts appropriated to the traffic safety commission, the commission must convene the Cooper Jones bicyclist safety advisory council comprised of stakeholders who have a unique interest or expertise in bicyclist and road safety.

(2) The purpose of the council is to review and analyze data related to bicyclist fatalities and serious injuries to identify points at which the transportation system can be improved and to identify patterns in bicyclist fatalities and serious injuries.

(3)(a) The council may include, but is not limited to:

- (i) A representative from the commission;
- (ii) An emergency medical technician from the county in which the most bicyclist deaths have occurred;
- (iii) A representative from the Washington association of sheriffs and police chiefs;
- (iv) Multiple members of law enforcement who have investigated bicyclist fatalities;
- (v) A traffic engineer;
- (vi) A representative from the department of transportation;
- (vii) A representative of cities, and up to two stakeholders, chosen by the council, who represent municipalities in which at least one bicyclist fatality has occurred in the previous three years;
- (viii) A representative from a bicyclist advocacy group;
- (ix) A transportation planner with a focus on multimodal planning;
- (x) A public health official, researcher, or epidemiologist; and
- (xi) A member of an academic transportation research organization, such as the transportation research board.

(b) The commission may invite other representatives of stakeholder groups to participate in the council as deemed appropriate by the commission. Additionally, the commission may invite a victim or family member of a victim to participate in the council.

(4) The council must meet at least quarterly. By December 31st of each year, the council must issue an annual report detailing any findings and recommendations to the governor and the transportation committees of the legislature. The commission must provide the annual report electronically to all municipal governments and state agencies that participated in the council during that calendar year. Additionally, the council must report any budgetary or fiscal recommendations to the office of financial management and the legislature by August 1, 2018.

(5) As part of the review of bicyclist fatalities and serious injuries that occur in Washington, the council may review any available information, including accident information maintained in existing databases; statutes, rules, policies, or ordinances governing bicyclists and traffic related to the incidents; and any other relevant information. The council may make recommendations regarding changes in statutes,

ordinances, rules, and policies that could improve bicyclist safety. Additionally, the council may make recommendations on how to improve traffic fatality and serious injury data quality.

(6)(a) Documents prepared by or for the council are inadmissible and may not be used in a civil or administrative proceeding, except that any document that exists before its use or consideration in a review by the council, or that is created independently of such review, does not become inadmissible merely because it is reviewed or used by the council. For confidential information, such as personally identifiable information and medical records, which are obtained by the council, neither the commission nor the council may publicly disclose such confidential information. No person who was in attendance at a meeting of the council or who participated in the creation, retention, collection, or maintenance of information or documents specifically for the commission or the council shall be permitted to testify in any civil action as to the content of such proceedings or of the documents and information prepared specifically as part of the activities of the council. However, recommendations from the council and the commission generally may be disclosed without personal identifiers.

(b) The council may review, only to the extent otherwise permitted by law or court rule when determined to be relevant and necessary: Any law enforcement incident documentation, such as incident reports, dispatch records, and victim, witness, and suspect statements; any supplemental reports, probable cause statements, and 911 call taker's reports; and any other information determined to be relevant to the review. The commission and the council must maintain the confidentiality of such information to the extent required by any applicable law.

(7) If acting in good faith, without malice, and within the parameters of and protocols established under this chapter, representatives of the commission and the council are immune from civil liability for an activity related to reviews of particular fatalities and serious injuries.

(8) This section must not be construed to provide a private civil cause of action.

(9)(a) The council may receive gifts, grants, or endowments from public or private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the council and spend the gifts, grants, or endowments from the public or private sources according to their terms, unless the receipt of the gifts, grants, or endowments violates RCW 42.17A.560.

(b) Subject to the appropriation of funds for this specific purpose, the council may provide grants targeted at improving bicyclist safety in accordance with recommendations made by the council.

(10) By December 1, 2018, the council must report to the transportation committees of the legislature on the strategies that have been deployed to improve bicyclist safety by the council and make a recommendation as to whether the council should be continued and if there are any improvements the legislature can make to improve the council.

(11) For purposes of this section:

(a) "Bicyclist fatality" means any death of a bicyclist resulting from a collision with a vehicle, whether on a road-

way, at an intersection, along an adjacent sidewalk, or on a path that is contiguous with a roadway.

(b) "Council" means the Cooper Jones bicyclist safety advisory council.

(c) "Serious injury" means any injury other than a fatal injury that prevents the injured person from walking, driving, or normally continuing the activities the person was capable of performing before the injury occurred.

(12) This section expires June 30, 2019. [2017 c 324 § 2.]

Finding—Intent—2017 c 324: "The legislature finds that Washington state is the nation's number one "Bike Friendly State." However, people who bike encounter road safety dangers that result in severe injury and death. Bicycle ridership has significantly increased over the last ten years, and the number of injuries and fatalities are also on the rise, despite the five percent annual reduction goal. The Cooper Jones act of 1998 laid the groundwork to begin a focus on bicycle safety and education. It is the intent of the legislature that the Cooper Jones bicycle safety advisory council continue that work with a focus on a review of best practices for the reduction and eventual elimination of bicycle-related injuries and fatalities in contribution to Washington state's adoption of Target Zero." [2017 c 324 § 1.]

Chapter 43.60A RCW

DEPARTMENT OF VETERANS AFFAIRS

Sections

- 43.60A.020 Department created—Powers, duties, and functions.
- 43.60A.100 Counseling services—Veterans, including national guard and reservists (*as amended by 2017 c 185*).
- 43.60A.100 Counseling services—Combat-affected veterans (*as amended by 2017 c 192*).
- 43.60A.101 Peer-to-peer support program—Report to the legislature.
- 43.60A.150 Veterans conservation corps—Created.
- 43.60A.151 Veterans conservation corps—Employment assistance—Agreements for educational benefits—Receipt of gifts, grants, or federal moneys.
- 43.60A.154 Agreements with federal entities for projects.
- 43.60A.155 Cooperation with the salmon recovery funding board regarding project work.
- 43.60A.190 Certified veteran-owned businesses.
- 43.60A.901 Decodified.
- 43.60A.902 Decodified.
- 43.60A.905 Decodified.

43.60A.020 Department created—Powers, duties, and functions. There is hereby created a department of state government to be known as the department of veterans affairs. Powers, duties, and functions to be vested in the department shall include, but not be limited to, all those powers, duties, and functions involving cooperation with other governmental units, such as cities and counties, or with the federal government, in particular those concerned with participation in federal grants-in-aid programs relating to veterans and veteran affairs. [2017 c 185 § 1; 1975-'76 2nd ex.s. c 115 § 2.]

43.60A.100 Counseling services—Veterans, including national guard and reservists (*as amended by 2017 c 185*). The department of veterans affairs, to the extent funds are made available, shall: (1) Contract with professional counseling specialists to provide a range of direct treatment services to ~~((war-affected))~~ state veterans ~~((and to those national guard and reservists who served in the Middle East))~~, including national guard and reservists, with military-related mental health needs, and their family members; (2) provide additional treatment services to Washington state Vietnam veterans for posttraumatic stress disorder, particularly for those veterans whose posttraumatic stress disorder has intensified or initially emerged due to ~~((the))~~ war ~~((in the Middle East))~~ or combat-related stress; (3) provide an educational program designed to train primary care professionals, such as mental health professionals, about the effects of war-related stress ~~((and))~~, trauma, and traumatic brain injury; (4) provide informational and counseling

services for the purpose of establishing and fostering peer-support networks throughout the state for families of deployed members of the reserves and the Washington national guard; (5) provide for veterans' families, a referral network of community mental health providers who are skilled in treating deployment stress, combat stress, ~~((and))~~ posttraumatic stress, and traumatic brain injury. [2017 c 185 § 2; 1991 c 55 § 1.]

43.60A.100 Counseling services—Combat-affected veterans (*as amended by 2017 c 192*). The department of veterans affairs, to the extent funds are made available, shall: (1) Contract with professional counseling specialists to provide a range of direct treatment services to ~~((war))~~ combat-affected state veterans and to those national guard and reservists who served in the Middle East, and their family members; (2) provide additional treatment services to Washington state Vietnam veterans for posttraumatic stress disorder, particularly for those veterans whose posttraumatic stress disorder has intensified or initially emerged due to ~~((the war))~~ combat in the Middle East; (3) provide an educational program designed to train primary care professionals, such as ~~((mental))~~ behavioral health professionals, about the effects of ~~((war))~~ combat-related stress and trauma; (4) provide informational and counseling services for the purpose of establishing and fostering peer-support networks throughout the state for families of deployed members of the reserves and the Washington national guard; (5) provide for veterans' families, a referral network of community mental health providers who are skilled in treating deployment stress, combat stress, and posttraumatic stress; and (6) offer training and support for volunteers interested in providing peer-to-peer support to other veterans. [2017 c 192 § 2; 1991 c 55 § 1.]

Reviser's note: RCW 43.60A.100 was amended twice during the 2017 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Findings—2017 c 192: "The legislature finds that:

- (1) Veterans are national heroes who have made great sacrifices in their lives for the protection of our nation;
- (2) Due to the relatively high number of military installations in our state, as well as the standard of living in our state, many veterans choose to live in Washington;
- (3) Many veterans have a need for support services, including peer-to-peer counseling services. Some veterans need to talk about their experiences with combat, deployment, or other situations experienced during their time in the military. Often, there is no person better prepared to speak with a veteran about his or her experiences than another veteran;
- (4) In 2009, the state of Texas created an award winning peer-to-peer counseling network, called the military veteran peer network. On a voluntary basis, veterans elect to receive specialized training about the facilitation of group counseling sessions. After receiving their training, the volunteers create peer-to-peer support groups in their local communities;
- (5) Veterans living in Washington would benefit from a program that is similar to the military veteran peer network." [2017 c 192 § 1.]

Findings—2017 c 192: See note following RCW 43.41.460.

43.60A.101 Peer-to-peer support program—Report to the legislature. By December 31, 2018, the department of veterans affairs must submit a report to the legislature on the veteran peer-to-peer training and support program authorized in RCW 43.60A.100 to determine the effectiveness of the program in meeting the needs of veterans in the state. The report must include the number of veterans receiving peer-to-peer support and the location of such support services; the number of veterans trained through the program to provide peer-to-peer support; and the types of training and support services provided by the program. The report must also include an analysis of peer-to-peer training and support programs developed by other states, as well as in the private and nonprofit sectors, in order to evaluate best practices for implementing and managing the veteran peer-to-peer training and support program authorized in RCW 43.60A.100. [2017 c 192 § 5.]

Findings—2017 c 192: See notes following RCW 43.41.460 and 43.60A.100.

43.60A.150 Veterans conservation corps—Created.

(1) The Washington veterans conservation corps is created. The department shall establish enrollment procedures for the program. Enrollees may choose to participate in either or both the volunteer projects list authorized in subsection (2) of this section, and the training, certification, ecotherapy, and placement program authorized in RCW 43.60A.151.

(2) The department shall create a list of veterans who are interested in working on projects that restore Washington's natural habitat. The department shall promote the opportunity to volunteer for the veterans conservation corps through its local counselors and representatives. Only veterans who grant their approval may be included on the list. The department shall consult with the salmon recovery board, the recreation and conservation funding board, the department of natural resources, the department of fish and wildlife, the department of agriculture, conservation districts, and the state parks and recreation commission to determine the most effective ways to market the veterans conservation corps to agencies and natural resource partners. [2017 c 185 § 3. Prior: 2007 c 451 § 2; 2007 c 241 § 6; 2005 c 257 § 2.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Findings—Purpose—2005 c 257: "The legislature finds that many Washington citizens are veterans of armed forces conflicts that have important skills that may be employed in projects that help to protect and restore Washington's rivers, streams, lakes, marine waters, and open lands, and help to maintain urban and suburban wastewater and stormwater management systems. The legislature further finds that such work has demonstrated benefits for many veterans who are coping with posttraumatic stress disorder or have other mental health or substance abuse disorders related to their service in the armed forces. The legislature further finds that these projects provide an opportunity for veterans to obtain on-the-job training, leading to certification in specific skill sets and to living wage employment in environmental restoration and stewardship. Therefore, it is the purpose of this chapter to create the veterans conservation corps program to assist veterans in obtaining training, certification, and employment in the field of environmental restoration and management, and to provide state funding assistance for projects that restore Washington's waters, forests, and habitat through the participation of veterans." [2007 c 451 § 1; 2005 c 257 § 1.]

43.60A.151 Veterans conservation corps—Employment assistance—Agreements for educational benefits—Receipt of gifts, grants, or federal moneys. (1) The department shall assist veterans enrolled in the veterans conservation corps with obtaining employment in conservation programs and projects that restore Washington's natural habitat, maintain and steward local, state, and federal forestlands and other outdoor lands, maintain and improve urban and suburban stormwater management facilities and other water management facilities, and other environmental maintenance, stewardship, and restoration projects. The department shall consult with the workforce training and education coordinating board, the state board for community and technical colleges, the employment security department, and other state agencies administering conservation corps programs, to incorporate training, education, ecotherapy, and certification in environmental restoration and management fields into the program. The department may enter into agreements with community colleges, private schools, conservation districts, state or local agencies, or other entities to provide training, internships, and educational courses as part of the enrollee benefits from the program.

(2) The department may receive gifts, grants, federal funds, or other moneys from public or private sources, for the use and benefit of the veterans conservation corps program. The funds shall be deposited to the veterans conservation corps account created in RCW 43.60A.153. [2017 c 185 § 4; 2012 c 229 § 820; 2007 c 451 § 3.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

43.60A.154 Agreements with federal entities for projects. The department shall seek to enter agreements with the bureau of land management, the national park service, the United States forest service, the United States fish and wildlife service, and other federal agencies managing lands or waterways in Washington, for the employment of veterans conservation corps enrollees in maintenance, restoration, and stewardship projects. [2017 c 185 § 5; 2007 c 451 § 7.]

43.60A.155 Cooperation with the salmon recovery funding board regarding project work. The salmon recovery funding board shall cooperate with the department of veterans affairs to inform salmon habitat project sponsors of the availability of veterans conservation corps enrollees to perform project work. From applications submitted, the board and the department shall identify projects that propose work suitable for corps enrollees and located near where enrollees are based or may be created. The department may provide the project applicants with information regarding the benefits of employing a veterans conservation corps enrollee in the project, as well as training to increase the success of hiring a veteran. [2017 c 185 § 6; 2007 c 451 § 8.]

43.60A.190 Certified veteran-owned businesses. (1) The department shall:

(a) Maintain a current list of certified veteran-owned businesses; and

(b) Make the list of certified veteran-owned businesses available on the department's public web site.

(2) To qualify as a certified veteran-owned business, the business must:

(a) Be at least fifty-one percent owned and controlled by:

(i) A veteran as defined as every person who at the time he or she seeks certification has received a discharge with an honorable characterization or received a discharge for medical reasons with an honorable record, where applicable, and who has served in at least one of the capacities listed in RCW 41.04.007;

(ii) A person who is in receipt of disability compensation or pension from the department of veterans affairs; or

(iii) An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves; and

(b) Be either an enterprise which is incorporated in the state of Washington as a Washington domestic corporation, or an enterprise whose principal place of business is located within the state of Washington for enterprises which are not incorporated.

(3) To participate in the linked deposit program under chapter 43.86A RCW, a veteran-owned business qualified

under this section must be certified by the department as a business:

(a) In which the veteran owner possesses and exercises sufficient expertise specifically in the business's field of operation to make decisions governing the long-term direction and the day-to-day operations of the business;

(b) That is organized for profit and performing a commercially useful function; and

(c) That meets the criteria for a small business concern as established under chapter 39.19 RCW.

(4) The department shall create a logo for the purpose of identifying veteran-owned businesses to the public. The department shall put the logo on an adhesive sticker or decal suitable for display in a business window and distribute the stickers or decals to veteran-owned businesses listed with the department.

(5)(a) Businesses may submit an application on a form prescribed by the department to apply for certification under this section.

(b) The department must notify the state treasurer of veteran-owned businesses who have participated in the linked deposit program and are no longer certified under this section. The written notification to the state treasurer must contain information regarding the reasons for the decertification and information on financing provided to the veteran-owned business under RCW 43.86A.060.

(6) The department may adopt rules necessary to implement this section. [2017 c 185 § 7; 2014 c 182 § 1; 2008 c 187 § 1; 2007 c 11 § 1.]

43.60A.901 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.60A.902 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.60A.905 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 43.63A RCW
DEPARTMENT OF COMMUNITY, TRADE, AND
ECONOMIC DEVELOPMENT**

Sections

43.63A.902 Decodified.
43.63A.903 Decodified.

43.63A.902 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.63A.903 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 43.70 RCW
DEPARTMENT OF HEALTH**

Sections

43.70.057 Hospital emergency room patient care information—Data collection, maintenance, analysis, and dissemination—Rules.
43.70.250 License fees for professions, occupations, and businesses.
43.70.320 Health professions account—Fees credited—Requirements for biennial budget request—Unappropriated funds.

43.70.442 Suicide assessment, treatment, and management training—Requirement for certain professionals—Exemptions—Model list of programs—Rules—Health profession training standards provided to the professional educator standards board. (*Effective August 1, 2020.*)
43.70.445 Suicide-safer homes task force—Suicide awareness and prevention. (*Expires July 1, 2020.*)
43.70.446 Suicide-safer homes project—Suicide-safer homes project account.
43.70.447 Suicide assessment, treatment, and management—Curriculum for dental students and dentists.
43.70.490 Emergency medical service personnel training program—Assistance to persons with disabilities—Requirements—Law enforcement officer training—Definitions.
43.70.750 Community assistance referral and education program—Review of certification and training—Recommendations to the legislature.
43.70.760 Healthy pregnancy advisory committee—Created—Administration—Duties. (*Expires July 1, 2019.*)
43.70.900 References to the secretary or department of social and health services—1989 1st ex.s. c 9.

43.70.057 Hospital emergency room patient care information—Data collection, maintenance, analysis, and dissemination—Rules. (1) The legislature finds that public health data is critical to the department's ability to respond to emerging public health threats and chronic conditions affecting the public health and, therefore, intends that the department be fully informed about emerging public health threats and chronic conditions that may impact the health of Washington citizens.

(2) The department shall require hospitals with emergency departments to submit emergency department patient care information, which must be collected, maintained, analyzed, and disseminated by the department. The department shall also accept other data types submitted voluntarily as approved by the department. The data must be collected in a way that allows automated reporting by electronic transmission. Emergency departments submitting data must be able to obtain their data and aggregate regional and statewide data from the collection system within thirty minutes of submission of a query for the data once the data is available in the system. The department may, if deemed cost-effective and efficient, contract with a private entity for any or all parts of data collection, maintenance, analysis, and dissemination. The department or contractor shall include the following elements:

(a) A demonstrated ability to collect the data required by this section in a way that allows automated reporting by electronic transmission;

(b) An established data submission arrangement with the majority of emergency departments required to submit data pursuant to this section;

(c) The demonstrated ability to allow emergency departments submitting data to immediately obtain their own data and aggregate regional and statewide data and the department to immediately obtain any data within thirty minutes of submission of a query for data once the data is available in the system; and

(d) The capacity to work with existing emergency department data systems to minimize administrative reporting burden and costs.

(3) Data elements must be reported in conformance with a uniform reporting system established by the department in collaboration with representatives from emergency departments required to submit data pursuant to this section and in conformance with current or emerging national standards for

reporting similar data. Data elements to be initially collected include, but are not limited to, data elements identifying facility information, limited patient identifiers, patient demographics, and encounter, clinical, and laboratory information. In order to ensure meaningful public health surveillance, after consulting with emergency departments required to submit data pursuant to this section, the department shall adopt rules including, but not limited to, data element and format requirements and time frames for reporting and addressing errors in submission. The rules adopted shall support alignment with current or emerging national standards for reporting similar data and minimization of administrative burden and costs.

(4) The department may require additional information from data providers only for the purposes of validating data received, verifying data accuracy, conducting surveillance of potential public health threats, and addressing potential public health threats.

(5) The data collected, maintained, and analyzed by the department must only be available for retrieval in original or processed form to public and private requestors pursuant to subsection (6) of this section and must be available within a reasonable period of time after the date of request, except that emergency departments submitting data pursuant to this section must have the ability to immediately obtain their own data and aggregate regional and statewide data within thirty minutes of submission of a query for data once the data is available in the system. The cost of retrieving their own data and aggregate regional and statewide data in standardized reports for state, local, tribal, federal officials and agencies, and health care facilities, and health care providers associated with the emergency departments submitting data pursuant to this section, must be funded through the agency's resources. The cost of retrieving data for individuals and organizations engaged in research or private use of data or reports must be funded by a fee schedule developed by the department that reflects the direct cost of retrieving the data or report in the requested form.

(6) The department must maintain the confidentiality of patient data it collects under subsection (2) of this section. Patient data collected by the department is health care information under chapter 70.02 RCW. Patient data that includes direct and indirect identifiers is not subject to public inspection and copying and the department may only release that data as allowed for in this section. Any agency that receives patient data under (a) or (b) of this subsection must also maintain the confidentiality of the data and may not release the data except as consistent with subsection (7)(b) of this section. The department may release the data as follows:

(a) Data that includes direct and indirect patient identifiers, as specifically defined in rule, may be released to:

(i)(A) Federal, Washington state, tribal, and local government agencies upon receipt of a signed data use agreement with the department;

(B) In the case of an emergent public health threat, the signed data use agreement requirement must be waived for public health authorities. The department may disclose only the minimum amount of information necessary, to the fewest number of people, for the least amount of time required to address the threat;

(ii) Researchers with approval of an institutional review board upon receipt of a signed confidentiality agreement with the department;

(b) Data that does not contain direct patient identifiers but may contain indirect patient identifiers may be released to agencies, institutional review board-approved researchers, and other persons upon receipt of a signed data use agreement with the department;

(c) Data that does not contain direct or indirect patient identifiers may be released on request.

(7) Recipients of data under subsection (6)(a) and (b) of this section must agree in a data use agreement, as applicable, at a minimum, to:

(a) Take steps to protect direct and indirect patient identifiers as described in the data use agreement; and

(b) Not redisclose the data except as authorized in their data use agreement consistent with the purpose of the agreement.

(8) Recipients of data under subsection (6)(b) and (c) of this section must not attempt to determine the identity of persons whose information is included in the data set or use the data in any manner that identifies individuals or their families.

(9) For the purposes of this section:

(a) "Direct patient identifier" means information that identifies a patient; and

(b) "Indirect patient identifier" means information that may identify a patient when combined with other information.

(10) The department may adopt rules necessary to carry out its responsibilities under this section. The department must consider national standards when adopting rules. [2017 c 220 § 1.]

43.70.250 License fees for professions, occupations, and businesses. (1) It shall be the policy of the state of Washington that the cost of each professional, occupational, or business licensing program be fully borne by the members of that profession, occupation, or business.

(2) The secretary shall from time to time establish the amount of all application fees, license fees, registration fees, examination fees, permit fees, renewal fees, and any other fee associated with licensing or regulation of professions, occupations, or businesses administered by the department. Any and all fees or assessments, or both, levied on the state to cover the costs of the operations and activities of the interstate health professions licensure compacts with participating authorities listed under chapter 18.130 RCW shall be borne by the persons who hold licenses issued pursuant to the authority and procedures established under the compacts. In fixing said fees, the secretary shall set the fees for each program at a sufficient level to defray the costs of administering that program and the cost of regulating licensed volunteer medical workers in accordance with RCW 18.130.360, except as provided in RCW 18.79.202. In no case may the secretary increase a licensing fee for an ambulatory surgical facility licensed under chapter 70.230 RCW prior to July 1, 2018, nor may he or she commence the adoption of rules to increase a licensing fee prior to July 1, 2018.

(3) All such fees shall be fixed by rule adopted by the secretary in accordance with the provisions of the administra-

tive procedure act, chapter 34.05 RCW. [2017 c 195 § 26; 2016 c 146 § 1; 2013 c 77 § 2; 2006 c 72 § 4; 2005 c 268 § 3; 1996 c 191 § 1; 1989 1st ex.s. c 9 § 319.]

Effective date—2013 c 77: See note following RCW 43.70.110.

Finding—2005 c 268: See note following RCW 18.79.202.

43.70.320 Health professions account—Fees credited—Requirements for biennial budget request—Unappropriated funds.

(1) There is created in the state treasury an account to be known as the health professions account. All fees received by the department for health professions licenses, registration, certifications, renewals, compact privileges, or examinations and the civil penalties assessed and collected by the department under RCW 18.130.190 shall be forwarded to the state treasurer who shall credit such moneys to the health professions account.

(2) All expenses incurred in carrying out the health professions licensing activities of the department and implementing and administering the medical marijuana authorization database established in RCW 69.51A.230 shall be paid from the account as authorized by legislative appropriation, except as provided in subsections (4) and (5) of this section. Any residue in the account shall be accumulated and shall not revert to the general fund at the end of the biennium.

(3) The secretary shall biennially prepare a budget request based on the anticipated costs of administering the health professions licensing activities of the department which shall include the estimated income from health professions fees.

(4) The fees received by the department from applicants for compact privilege under RCW 18.74.500 must be used for the purpose of meeting financial obligations imposed on the state as a result of this state's participation in the physical therapy licensure compact.

(5) The secretary shall, at the request of a board or commission as applicable, spend unappropriated funds in the health professions account that are allocated to the requesting board or commission to meet unanticipated costs of that board or commission when revenues exceed more than fifteen percent over the department's estimated six-year spending projections for the requesting board or commission. Unanticipated costs shall be limited to spending as authorized in subsection (3) of this section for anticipated costs. [2017 c 108 § 7; 2015 c 70 § 39; 2008 c 134 § 16; 1993 c 492 § 411; 1991 sp.s. c 13 § 18; 1991 c 3 § 299; 1985 c 57 § 29; 1983 c 168 § 5. Formerly RCW 43.24.072.]

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW 66.08.012.

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

43.70.442 Suicide assessment, treatment, and management training—Requirement for certain professionals—Exemptions—Model list of programs—Rules—Health profession training standards provided to the professional educator standards board. (Effective August 1, 2020.) (1)(a) Each of the following professionals certified or licensed under Title 18 RCW shall, at least once every six

years, complete training in suicide assessment, treatment, and management that is approved, in rule, by the relevant disciplining authority:

(i) An adviser or counselor certified under chapter 18.19 RCW;

(ii) A chemical dependency professional licensed under chapter 18.205 RCW;

(iii) A marriage and family therapist licensed under chapter 18.225 RCW;

(iv) A mental health counselor licensed under chapter 18.225 RCW;

(v) An occupational therapy practitioner licensed under chapter 18.59 RCW;

(vi) A psychologist licensed under chapter 18.83 RCW;

(vii) An advanced social worker or independent clinical social worker licensed under chapter 18.225 RCW; and

(viii) A social worker associate—advanced or social worker associate—independent clinical licensed under chapter 18.225 RCW.

(b) The requirements in (a) of this subsection apply to a person holding a retired active license for one of the professions in (a) of this subsection.

(c) The training required by this subsection must be at least six hours in length, unless a disciplining authority has determined, under subsection (10)(b) of this section, that training that includes only screening and referral elements is appropriate for the profession in question, in which case the training must be at least three hours in length.

(d) Beginning July 1, 2017, the training required by this subsection must be on the model list developed under subsection (6) of this section. Nothing in this subsection (1)(d) affects the validity of training completed prior to July 1, 2017.

(2)(a) Except as provided in (b) of this subsection, a professional listed in subsection (1)(a) of this section must complete the first training required by this section by the end of the first full continuing education reporting period after January 1, 2014, or during the first full continuing education reporting period after initial licensure or certification, whichever occurs later.

(b) A professional listed in subsection (1)(a) of this section applying for initial licensure may delay completion of the first training required by this section for six years after initial licensure if he or she can demonstrate successful completion of the training required in subsection (1) of this section no more than six years prior to the application for initial licensure.

(3) The hours spent completing training in suicide assessment, treatment, and management under this section count toward meeting any applicable continuing education or continuing competency requirements for each profession.

(4)(a) A disciplining authority may, by rule, specify minimum training and experience that is sufficient to exempt an individual professional from the training requirements in subsections (1) and (5) of this section. Nothing in this subsection (4)(a) allows a disciplining authority to provide blanket exemptions to broad categories or specialties within a profession.

(b) A disciplining authority may exempt a professional from the training requirements of subsections (1) and (5) of

this section if the professional has only brief or limited patient contact.

(5)(a) Each of the following professionals credentialed under Title 18 RCW shall complete a one-time training in suicide assessment, treatment, and management that is approved by the relevant disciplining authority:

(i) A chiropractor licensed under chapter 18.25 RCW;
 (ii) A naturopath licensed under chapter 18.36A RCW;
 (iii) A licensed practical nurse, registered nurse, or advanced registered nurse practitioner, other than a certified registered nurse anesthetist, licensed under chapter 18.79 RCW;

(iv) An osteopathic physician and surgeon licensed under chapter 18.57 RCW, other than a holder of a postgraduate osteopathic medicine and surgery license issued under RCW 18.57.035;

(v) An osteopathic physician assistant licensed under chapter 18.57A RCW;

(vi) A physical therapist or physical therapist assistant licensed under chapter 18.74 RCW;

(vii) A physician licensed under chapter 18.71 RCW, other than a resident holding a limited license issued under RCW 18.71.095(3);

(viii) A physician assistant licensed under chapter 18.71A RCW;

(ix) A pharmacist licensed under chapter 18.64 RCW;

(x) A dentist licensed under chapter 18.32 RCW;

(xi) A dental hygienist licensed under chapter 18.29 RCW; and

(xii) A person holding a retired active license for one of the professions listed in (a)(i) through (xi) of this subsection.

(b)(i) A professional listed in (a)(i) through (viii) of this subsection or a person holding a retired active license for one of the professions listed in (a)(i) through (viii) of this subsection must complete the one-time training by the end of the first full continuing education reporting period after January 1, 2016, or during the first full continuing education reporting period after initial licensure, whichever is later. Training completed between June 12, 2014, and January 1, 2016, that meets the requirements of this section, other than the timing requirements of this subsection (5)(b), must be accepted by the disciplining authority as meeting the one-time training requirement of this subsection (5).

(ii) A licensed pharmacist or a person holding a retired active pharmacist license must complete the one-time training by the end of the first full continuing education reporting period after January 1, 2017, or during the first full continuing education reporting period after initial licensure, whichever is later.

(iii) A licensed dentist, a licensed dental hygienist, or a person holding a retired active license as a dentist shall complete the one-time training by the end of the full continuing education reporting period after August 1, 2020, or during the first full continuing education reporting period after initial licensure, whichever is later. Training completed between July 23, 2017, and August 1, 2020, that meets the requirements of this section, other than the timing requirements of this subsection (5)(b)(iii), must be accepted by the disciplining authority as meeting the one-time training requirement of this subsection (5).

(c) The training required by this subsection must be at least six hours in length, unless a disciplining authority has determined, under subsection (10)(b) of this section, that training that includes only screening and referral elements is appropriate for the profession in question, in which case the training must be at least three hours in length.

(d) Beginning July 1, 2017, the training required by this subsection must be on the model list developed under subsection (6) of this section. Nothing in this subsection (5)(d) affects the validity of training completed prior to July 1, 2017.

(6)(a) The secretary and the disciplining authorities shall work collaboratively to develop a model list of training programs in suicide assessment, treatment, and management.

(b) The secretary and the disciplining authorities shall update the list at least once every two years.

(c) By June 30, 2016, the department shall adopt rules establishing minimum standards for the training programs included on the model list. The minimum standards must require that six-hour trainings include content specific to veterans and the assessment of issues related to imminent harm via lethal means or self-injurious behaviors and that three-hour trainings for pharmacists or dentists include content related to the assessment of issues related to imminent harm via lethal means. When adopting the rules required under this subsection (6)(c), the department shall:

(i) Consult with the affected disciplining authorities, public and private institutions of higher education, educators, experts in suicide assessment, treatment, and management, the Washington department of veterans affairs, and affected professional associations; and

(ii) Consider standards related to the best practices registry of the American foundation for suicide prevention and the suicide prevention resource center.

(d) Beginning January 1, 2017:

(i) The model list must include only trainings that meet the minimum standards established in the rules adopted under (c) of this subsection and any three-hour trainings that met the requirements of this section on or before July 24, 2015;

(ii) The model list must include six-hour trainings in suicide assessment, treatment, and management, and three-hour trainings that include only screening and referral elements; and

(iii) A person or entity providing the training required in this section may petition the department for inclusion on the model list. The department shall add the training to the list only if the department determines that the training meets the minimum standards established in the rules adopted under (c) of this subsection.

(7) The department shall provide the health profession training standards created in this section to the professional educator standards board as a model in meeting the requirements of RCW 28A.410.226 and provide technical assistance, as requested, in the review and evaluation of educator training programs. The educator training programs approved by the professional educator standards board may be included in the department's model list.

(8) Nothing in this section may be interpreted to expand or limit the scope of practice of any profession regulated under chapter 18.130 RCW.

(9) The secretary and the disciplining authorities affected by this section shall adopt any rules necessary to implement this section.

(10) For purposes of this section:

(a) "Disciplining authority" has the same meaning as in RCW 18.130.020.

(b) "Training in suicide assessment, treatment, and management" means empirically supported training approved by the appropriate disciplining authority that contains the following elements: Suicide assessment, including screening and referral, suicide treatment, and suicide management. However, the disciplining authority may approve training that includes only screening and referral elements if appropriate for the profession in question based on the profession's scope of practice. The board of occupational therapy may also approve training that includes only screening and referral elements if appropriate for occupational therapy practitioners based on practice setting.

(11) A state or local government employee is exempt from the requirements of this section if he or she receives a total of at least six hours of training in suicide assessment, treatment, and management from his or her employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or may be spread among shorter training sessions at the employer's discretion.

(12) An employee of a community mental health agency licensed under chapter 71.24 RCW or a chemical dependency program certified under *chapter 70.96A RCW is exempt from the requirements of this section if he or she receives a total of at least six hours of training in suicide assessment, treatment, and management from his or her employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or may be spread among shorter training sessions at the employer's discretion. [2017 c 262 § 4; 2016 c 90 § 5; 2015 c 249 § 1; 2014 c 71 § 2. Prior: 2013 c 78 § 1; 2013 c 73 § 6; 2012 c 181 § 2.]

*Reviser's note: Many sections in chapter 70.96A RCW were recodified in chapter 71.24 RCW pursuant to 2016 sp.s. c 29 § 701.

Effective date—2017 c 262 § 4: "Section 4 of this act takes effect August 1, 2020." [2017 c 262 § 7.]

Findings—Intent—2017 c 262: "The legislature finds that over one thousand one hundred suicide deaths occur each year in Washington and these suicide deaths take an enormous toll on families and communities across the state. The legislature further finds that: Sixty-five percent of all suicides, and most suicide deaths and attempts for young people ages ten to eighteen, occur using firearms and prescription medications that are easily accessible in homes; firearms are the most lethal method used in suicide and almost entirely account for more men dying by suicide than women; sixty-seven percent of all veteran deaths by suicide are by firearm; and nearly eighty percent of all deaths by firearms in Washington are suicides. The legislature further finds that there is a need for a robust public education campaign designed to raise awareness of suicide and to teach everyone the role that he or she can play in suicide prevention. The legislature further finds that important suicide prevention efforts include: Motivating households to improve safe storage practices to reduce deaths from firearms and prescription medications; decreasing barriers to prevent access to lethal means by allowing for temporary and voluntary transfers of firearms when individuals are at risk for suicide; increasing access to drug take-back sites; and making the public aware of suicide prevention steps, including recognizing warning signs, empathizing and listening, asking directly about suicide, removing dangers to ensure immediate safety, and getting help. The legislature intends by this act to create a public-private partnership fund to implement a suicide-safer home public education campaign in the coming years." [2017 c 262 § 1.]

Effective date—2016 c 90 § 5: "Section 5 of this act takes effect January 1, 2017." [2016 c 90 § 8.]

Findings—2016 c 90: "The legislature finds that: Washington's suicide rate is fourteen percent higher than the national average; on average, two young people between the ages of ten and twenty-four die by suicide each week; almost a quarter of those who die by suicide are veterans; and many of the state's rural and tribal communities have the highest suicide rates. The legislature further finds that when suicide occurs, it has devastating consequences for communities and schools, yet, according to the United States surgeon general, suicide is the nation's most preventable form of death. The legislature further finds that one of the most immediate ways to reduce the tragedy of suicide is through suicide awareness and prevention education coupled with safe storage of lethal means commonly used in suicides, such as firearms and prescription medications. The legislature further finds that encouraging firearms dealers to voluntarily participate in suicide awareness and prevention education programs and provide certain safe storage devices at cost is an important step in creating safer homes and reducing suicide deaths in the state." [2016 c 90 § 1.]

Findings—Intent—2014 c 71; 2012 c 181: "(1) The legislature finds that:

(a) According to the centers for disease control and prevention:

(i) In 2008, more than thirty-six thousand people died by suicide in the United States, making it the tenth leading cause of death nationally.

(ii) During 2007-2008, an estimated five hundred sixty-nine thousand people visited hospital emergency departments with self-inflicted injuries in the United States, seventy percent of whom had attempted suicide.

(iii) During 2008-2009, the average percentages of adults who thought, planned, or attempted suicide in Washington were higher than the national average.

(b) According to a national study, veterans face an elevated risk of suicide as compared to the general population, more than twice the risk among male veterans. Another study has indicated a positive correlation between posttraumatic stress disorder and suicide.

(i) Washington state is home to more than sixty thousand men and women who have deployed in support of the wars in Iraq and Afghanistan.

(ii) Research continues on how the effects of wartime service and injuries, such as traumatic brain injury, posttraumatic stress disorder, or other service-related conditions, may increase the number of veterans who attempt suicide.

(iii) As more men and women separate from the military and transition back into civilian life, community mental health providers will become a vital resource to help these veterans and their families deal with issues that may arise.

(c) Suicide has an enormous impact on the family and friends of the victim as well as the community as a whole.

(d) Approximately ninety percent of people who die by suicide had a diagnosable psychiatric disorder at the time of death, such as depression. Most suicide victims exhibit warning signs or behaviors prior to an attempt.

(e) Improved training and education in suicide assessment, treatment, and management has been recommended by a variety of organizations, including the United States department of health and human services and the institute of medicine.

(2) It is therefore the intent of the legislature to help lower the suicide rate in Washington by requiring certain health professionals to complete training in suicide assessment, treatment, and management as part of their continuing education, continuing competency, or recertification requirements.

(3) The legislature does not intend to expand or limit the existing scope of practice of any health professional affected by this act." [2014 c 71 § 1; 2012 c 181 § 1.]

Short title—2012 c 181: "This act may be known and cited as the Matt Adler suicide assessment, treatment, and management training act of 2012." [2012 c 181 § 4.]

43.70.445 Suicide-safer homes task force—Suicide awareness and prevention. (Expires July 1, 2020.) (1)(a) Subject to the availability of amounts appropriated for this specific purpose, a suicide-safer homes task force is established to raise public awareness and increase suicide prevention education among new partners who are in key positions to help reduce suicide. The task force shall be administered and staffed by the University of Washington school of social work. To the extent possible, the task force membership

should include representatives from geographically diverse and priority populations, including tribal populations.

(b) The suicide-safer homes task force comprises a suicide prevention and firearms subcommittee and a suicide prevention and health care subcommittee, as follows:

(i) The suicide prevention and firearms subcommittee shall consist of the following members and be cochaired by the University of Washington school of social work and a member identified in (b)(i)(A) of this subsection (1):

(A) A representative of the national rifle association and a representative of the second amendment foundation;

(B) Two representatives of suicide prevention organizations, selected by the cochaired of the subcommittee;

(C) Two representatives of the firearms industry, selected by the cochaired of the subcommittee;

(D) Two individuals who are suicide attempt survivors or who have experienced suicide loss, selected by the cochaired of the subcommittee;

(E) Two representatives of law enforcement agencies, selected by the cochaired of the subcommittee;

(F) One representative from the department of health;

(G) One representative from the department of veterans affairs, and one other individual representing veterans to be selected by the cochaired of the subcommittee; and

(H) No more than two other interested parties, selected by the cochaired of the subcommittee.

(ii) The suicide prevention and health care subcommittee shall consist of the following members and be cochaired by the University of Washington school of social work and a member identified in (b)(ii)(A) of this subsection (1):

(A) Two representatives of the Washington state pharmacy association;

(B) Two representatives of retailers who operate pharmacies, selected by the cochaired of the subcommittee;

(C) One faculty member from the University of Washington school of pharmacy and one faculty member from the Washington State University school of pharmacy;

(D) One representative of the department of health;

(E) One representative of the pharmacy quality assurance commission;

(F) Two representatives of the Washington state poison control center;

(G) One representative of the department of veterans affairs, and one other individual representing veterans to be selected by the cochaired of the subcommittee;

(H) Three members representing health care professionals providing suicide prevention training in the state, selected by the cochaired of the subcommittee; and

(I) No more than two other interested parties, selected by the cochaired of the subcommittee.

(c) The University of Washington school of social work shall convene the initial meeting of the task force.

(2) The task force shall:

(a) Develop and prepare to disseminate online trainings on suicide awareness and prevention for firearms dealers and their employees and firearm range owners and their employees;

(b) In consultation with the department of fish and wildlife, review the firearm safety pamphlet produced by the department of fish and wildlife under RCW 9.41.310 and, by January 1, 2017, recommend changes to the pamphlet to

incorporate information on suicide awareness and prevention;

(c) Develop and approve suicide awareness and prevention messages for posters and brochures that are tailored to be effective for firearms owners for distribution to firearms dealers and firearms ranges;

(d) Develop suicide awareness and prevention messages for posters and brochures for distribution to pharmacies;

(e) In consultation with the department of fish and wildlife, develop strategies for creating and disseminating suicide awareness and prevention information for hunting safety classes, including messages to parents that can be shared during online registration, in either follow-up email communications, or in writing, or both;

(f) Develop suicide awareness and prevention messages for training for the schools of pharmacy and provide input on trainings being developed for community pharmacists;

(g) Create a web site that will be a clearinghouse for the newly created suicide awareness and prevention materials developed by the task force;

(h) Conduct a survey of firearms dealers and firearms ranges in the state to determine the types and amounts of incentives that would be effective in encouraging those entities to participate in suicide-safer homes projects;

(i) Gather input on collateral educational materials that will help health care professionals in suicide prevention work; and

(j) Create, implement, and evaluate a suicide awareness and prevention pilot program in two counties, one rural and one urban, that have high suicide rates. The pilot program shall include:

(i) Developing and directing advocacy efforts with firearms dealers to pair suicide awareness and prevention training with distribution of safe storage devices;

(ii) Developing and directing advocacy efforts with pharmacies to pair suicide awareness and prevention training with distribution of medication disposal kits and safe storage devices;

(iii) Training health care providers on suicide awareness and prevention, paired with distribution of medication disposal kits and safe storage devices; and

(iv) Training local law enforcement officers on suicide awareness and prevention, paired with distribution of medication disposal kits and safe storage devices.

(3) The task force shall, in consultation with the department of health, develop and prioritize a list of projects to carry out the task force's purposes and submit the prioritized list to the department of health for funding from the suicide-safer homes project account created in RCW 43.70.446.

(4) Beginning December 1, 2016, the task force shall annually report to the legislature on the status of its work. The task force shall submit a final report by December 1, 2019, that includes the findings of the suicide awareness and prevention pilot program evaluation under subsection (2) of this section and recommendations on possible continuation of the program. The task force shall submit its reports in accordance with RCW 43.01.036.

(5) This section expires July 1, 2020. [2017 c 262 § 2; 2016 c 90 § 2.]

Findings—Intent—2017 c 262: See note following RCW 43.70.442.

Findings—2016 c 90: See note following RCW 43.70.442.

43.70.446 Suicide-safer homes project—Suicide-safer homes project account. (1) The suicide-safer homes project is created within the department of health for the purpose of accepting private funds for use by the suicide-safer homes task force created in RCW 43.70.445 in developing and providing suicide education and prevention materials, training, and outreach programs to help create suicide-safer homes. The secretary may accept gifts, grants, donations, or moneys from any source for deposit in the suicide-safer homes project account created in subsection (2) of this section.

(2) The suicide-safer homes project account is created in the custody of the state treasurer. The account shall consist of funds appropriated by the legislature for the suicide-safer homes project account and all receipts from gifts, grants, bequests, devises, or other funds from public and private sources to support the activities of the suicide-safer homes project. Only the secretary of the department of health, or the secretary's designee, may authorize expenditures from the account to fund projects identified and prioritized by the suicide-safer homes task force. Funds deposited in the suicide-safer homes project account may be used for the development and production of suicide prevention materials and training programs, for providing financial incentives to encourage firearms dealers and others to participate in suicide prevention training, and to implement pilot programs involving community outreach on creating suicide-safer homes.

(3) The suicide-safer homes project account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2017 c 262 § 3.]

Findings—Intent—2017 c 262: See note following RCW 43.70.442.

43.70.447 Suicide assessment, treatment, and management—Curriculum for dental students and dentists.

(1) By July 1, 2020, the school of dentistry at the University of Washington shall develop a curriculum on suicide assessment, treatment, and management for dental students and licensed dentists. The curriculum must meet the minimum standards established under RCW 43.70.442 and must include material on identifying at-risk patients and limiting access to lethal means. When developing the curriculum, the school of dentistry must consult with experts on suicide assessment, treatment, and management and with the suicide-safer homes task force established in RCW 43.70.445. The school of dentistry shall submit a progress report to the governor and the relevant committees of the legislature by July 1, 2019.

(2) The dental quality assurance commission shall, for purposes of RCW 43.70.442(4)(a), consider a dentist who has successfully completed the curriculum developed under subsection (1) of this section prior to licensure as possessing the minimum training and experience necessary to be exempt from the training requirements in RCW 43.70.442. [2017 c 262 § 5.]

Findings—Intent—2017 c 262: See note following RCW 43.70.442.

43.70.490 Emergency medical service personnel training program—Assistance to persons with disabilities—Requirements—Law enforcement officer training—Definitions. (1) Subject to the availability of amounts

appropriated for this specific purpose, the department, in collaboration with the department of social and health services, the state fire marshal's office, the superintendent of public instruction, and the Washington state council of firefighters, must review existing local training programs and training programs being used in other states and design a statewide training program that will familiarize fire department and emergency medical service personnel with the techniques, procedures, and protocols for best handling situations in which persons with disabilities are present at the scene of an emergency in order to maximize the safety of persons with disabilities, minimize the likelihood of injury to persons with disabilities, and promote the safety of all persons present. The program must include a checklist of disabilities, symptoms of such disabilities, and things to do and not to do relevant to a particular disability so fire department and emergency medical services personnel can easily and quickly determine the specific scenario into which they are entering. The department must make the training program available on the department's web site for use by all fire departments and emergency medical service agencies in the state. The department must include on its web site a list of public and private nonprofit disability-related agencies and organizations and the contact information of each agency and organization. Fire departments and emergency medical service agencies must ensure their employees are adequately trained in and familiarized with techniques, procedures, and protocols for best handling situations in which persons with particular disabilities are present at the scene of an emergency.

(2) Subject to the availability of amounts appropriated for this specific purpose, the criminal justice training commission, in consultation with the Washington state patrol and other stakeholders, must examine existing training programs and curricula related to law enforcement officers responding to an emergency where a person with a disability may be present, to ensure that those programs and curricula are consistent with best practices.

(3) For purposes of this section:

(a) Both "accident" and "emergency" mean an unforeseen combination of circumstances or a resulting situation that results in a need for assistance or relief and calls for immediate action; and

(b) "Persons with disabilities" means individuals who have been diagnosed medically to have a physical, mental, emotional, intellectual, behavioral, developmental, or sensory disability. [2017 c 295 § 2.]

Short title—2017 c 295: "This act may be known and cited as the Travis alert act." [2017 c 295 § 1.]

43.70.750 Community assistance referral and education program—Review of certification and training—Recommendations to the legislature. The department of health must review the professional certification and training of health professionals participating in a community assistance referral and education program, review the certification and training requirements in other states with similar programs, and coordinate with the health care authority to link the certification requirements with the covered health care services recommended for payment in RCW 74.09.335. The department shall submit recommendations to the appropriate committees of the legislature for any changes and sugges-

tions for implementation within six months of the development of the payment standards. [2017 c 273 § 3.]

43.70.760 Healthy pregnancy advisory committee—Created—Administration—Duties. (Expires July 1, 2019.) (1) The healthy pregnancy advisory committee is established to develop a strategy for improving maternal and infant health outcomes. The advisory committee shall conduct its activities in consultation with the maternal mortality review panel established in RCW 70.54.450 and an initiative related to improving maternal and infant outcomes that is established by the largest association representing hospitals in Washington. Administration of the advisory committee by the department must be done within existing resources.

(2) The secretary shall appoint up to twenty members to the advisory committee including experts in maternal and child health, pediatric primary care providers, public health experts, hospitals that provide birthing services, health care providers involved in the care of pregnant women and infants, and representatives of low-income women, women of color, and immigrant communities. In addition, the secretary shall designate a representative from the department of health and invite participation from the health care authority, the department of social and health services, and the *department of early learning. The secretary's designee shall serve as the chair of the advisory committee and shall convene the work group.

(3) The advisory committee shall meet quarterly and develop a strategy to promote maternal and child health outcomes. The strategy shall consider best practices that agencies may integrate into their programs to improve birth outcomes, reduce maternal mortality and morbidity, and reduce infant mortality. The strategy shall include elements to promote breastfeeding, incentivize the adoption of the baby-friendly designation by hospitals, and reduce barriers to accessing prenatal care. The advisory committee shall consider where there may be gaps in the availability of services that may benefit pregnant women and infants, such as coverage for lactation consulting, the availability of smoking cessation programs for persons who are codomiciled with the pregnant woman or infant, access to fresh fruits and vegetables, and improved access to dental care for pregnant women.

(4) The advisory committee shall submit the strategy to the legislature and the governor's council for the healthiest next generation by October 15, 2018.

(5) This section expires July 1, 2019. [2017 c 294 § 5.]

***Reviser's note:** The department of early learning was abolished and its powers, duties, and functions were transferred to the department of children, youth, and families by 2017 3rd sp.s. c 6 § 802, effective July 1, 2018.

Findings—2017 c 294: See note following RCW 74.09.475.

43.70.900 References to the secretary or department of social and health services—1989 1st ex.s. c 9. All references to the secretary or department of social and health services in the Revised Code of Washington shall be construed to mean the secretary or department of health when referring to the functions transferred in RCW 43.70.080, 18.104.005, 70.08.005, 70.24.005, 70.40.005, 70.41.005, and 70.54.005. [2017 3rd sp.s. c 25 § 24; 2015 1st sp.s. c 4 § 31; 2007 c 52 § 2; 1990 c 33 § 580; 1989 1st ex.s. c 9 § 801.]

[2017 RCW Supp—page 468]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Chapter 43.79 RCW STATE FUNDS

Sections

43.79.445	Death investigations account—Disbursal.
43.79.460	Savings incentive account—Report.
43.79.496	Transfers of budget stabilization account deposits to the general fund.
43.79.540	Concealed pistol license renewal notification account.

43.79.445 Death investigations account—Disbursal.

There is established an account in the state treasury referred to as the "death investigations account" which shall exist for the purpose of receiving, holding, investing, and disbursing funds appropriated or provided in RCW 70.58.107 and any moneys appropriated or otherwise provided thereafter.

Moneys in the death investigations account shall be disbursed by the state treasurer once every year on December 31 and at any other time determined by the treasurer. The treasurer shall make disbursements to: The state toxicology laboratory, counties for the cost of autopsies, the state patrol for providing partial funding for the state dental identification system, the criminal justice training commission for training county coroners, medical examiners and their staff, and the state forensic investigations council. Funds from the death investigations account may be appropriated during the 2013-2015 fiscal biennium for the activities of the state crime laboratory within the Washington state patrol. In addition, during the 2017-2019 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys in the death investigations account to the state general fund. [2017 3rd sp.s. c 1 § 970; 2016 sp.s. c 36 § 931; 2013 2nd sp.s. c 4 § 979; 2005 c 166 § 3; 1997 c 454 § 901; 1995 c 398 § 9; 1991 sp.s. c 13 § 21; 1991 c 176 § 4; 1986 c 31 § 2; 1985 c 57 § 41; 1983 1st ex.s. c 16 § 18.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Additional notes found at www.leg.wa.gov

43.79.460 Savings incentive account—Report. (1)

The savings incentive account is created in the custody of the state treasurer. The account shall consist of all moneys appropriated to the account by the legislature. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures from the account.

(2) Within the savings incentive account, the state treasurer may create subaccounts to be credited with incentive savings attributable to individual state agencies, as determined by the office of financial management in consultation with the legislative fiscal committees. Moneys deposited in the subaccounts may be expended only on the authorization of the agency's executive head or designee and only for the purpose of one-time expenditures to improve the quality, efficiency, and effectiveness of services to customers of the state, such as one-time expenditures for employee training,

employee incentives, technology improvements, new work processes, or performance measurement. Funds may not be expended from the account to establish new programs or services, expand existing programs or services, or incur ongoing costs that would require future expenditures.

(3) For purposes of this section, "incentive savings" means state general fund appropriations that are unspent as of June 30th of a fiscal year, excluding any amounts included in across-the-board reductions under RCW 43.88.110 and excluding unspent appropriations for:

(a) Caseload and enrollment in entitlement programs, except to the extent that an agency has clearly demonstrated that efficiencies have been achieved in the administration of the entitlement program. "Entitlement program," as used in this section, includes programs for which specific sums of money are appropriated for pass-through to third parties or other entities;

(b) Enrollments in state institutions of higher education;

(c) Except for fiscal year 2011, a specific amount contained in a condition or limitation to an appropriation in the biennial appropriations act, if the agency did not achieve the specific purpose or objective of the condition or limitation;

(d) Debt service on state obligations; and

(e) State retirement system obligations.

(4) The office of financial management, after consulting with the legislative fiscal committees, shall report the amount of savings incentives achieved.

(5) For fiscal year 2010, the legislature may transfer from the savings incentive account to the state general fund such amounts as reflect the fund balance of the account attributable to unspent state general fund appropriations for fiscal year 2009. For fiscal year 2011, the legislature may transfer from the savings incentive account to the state general fund such amounts as reflect the fund balance of the account attributable to unspent state general fund appropriations for fiscal year 2010. For fiscal year 2011, the legislature may transfer from the savings incentive account to the state general fund eight million dollars or as much as reflects the fund balance of the account attributable to unspent agency credits prior to fiscal year 2009. Credits for legislative and judicial agencies are not included in this action, with the exception and upon consent of the supreme court, court of appeals, office of public defense, and office of civil legal aid.

(6) For fiscal years 2012 and 2013, the legislature may transfer from the savings incentive account to the state general fund such amounts as reflect the fund balance of the account attributable to unspent general fund appropriations for fiscal years 2011 and 2012.

(7) For fiscal year 2016, the legislature may transfer from the savings incentive account to the state general fund such amounts as reflect the fund balance of the account attributable to unspent agency credit. Credits for legislative and judicial agencies are not included in this action.

(8) For the 2017-2019 fiscal biennium, the joint legislative audit and review committee and the legislative evaluation and accountability program committee may use moneys deposited in their subaccounts for one-time costs related to their office relocation to the 1063 building. [2017 3rd sp.s. c 1 § 971; 2016 sp.s. c 36 § 932; 2011 2nd sp.s. c 9 § 908; 2011 c 5 § 909; 2010 1st sp.s. c 37 § 928; 2009 c 518 § 21; 2009 c 4 § 902; 1998 c 302 § 1; 1997 c 261 § 1.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

Effective dates—2011 2nd sp.s. c 9: See note following RCW 28B.50.837.

Effective date—2011 c 5: See note following RCW 43.79.487.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2009 c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 18, 2009]." [2009 c 4 § 911.]

Additional notes found at www.leg.wa.gov

43.79.496 Transfers of budget stabilization account deposits to the general fund. (1) By June 30, 2015, the treasurer shall transfer into the state general fund the entire budget stabilization account deposit for the 2013-2015 fiscal biennium that is attributable to extraordinary revenue growth, not to exceed fifty million dollars.

(2) During the 2017-2019 fiscal biennium, the treasurer shall transfer into the state general fund the entire budget stabilization account deposit for the 2017-2019 fiscal biennium that is attributable to extraordinary revenue growth, not to exceed one billion seventy-eight million dollars.

(3) For purposes of RCW 43.88.055(4), the transfers in this section do not alter the requirement to balance in ensuing biennia. [2017 3rd sp.s. c 29 § 5; 2015 3rd sp.s. c 2 § 1.]

Effective date—2017 3rd sp.s. c 29: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 7, 2017]." [2017 3rd sp.s. c 29 § 6.]

Effective date—2015 3rd sp.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 30, 2015]." [2015 3rd sp.s. c 2 § 2.]

43.79.540 Concealed pistol license renewal notification account. The concealed pistol license renewal notification account is created in the state treasury. All funds collected under RCW 9.41.070 (5)(e) and (6)(d) must be deposited into the account. Expenditures from the account may be used only by the department of licensing for creation of a concealed pistol license renewal notification system and compliance with the notification requirement established in RCW 9.41.070(9)(b). [2017 c 74 § 2.]

Chapter 43.79A RCW TREASURER'S TRUST FUND

Sections

43.79A.040 Management—Income—Investment income account—Distribution.

43.79A.040 Management—Income—Investment income account—Distribution. (1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury, and may be commingled with moneys in the state treasury for cash management and cash balance purposes.

(2) All income received from investment of the treasurer's trust fund must be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments must occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer must distribute the earnings credited to the investment income account to the state general fund except under (b), (c), and (d) of this subsection.

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The 24/7 sobriety account, the Washington promise scholarship account, the Gina Grant Bull memorial legislative page scholarship account, the Washington advanced college tuition payment program account, the Washington college savings program account, the accessible communities account, the Washington achieving a better life experience program account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county enhanced 911 excise tax account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the fair fund, the family and medical leave insurance account, the food animal veterinarian conditional scholarship account, the forest health revolving account, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the low-income home rehabilitation revolving loan program account, the multiagency permitting team account, the northeast Washington wolf-live-stock management account, the pilotage account, the produce railcar pool account, the regional transportation investment district account, the rural rehabilitation account, the Washington sexual assault kit account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account, the life sciences discovery fund, the Washington state heritage center account, the reduced cigarette ignition propensity account,

the center for childhood deafness and hearing loss account, the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, and the radiation perpetual maintenance fund.

(c) The following accounts and funds must receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right-of-way revolving fund, the advanced environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(d) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the custody of the state treasurer that deposits funds into a fund or account in the custody of the state treasurer pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [2017 3rd sp.s. c 5 § 89. Prior: 2017 c 322 § 5; 2017 c 285 § 5; 2017 c 257 § 5; 2017 c 248 § 7; prior: 2016 c 203 § 2; 2016 c 173 § 10; 2016 c 69 § 21; 2016 c 39 § 7; prior: 2013 c 251 § 5; 2013 c 88 § 1; prior: 2012 c 198 § 8; 2012 c 196 § 6; 2012 c 187 § 13; 2012 c 114 § 3; 2011 1st sp.s. c 37 § 603; 2011 c 274 § 4; prior: 2010 1st sp.s. c 19 § 22; 2010 1st sp.s. c 13 § 4; 2010 1st sp.s. c 9 § 6; 2010 c 222 § 4; 2010 c 215 § 7; 2009 c 87 § 4; prior: 2008 c 239 § 9; 2008 c 208 § 9; 2008 c 128 § 20; 2008 c 122 § 24; prior: 2007 c 523 § 5; 2007 c 357 § 21; 2007 c 214 § 14; prior: 2006 c 311 § 21; 2006 c 120 § 2; prior: 2005 c 424 § 18; 2005 c 402 § 8; 2005 c 215 § 10; 2005 c 16 § 2; prior: 2004 c 246 § 8; 2004 c 58 § 10; prior: 2003 c 403 § 9; 2003 c 313 § 10; 2003 c 191 § 7; 2003 c 148 § 15; 2003 c 92 § 8; 2003 c 19 § 12; prior: 2002 c 322 § 5; 2002 c 204 § 7; 2002 c 61 § 6; prior: 2001 c 201 § 4; 2001 c 184 § 4; 2000 c 79 § 45; prior: 1999 c 384 § 8; 1999 c 182 § 2; 1998 c 268 § 1; prior: 1997 c 368 § 8; 1997 c 289 § 13; 1997 c 220 § 221 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 140 § 6; 1997 c 94 § 3; 1996 c 253 § 409; prior: 1995 c 394 § 2; 1995 c 365 § 1; prior: 1993 sp.s. c 8 § 2; 1993 c 500 § 5; 1991 sp.s. c 13 § 82; 1973 1st ex.s. c 15 § 4.]

Finding—Intent—2016 c 173: See note following RCW 43.43.545.

Residual balance of funds—Effective date—2013 c 251: See notes following RCW 41.06.280.

Effective date—2012 c 198: See note following RCW 70.94.6532.

Finding—Effective date—2011 1st sp.s. c 37: See notes following RCW 51.32.090.

Finding—Intent—2011 c 274: See note following RCW 28B.50.515.

Effective dates—2010 1st sp.s. c 19: See note following RCW 82.14B.010.

Effective date—2010 1st sp.s. c 9: See note following RCW 28A.650.035.

Intent—2010 c 222: See note following RCW 43.08.150.

Findings—2010 c 215: See note following RCW 50.40.071.

Effective date—2009 c 87 § 4: "Section 4 of this act takes effect August 1, 2009." [2009 c 87 § 5.]

Effective date—2008 c 239: See RCW 19.305.900.

Findings—Intent—2008 c 208: See RCW 28B.121.005.

Effective date—2008 c 128 §§ 17-20: See note following RCW 88.16.061.

Effective date—2008 c 122 §§ 23 and 24: See note following RCW 47.56.167.

Contingency—2007 c 523: See note following RCW 43.07.128.

Findings—2006 c 311: See note following RCW 36.120.020.

SEED act—Findings—Purpose—Short title—2005 c 402: See RCW 43.31.450 and 43.31.485.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Finding—Intent—Short title—2003 c 19: See RCW 28B.133.005 and 28B.133.900.

Intent—Captions not law—1999 c 384: See notes following RCW 43.330.431.

Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368: See notes following RCW 82.08.810.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Intent—1997 c 140: See note following RCW 47.12.330.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 28B.109.010.

Finding—Severability—Effective date—1993 c 500: See notes following RCW 43.41.180.

Additional notes found at www.leg.wa.gov

Chapter 43.84 RCW

INVESTMENTS AND INTERFUND LOANS

Sections

43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited.

43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited. (1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and

disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Chehalis basin account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the community forest trust account, the connecting Washington account, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the diesel idle reduction account, the drinking water assistance account, the *drinking water assistance administrative account, the early learning facilities development account, the early learning facilities revolving account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the electric vehicle charging infrastructure account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the **high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the money-purchase retirement savings administrative account, the money-purchase retirement savings principal

account, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the pollution liability insurance agency underground storage tank revolving account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puget Sound taxpayer accountability account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the sexual assault prevention and response account, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation future funding program account, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation tax-

able bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [2017 3rd sp.s. c 25 § 50; 2017 3rd sp.s. c 12 § 12; 2017 c 290 § 8. Prior: 2016 c 194 § 5; 2016 c 161 § 20; 2016 c 112 § 4; prior: 2015 3rd sp.s. c 44 § 107; 2015 3rd sp.s. c 12 § 3; prior: 2014 c 112 § 106; 2014 c 74 § 5; 2014 c 32 § 6; prior: 2013 2nd sp.s. c 23 § 24; 2013 2nd sp.s. c 11 § 15; 2013 2nd sp.s. c 1 § 15; prior: 2013 c 251 § 3; 2013 c 96 § 3; 2012 c 198 § 2; 2012 c 196 § 7; 2012 c 187 § 14; 2012 c 83 § 4; prior: 2011 1st sp.s. c 16 § 6; 2011 1st sp.s. c 7 § 22; 2011 c 369 § 6; 2011 c 339 § 1; 2011 c 311 § 9; 2011 c 272 § 3; 2011 c 120 § 3; 2011 c 83 § 7; prior: 2010 1st sp.s. c 30 § 20; 2010 1st sp.s. c 9 § 7; 2010 c 248 § 6; 2010 c 222 § 5; 2010 c 162 § 6; 2010 c 145 § 11; prior: 2009 c 479 § 31; 2009 c 472 § 5; 2009 c 451 § 8; (2009 c 451 § 7 expired July 1, 2009); prior: 2008 c 128 § 19; 2008 c 106 § 4; (2008 c 106 § 3 expired July 1, 2009); (2008 c 106 § 2 expired July 1, 2008); prior: 2007 c 514 § 3; 2007 c 513 § 1; 2007 c 484 § 4; 2007 c 356 § 9; prior: 2006 c 337 § 11; (2006 c 337 § 10 expired July 1, 2006); 2006 c 311 § 23; (2006 c 311 § 22 expired July 1, 2006); 2006 c 171 § 10; (2006 c 171 § 9 expired July 1, 2006); 2006 c 56 § 10; (2006 c 56 § 9 expired July 1, 2006); 2006 c 6 § 8; prior: 2005 c 514 § 1106; 2005 c 353 § 4; 2005 c 339 § 23; 2005 c 314 § 110; 2005 c 312 § 8; 2005 c 94 § 2; 2005 c 83 § 5; prior: (2005 c 353 § 2 expired July 1, 2005); 2004 c 242 § 60; prior: 2003 c 361 § 602; 2003 c 324 § 1; 2003 c 150 § 2; 2003 c 48 § 2; prior: 2002 c 242 § 2; 2002 c 114 § 24; 2002 c 56 § 402; prior: 2001 2nd sp.s. c 14 § 608; (2001 2nd sp.s. c 14 § 607 expired March 1, 2002); 2001 c 273 § 6; (2001 c 273 § 5 expired March 1, 2002); 2001 c 141 § 3; (2001 c 141 § 2 expired March 1, 2002); 2001 c 80 § 5; (2001 c 80 § 4 expired March 1, 2002); 2000 2nd sp.s. c 4 § 6; prior: 2000 2nd sp.s. c 4 § 5; (2000 2nd sp.s. c 4 §§ 3, 4 expired September 1, 2000); 2000 c 247 § 702; 2000 c 79 § 39; (2000 c 79 §§ 37, 38 expired September 1, 2000); prior: 1999 c 380 § 9; 1999 c 380 § 8; 1999 c 309 § 929; (1999 c 309 § 928 expired September 1, 2000); 1999 c 268 § 5; (1999 c 268 § 4 expired September 1, 2000); 1999 c 94 § 4; (1999 c 94 §§ 2, 3 expired September 1, 2000); 1998 c 341 § 708; 1997 c 218 § 5; 1996 c 262 § 4; prior: 1995 c 394 § 1; 1995 c 122 § 12; prior: 1994 c 2 § 6 (Initiative Measure No. 601, approved November 2, 1993); 1993 sp.s. c 25 § 511; 1993 sp.s. c 8 § 1; 1993 c 500 § 6; 1993 c 492 § 473; 1993 c 445 § 4; 1993 c 329 § 2; 1993 c 4 § 9; 1992 c 235 § 4; 1991 sp.s. c 13 § 57; 1990 2nd ex.s. c 1 § 204; 1989 c 419 § 12; 1985 c 57 § 51.]

Reviser's note: *(1) 2016 c 111 § 1 eliminated the "drinking water assistance administrative account" and created an administrative subaccount

of the drinking water assistance account. The office of financial management's fund reference manual treats the administrative subaccount as a continuation of the drinking water assistance administrative account.

** (2) RCW 47.78.010, the high capacity transportation account, was repealed by 2017 3rd sp.s. c 25 § 39.

(3) This section was amended by 2017 c 290 § 8, 2017 3rd sp.s. c 12 § 12, and by 2017 3rd sp.s. c 25 § 50, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—Effective date—2017 3rd sp.s. c 12: See notes following RCW 43.31.565.

Contingent expiration date—2015 3rd sp.s. c 44 § 107: "Section 107 of this act expires on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2015 3rd sp.s. c 44 § 429.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Contingent expiration date—2015 3rd sp.s. c 12 § 3: "Section 3 of this act expires on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2015 3rd sp.s. c 12 § 5.]

Effective date—2015 3rd sp.s. c 12: See note following RCW 47.01.480.

Contingent expiration date—2014 c 112 § 106: "Section 106 of this act expires on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2014 c 112 § 501.]

Contingent expiration date—2014 c 74 § 5: "Section 5 of this act expires on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2014 c 74 § 9.]

Contingent expiration date—2014 c 32 § 6: "Section 6 of this act expires on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2014 c 32 § 8.]

Contingent expiration date—2013 2nd sp.s. c 23 § 24: "Section 24 of this act expires if the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2013 2nd sp.s. c 23 § 29.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

Contingent expiration date—2013 2nd sp.s. c 11 § 15: "Section 15 of this act expires if the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2013 2nd sp.s. c 11 § 17.]

Contingent expiration date—2013 2nd sp.s. c 1 § 15: "Section 15 of this act expires on the date the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2013 2nd sp.s. c 1 § 17.]

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70.105D.020.

Contingent expiration date—2013 c 251 § 3: "Section 3 of this act expires if the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2013 c 251 § 15.]

Residual balance of funds—Effective date—2013 c 251: See notes following RCW 41.06.280.

Contingent expiration date—2013 c 96 § 3: "Section 3 of this act expires if the requirements set out in section 7, chapter 36, Laws of 2012 are met." [2013 c 96 § 5.]

Effective date—2012 c 198: See note following RCW 70.94.6532.

Finding—Intent—2012 c 83: See note following RCW 47.56.862.

Finding—Contingent effective date—Notice of certification and toll rate agreements—2012 c 36: See notes following RCW 47.56.810.

Effective date—2011 1st sp.s. c 16 §§ 1-15: See note following RCW 47.60.530.

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Intent—2011 c 369: See note following RCW 47.56.880.

Effective date—2011 c 339: "Sections 1 through 4 and 6 through 38 of this act take effect September 1, 2011." [2011 c 339 § 39.]

Effective date—2010 1st sp.s. c 30: See RCW 74.60.903.

Effective date—2010 1st sp.s. c 9: See note following RCW 28A.650.035.

Intent—2010 c 222: See note following RCW 43.08.150.

Effective date—2010 c 162: See note following RCW 43.42.090.

Effective date—2009 c 479: See note following RCW 2.56.030.

Intent—Effective date—2009 c 472: See notes following RCW 47.56.870.

Effective date—2009 c 451 § 8: "Section 8 of this act takes effect July 1, 2009." [2009 c 451 § 9.]

Expiration dates—2009 c 451 §§ 2, 3, 5, 6, and 7: "(1) Sections 2, 3, 5, and 6 of this act expire June 30, 2016.

(2) Section 7 of this act expires July 1, 2009." [2009 c 451 § 10.]

Effective date—Intent—2009 c 451: See notes following RCW 43.325.030.

Effective date—2008 c 128 §§ 17-20: See note following RCW 88.16.061.

Expiration dates—2008 c 106 §§ 2 and 3: "(1) Section 2 of this act expires July 1, 2008.

(2) Section 3 of this act expires July 1, 2009." [2008 c 106 § 5.]

Effective dates—2008 c 106 §§ 3 and 4: "(1) Section 3 of this act takes effect July 1, 2008.

(2) Section 4 of this act takes effect July 1, 2009." [2008 c 106 § 6.]

Effective date—2007 c 513: "This act takes effect July 1, 2009." [2007 c 513 § 2.]

Contingent effective date—2007 c 484 §§ 2-8: See note following RCW 43.79.495.

Short title—2007 c 356: See note following RCW 74.31.005.

Findings—2006 c 311: See note following RCW 36.120.020.

Intent—Captions—2005 c 312: See notes following RCW 47.56.401.

Findings—Effective dates—2005 c 83: See notes following RCW 47.26.340.

Findings—2003 c 361: See note following RCW 82.38.030.

Findings—Intent—2003 c 150; 2002 c 242: "The legislature finds that the community economic revitalization board plays a valuable and unique role in stimulating and diversifying local economies, attracting private investment, creating new jobs, and generating additional state and local tax revenues by investing in public facilities projects that result in new or expanded economic development. The legislature also finds that it is in the best interest of the state and local communities to secure a stable and dedicated source of funds for the community economic revitalization board. It is the intent of the legislature to establish an ongoing funding source for the community economic revitalization board that will be used exclusively to advance economic development infrastructure. This act provides a partial funding solution by directing that beginning July 1, 2005, the interest earnings generated by the public works assistance account shall be used to fund the community economic revitalization board's financial assistance programs. These funds are not for use other than for the stated purpose and goals of the community economic revitalization board." [2003 c 150 § 1; 2002 c 242 § 1.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Purpose—2001 c 141: "This act is needed to comply with federal law, which is the source of funds in the drinking water assistance account, used to fund the Washington state drinking water loan program as part of the federal safe drinking water act." [2001 c 141 § 1.]

Findings—Intent—2001 c 80: See note following RCW 43.70.040.

Legislative finding—1999 c 94: "The legislature finds that a periodic review of the accounts and their uses is necessary. While creating new accounts may facilitate the implementation of legislative intent, the creation of too many accounts limits the effectiveness of performance-based budgeting. Too many accounts also limit the flexibility of the legislature to address emerging and changing issues in addition to creating administrative burdens for the responsible agencies. Accounts created for specific purposes may no longer be valid or needed. Accordingly, this act eliminates accounts that are not in use or are unneeded and consolidates accounts that are similar in nature." [1999 c 94 § 1.]

Findings—Effective date—1997 c 218: See notes following RCW 70.119.030.

Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262: See RCW 82.44.195.

Declaration—Intent—Purpose—1995 c 122: See RCW 59.21.006.

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Finding—Severability—Effective date—1993 c 500: See notes following RCW 43.41.180.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

Additional notes found at www.leg.wa.gov

Chapter 43.88 RCW STATE BUDGETING, ACCOUNTING, AND REPORTING SYSTEM

Sections

43.88.0301	Capital budget instructions—Additional information—Staff support from office of community development.
43.88.096	Budget detail—Designated state agencies—Federal receipts reporting requirements. (<i>Effective July 1, 2018.</i>)
43.88.583	Public inspection of state collective bargaining agreements—Web site—Contents.
43.88.910	Decodified.

43.88.0301 Capital budget instructions—Additional information—Staff support from office of community development. (1) The office of financial management must include in its capital budget instructions, beginning with its instructions for the 2003-05 capital budget, a request for "yes" or "no" answers for the following additional informational questions from capital budget applicants for all proposed major capital construction projects valued over five million dollars and required to complete a predesign:

(a) For proposed capital projects identified in this subsection that are located in or serving city or county planning under RCW 36.70A.040:

(i) Whether the proposed capital project is identified in the host city or county comprehensive plan, including the capital facility plan, and implementing rules adopted under chapter 36.70A RCW;

(ii) Whether the proposed capital project is located within an adopted urban growth area:

(A) If at all located within an adopted urban growth area boundary, whether a project facilitates, accommodates, or attracts planned population and employment growth;

(B) If at all located outside an urban growth area boundary, whether the proposed capital project may create pressures for additional development;

(b) For proposed capital projects identified in this subsection that are requesting state funding:

(i) Whether there was regional coordination during project development;

(ii) Whether local and additional funds were leveraged;

(iii) Whether environmental outcomes and the reduction of adverse environmental impacts were examined.

(2) For projects subject to subsection (1) of this section, the office of financial management shall request the required information be provided during the predesign process of major capital construction projects to reduce long-term costs and increase process efficiency.

(3) The office of financial management, in fulfilling its duties under RCW 43.88.030(5) to create a capital budget document, must take into account information gathered under subsections (1) and (2) of this section in an effort to promote state capital facility expenditures that minimize unplanned or

uncoordinated infrastructure and development costs, support economic and quality of life benefits for existing communities, and support local government planning efforts.

(4) The office of community development must provide staff support to the office of financial management and affected capital budget applicants to help collect data required by subsections (1) and (2) of this section. [2017 3rd sp.s. c 25 § 2; 2002 c 312 § 1.]

43.88.096 Budget detail—Designated state agencies—Federal receipts reporting requirements. (*Effective July 1, 2018.*) (1) As used in this section:

(a) "Designated state agency" means the department of social and health services, the department of health, the health care authority, the department of commerce, the department of ecology, the department of fish and wildlife, the office of the superintendent of public instruction, and the department of children, youth, and families.

(b) "Federal receipts" means the federal financial assistance, as defined in 31 U.S.C. Sec. 7501 on September 28, 2013, that is reported as part of a single audit.

(c) "Single audit" is as defined in 31 U.S.C. Sec. 7501 on September 28, 2013.

(2) Subject to subsection (3) of this section, a designated state agency shall prepare as part of the agency's biennial budget submittal under this chapter a report that:

(a) Reports the aggregate value of federal receipts the designated state agency estimated for the ensuing biennium;

(b) Calculates the percentage of the designated state agency's total budget for the ensuing biennium that constitutes federal receipts that the designated state agency received; and

(c) Develops plans for operating the designated state agency if there is a reduction of:

(i) Five percent or more in the federal receipts that the designated state agency receives; and

(ii) Twenty-five percent or more in the federal receipts that the designated state agency receives.

(3) The report required by subsection (2) of this section prepared by the superintendent of public instruction shall include the information required by subsection (2)(a) through (c) of this section for each school district within the state. [2017 3rd sp.s. c 6 § 227; 2013 2nd sp.s. c 32 § 1.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

43.88.583 Public inspection of state collective bargaining agreements—Web site—Contents. (1) To facilitate public inspection of state collective bargaining agreements, the office of financial management must maintain a web site that is accessible to the public of all agreements collectively bargained with state employees under the authority of chapters 28B.52, 41.56, 41.76, 41.80, and 47.64 RCW. In addition, the web site must contain all agreements collectively bargained with persons who are state employees solely for the purpose of collective bargaining under RCW 41.56.026, 41.56.028, 41.56.029, 41.56.473, 41.56.510, and 74.39A.270. Tentatively agreed to collective bargaining

agreements must be posted to the web site in a searchable format within forty-five days of being submitted to the office of financial management. Revisions and modification to agreements must be posted to the web site within fifteen days of the agreement being signed by both parties.

(2) To facilitate public understanding of state collective bargaining agreements, the office of financial management must prepare a summary of each agreement subject to subsection (1) of this section for posting on the web site by December 20th of the year in which the agreement was negotiated, but no later than the date that the governor submits a request for funding to the legislature. The summary must identify the following information for each agreement:

- (a) The term of the agreement;
- (b) The bargaining units covered by the agreement by state agency;
- (c) Base compensation;
- (d) Provisions for and rate of overtime pay;
- (e) Provisions for and rate of compensatory time;
- (f) Provisions for and rate of any other compensation including, but not limited to, shift premium pay, on-call pay, stand-by pay, assignment pay, special pay, or employer-provided housing or meals;
- (g) Provisions for and rate of pay for each paid leave provision;
- (h) Provisions for and rate of pay for any cash out provisions for compensatory time or paid leave;
- (i) Temporary layoff provision;
- (j) Any impasse procedure subject to bargaining;
- (k) Health care benefits provisions expressed as a percentage of cost or as a dollar amount, or in the case of contributions to a third-party benefit fund, the hourly contribution rate to the fund;
- (l) Any retirement benefit subject to bargaining, or in the case of contributions to a third-party benefit fund, the hourly contribution rate to the fund;
- (m) For compensation or fringe benefits with an anticipated cost of fifty thousand dollars or more, a brief description of each component and its cost that comprises the amount funded by the legislature to implement in accordance with RCW 41.80.010(3);
- (n) Number of bargaining unit members covered by the agreement as of the date submitted to the office of financial management;
- (o) Content of any agency-specific supplemental agreements affecting (a) through (m) of this subsection; and
- (p) Any contract provisions that allow the contract to be reopened during the contract term.

(3) For collective bargaining agreements negotiated by institutions of higher education, the institution of higher education must:

- (a) Provide the office of financial management with a searchable version of the tentatively agreed to collective bargaining agreements to be posted on the web site identified in subsection (1) of this section to within forty days of submitting the agreements to the office of financial management.
- (b) Submit revisions and modifications to agreements to the office of financial management to be posted to the web site identified in subsection (1) of this section within ten days of the agreement being signed by both parties.

(c) Submit a summary of each agreement to the office of financial management by December 10th of the year in which a master agreement was negotiated or within fifteen days of a contract revision. The summary must include the information identified in subsection (2)(a) through (p) of this section.

(4) The office of financial management must also include on the web site any additional information identified in budget instructions developed by the office of financial management or that is otherwise required under RCW 43.88.030.

(5) Information on the web site may include links to salary schedules, pay ranges, and other information on state or federal agency web sites to summarize information. Information may include links to specific language within an agreement to summarize information.

(6) By January 1, 2018, the information under this section must be incorporated into the state expenditure information web site maintained by the legislative evaluation and accountability program committee under RCW 44.48.150.

(7) The summaries of collective bargaining agreements created under this section must not disclose personally identifiable information of any bargaining unit member.

(8) The summaries of collective bargaining agreements created under this section have no legal effect on the interpretation of the agreements. [2017 3rd sp.s. c 23 § 1.]

43.88.910 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.88D RCW HIGHER EDUCATION CAPITAL PROJECT STRATEGIC PLANNING

Sections

43.88D.010 Capital budget projects—Objective analysis and scoring—Prioritized lists.

43.88D.010 Capital budget projects—Objective analysis and scoring—Prioritized lists. (1) By October 1st of each even-numbered year, the office of financial management shall complete an objective analysis and scoring of all capital budget projects proposed by the public four-year institutions of higher education and submit the results of the scoring process to the legislative fiscal committees and the four-year institutions. Each project must be reviewed and scored within one of the following categories, according to the project's principal purpose. Each project may be scored in only one category. The categories are:

(a) Access-related projects to accommodate enrollment growth at all campuses, at existing or new university centers, or through distance learning. Growth projects should provide significant additional student capacity. Proposed projects must demonstrate that they are based on solid enrollment demand projections, more cost-effectively provide enrollment access than alternatives such as university centers and distance learning, and make cost-effective use of existing and proposed new space;

(b) Projects that replace failing permanent buildings. Facilities that cannot be economically renovated are considered replacement projects. New space may be programmed for the same or a different use than the space being replaced

and may include additions to improve access and enhance the relationship of program or support space;

(c) Projects that renovate facilities to restore building life and upgrade space to meet current program requirements. Renovation projects should represent a complete renovation of a total facility or an isolated wing of a facility. A reasonable renovation project should cost between sixty to eighty percent of current replacement value and restore the renovated area to at least twenty-five years of useful life. New space may be programmed for the same or a different use than the space being renovated and may include additions to improve access and enhance the relationship of program or support space;

(d) Major stand-alone campus infrastructure projects;

(e) Projects that promote economic growth and innovation through expanded research activity. The acquisition and installation of specialized equipment is authorized under this category; and

(f) Other project categories as determined by the office of financial management in consultation with the legislative fiscal committees.

(2) The office of financial management, in consultation with the legislative fiscal committees, shall establish a scoring system and process for each four-year project category that is based on the framework used in the community and technical college system of prioritization. Staff from the state board for community and technical colleges and the four-year institutions shall provide technical assistance on the development of a scoring system and process.

(3) The office of financial management shall consult with the legislative fiscal committees in the scoring of four-year institution project proposals, and may also solicit participation by independent experts.

(a) For each four-year project category, the scoring system must, at a minimum, include an evaluation of enrollment trends, reasonableness of cost, the ability of the project to enhance specific strategic master plan goals, age and condition of the facility if applicable, and impact on space utilization.

(b) Each four-year project category may include projects at the pre-design, design, or construction funding phase.

(c) To the extent possible, the objective analysis and scoring system of all capital budget projects shall occur within the context of any and all performance agreements between the office of financial management and the governing board of a public, four-year institution of higher education that aligns goals, priorities, desired outcomes, flexibility, institutional mission, accountability, and levels of resources.

(4) In evaluating and scoring four-year institution projects, the office of financial management shall take into consideration project schedules that result in realistic, balanced, and predictable expenditure patterns over the ensuing three biennia.

(5) The office of financial management shall distribute common definitions, the scoring system, and other information required for the project proposal and scoring process as part of its biennial budget instructions. The office of financial management, in consultation with the legislative fiscal committees, shall develop common definitions that four-year institutions must use in developing their project proposals and lists under this section.

(6) In developing any scoring system for capital projects proposed by the four-year institutions, the office of financial management:

(a) Shall be provided with all required information by the four-year institutions as deemed necessary by the office of financial management;

(b) May utilize independent services to verify, sample, or evaluate information provided to the office of financial management by the four-year institutions; and

(c) Shall have full access to all data maintained by the joint legislative audit and review committee concerning the condition of higher education facilities.

(7) By August 1st of each even-numbered year each public four-year higher education institution shall prepare and submit prioritized lists of the individual projects proposed by the institution for the ensuing six-year period in each category. The lists must be submitted to the office of financial management and the legislative fiscal committees. The four-year institutions may aggregate minor works project proposals by primary purpose for ranking purposes. Proposed minor works projects must be prioritized within the aggregated proposal, and supporting documentation, including project descriptions and cost estimates, must be provided to the office of financial management and the legislative fiscal committees. [2017 c 52 § 15; 2012 c 229 § 821; 2010 c 245 § 9; 2008 c 205 § 2.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Findings—Expand on demand—System design plan endorsed—2010 c 245: See note following RCW 28B.50.020.

Chapter 43.101 RCW

CRIMINAL JUSTICE TRAINING COMMISSION— EDUCATION AND TRAINING STANDARDS BOARDS

Sections

- 43.101.200 Law enforcement personnel—Basic law enforcement training required—Commission to provide.
- 43.101.220 Training for corrections personnel.
- 43.101.272 Sexual assault—Training for persons investigating adult sexual assault.
- 43.101.274 Sexual assault—Training curriculum modification.
- 43.101.276 Sexual assault—Training curriculum requirements.

43.101.200 Law enforcement personnel—Basic law enforcement training required—Commission to provide.

(1) All law enforcement personnel, except volunteers, and reserve officers whether paid or unpaid, initially employed on or after January 1, 1978, shall engage in basic law enforcement training which complies with standards adopted by the commission pursuant to RCW 43.101.080. For personnel initially employed before January 1, 1990, such training shall be successfully completed during the first fifteen months of employment of such personnel unless otherwise extended or waived by the commission and shall be requisite to the continuation of such employment. Personnel initially employed on or after January 1, 1990, shall commence basic training during the first six months of employment unless the basic training requirement is otherwise waived or extended by the commission. Successful completion of basic training is requi-

site to the continuation of employment of such personnel initially employed on or after January 1, 1990.

(2) Except as otherwise provided in this chapter, the commission shall provide the aforementioned training together with necessary facilities, supplies, materials, and the board and room of noncommuting attendees for seven days per week, except during the 2015-2017 and 2017-2019 fiscal biennia when the employing, county, city, or state law enforcement agency shall reimburse the commission for twenty-five percent of the cost of training its personnel. Additionally, to the extent funds are provided for this purpose, the commission shall reimburse to participating law enforcement agencies with ten or less full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training: PROVIDED, That such reimbursement shall include only the actual cost of temporary replacement not to exceed the total amount of salary and benefits received by the replaced officer during his or her training period. [2017 3rd sp.s. c 1 § 973; 2015 3rd sp.s. c 4 § 957; 2013 2nd sp.s. c 4 § 982; 2011 1st sp.s. c 50 § 949; 1997 c 351 § 13. Prior: 1993 sp.s. c 24 § 920; 1993 sp.s. c 21 § 5; 1989 c 299 § 2; 1977 ex.s. c 212 § 2.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Additional notes found at www.leg.wa.gov

43.101.220 Training for corrections personnel. (1) The corrections personnel of the state and all counties and municipal corporations initially employed on or after January 1, 1982, shall engage in basic corrections training which complies with standards adopted by the commission. The training shall be successfully completed during the first six months of employment of the personnel, unless otherwise extended or waived by the commission, and shall be requisite to the continuation of employment.

(2) The commission shall provide the training required in this section, together with facilities, supplies, materials, and the room and board for noncommuting attendees, except during the 2015-2017 and 2017-2019 fiscal biennia, when the employing county, municipal corporation, or state agency shall reimburse the commission for twenty-five percent of the cost of training its personnel.

(3)(a) Subsections (1) and (2) of this section do not apply to the Washington state department of corrections prisons division. The Washington state department of corrections is responsible for identifying training standards, designing curricula and programs, and providing the training for those corrections personnel employed by it. In doing so, the secretary of the department of corrections shall consult with staff development experts and correctional professionals both inside and outside of the agency, to include soliciting input from labor organizations.

(b) The commission and the department of corrections share the responsibility of developing and defining training

standards and providing training for community corrections officers employed within the community corrections division of the department of corrections. [2017 3rd sp.s. c 1 § 972; 2015 3rd sp.s. c 4 § 958; 2014 c 221 § 918; 2009 c 146 § 2; 2007 c 382 § 1; 1981 c 136 § 26.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective date—2014 c 221: See note following RCW 28A.710.260.

Intent—2009 c 146: "The intent of the legislature is that all corrections personnel employed by the Washington department of corrections are prepared to carry out the demands of their position that they are likely to encounter during their daily duties. The protection of the public, department employees, and inmates are a primary reason to ensure that everyone is adequately trained and knowledgeable in routine and emergency procedures.

To best carry out this mission it is necessary for the Washington state department of corrections to have the authority, discretion, and ability to design and conduct mandatory training that best meets the needs of its changing offender population." [2009 c 146 § 1.]

Additional notes found at www.leg.wa.gov

43.101.272 Sexual assault—Training for persons investigating adult sexual assault. (1) Subject to the availability of amounts appropriated for this specific purpose, the commission shall provide ongoing specialized, intensive, and integrative training for persons responsible for investigating sexual assault cases involving adult victims. The training must be based on a victim-centered, trauma-informed approach to responding to sexual assault. Among other subjects, the training must include content on the neurobiology of trauma and trauma-informed interviewing, counseling, and investigative techniques.

(2) The training must: Be based on research-based practices and standards; offer participants an opportunity to practice interview skills and receive feedback from instructors; minimize the trauma of all persons who are interviewed during abuse investigations; provide methods of reducing the number of investigative interviews necessary whenever possible; assure, to the extent possible, that investigative interviews are thorough, objective, and complete; recognize needs of special populations; recognize the nature and consequences of victimization; require investigative interviews to be conducted in a manner most likely to permit the interviewed persons the maximum emotional comfort under the circumstances; address record retention and retrieval; and address documentation of investigative interviews.

(3) In developing the training, the commission shall seek advice from the Washington association of sheriffs and police chiefs, the Washington coalition of sexual assault programs, and experts on sexual assault and the neurobiology of trauma. The commission shall consult with the Washington association of prosecuting attorneys in an effort to design training containing consistent elements for all professionals engaged in interviewing and interacting with sexual assault victims in the criminal justice system.

(4) The commission shall develop the training and begin offering it by July 1, 2018. Officers assigned to regularly investigate sexual assault involving adult victims shall complete the training within one year of being assigned or by July 1, 2020, whichever is later. [2017 c 290 § 3.]

43.101.274 Sexual assault—Training curriculum modification. Subject to the availability of amounts appropriated for this specific purpose, the commission shall incorporate victim-centered, trauma-informed approaches to policing in the basic law enforcement training curriculum. In modifying the curriculum, the commission shall seek advice from the Washington coalition of sexual assault programs and other experts on sexual assault and the neurobiology of trauma. [2017 c 290 § 4.]

43.101.276 Sexual assault—Training curriculum requirements. (1) Subject to the availability of amounts appropriated for this specific purpose, the commission shall develop training on a victim-centered, trauma-informed approach to interacting with victims and responding to sexual assault calls. The curriculum must: Be designed for commissioned patrol officers not regularly assigned to investigate sexual assault cases; be designed for deployment and use within individual law enforcement agencies; include features allowing for it to be used in different environments, which may include multimedia or video components; allow for law enforcement agencies to host it in small segments at different times over several days or weeks, including roll calls. The training must include components on available resources for victims including, but not limited to, material on and references to community-based victim advocates.

(2) In developing the training, the commission shall seek advice from the Washington association of sheriffs and police chiefs, the Washington coalition of sexual assault programs, and experts on sexual assault and the neurobiology of trauma.

(3) Beginning in 2018, all law enforcement agencies shall annually host the training for commissioned peace officers. All law enforcement agencies shall, to the extent feasible, consult with and feature local community-based victim advocates during the training. [2017 c 290 § 5.]

Chapter 43.103 RCW WASHINGTON STATE FORENSIC INVESTIGATIONS COUNCIL

Sections

43.103.090 Powers.

43.103.090 Powers. (1) The council may:

(a) Meet at such times and places as may be designated by a majority vote of the councilmembers or, if a majority cannot agree, by the chair;

(b) Adopt rules governing the council and the conduct of its meetings;

(c) Require reports from the chief of the Washington state patrol on matters pertaining to the bureau of forensic laboratory services;

(d) Authorize the expenditure of up to two hundred fifty thousand dollars per biennium from the council's death investigations account appropriation for the purpose of assisting local jurisdictions in the investigation of multiple deaths involving unanticipated, extraordinary, and catastrophic events, or involving multiple jurisdictions. The council shall adopt rules consistent with this subsection for the purposes of authorizing expenditure of the funds;

(e) Authorize the expenditure of up to twenty-five thousand dollars per biennium from the council's death investigations account appropriation for the purpose of assisting local jurisdictions to secure forensic anthropology services or other testing, to determine the identity of human remains upon a showing of financial need. The council shall adopt rules consistent with this subsection for the purposes of authorizing expenditure of the funds;

(f) Authorize expenditures from the council's death investigations account appropriation for the purpose of funding a statewide case management system for coroners and medical examiners. The council shall confer with the state association of coroners and medical examiners in the selection of a statewide system. The council may adopt rules consistent with this subsection for the purposes of authorizing expenditure of the funds;

(g) Do anything, necessary or convenient, which enables the council to perform its duties and to exercise its powers; and

(h) Be actively involved in the preparation of the bureau of forensic laboratory services budget and approve the bureau of forensic laboratory services budget prior to formal submission to the office of financial management pursuant to RCW 43.88.030.

(2) The council shall:

(a) Prescribe qualifications for the position of director of the bureau of forensic laboratory services, after consulting with the chief of the Washington state patrol. The council shall submit to the chief of the Washington state patrol a list containing the names of up to three persons who the council believes meet its qualifications to serve as director of the bureau of forensic laboratory services. Minimum qualifications for the director of the bureau of forensic laboratory services must include successful completion of a background investigation and polygraph examination. If requested by the chief of the Washington state patrol, the forensic investigations council shall submit one additional list of up to three persons who the forensic investigations council believes meet its qualifications. The appointment must be from one of the lists of persons submitted by the forensic investigations council, and the director of the bureau of forensic laboratory services shall report to the office of the chief of the Washington state patrol;

(b) After consulting with the chief of the Washington state patrol and the director of the bureau of forensic laboratory services, the council shall appoint a toxicologist as state toxicologist, who shall report to the director of the bureau of forensic laboratory services. The appointee shall meet the minimum standards for employment with the Washington state patrol including successful completion of a background investigation and polygraph examination;

(c) Establish, after consulting with the chief of the Washington state patrol, the policies, objectives, and priorities of the bureau of forensic laboratory services, to be implemented and administered within constraints established by budgeted resources by the director of the bureau of forensic laboratory services;

(d) Set the salary for the director of the bureau of forensic laboratory services; and

(e) Set the salary for the state toxicologist. [2017 c 146 § 1; 2007 c 200 § 1. Prior: 1999 c 142 § 1; 1999 c 40 § 5; 1995 c 398 § 8; 1983 1st ex.s. c 16 § 9.]

Additional notes found at www.leg.wa.gov

Chapter 43.105 RCW
CONSOLIDATED TECHNOLOGY SERVICES
AGENCY

Sections

43.105.020	Definitions.
43.105.331	State interoperability executive committee—Composition—Responsibilities.
43.105.902	Decodified.
43.105.903	Decodified.

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

(1) "Agency" means the consolidated technology services agency.

(2) "Board" means the technology services board.

(3) "Customer agencies" means all entities that purchase or use information technology resources, telecommunications, or services from the consolidated technology services agency.

(4) "Director" means the state chief information officer, who is the director of the consolidated technology services agency.

(5) "Enterprise architecture" means an ongoing activity for translating business vision and strategy into effective enterprise change. It is a continuous activity. Enterprise architecture creates, communicates, and improves the key principles and models that describe the enterprise's future state and enable its evolution.

(6) "Equipment" means the machines, devices, and transmission facilities used in information processing, including but not limited to computers, terminals, telephones, wireless communications system facilities, cables, and any physical facility necessary for the operation of such equipment.

(7) "Information" includes, but is not limited to, data, text, voice, and video.

(8) "Information security" means the protection of communication and information resources from unauthorized access, use, disclosure, disruption, modification, or destruction in order to:

(a) Prevent improper information modification or destruction;

(b) Preserve authorized restrictions on information access and disclosure;

(c) Ensure timely and reliable access to and use of information; and

(d) Maintain the confidentiality, integrity, and availability of information.

(9) "Information technology" includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications, requisite system controls, simulation, electronic commerce, radio technologies, and all related interactions between people and machines.

(10) "Information technology portfolio" or "portfolio" means a strategic management process documenting relationships between agency missions and information technology and telecommunications investments.

(11) "K-20 network" means the network established in RCW 43.41.391.

(12) "Local governments" includes all municipal and quasi-municipal corporations and political subdivisions, and all agencies of such corporations and subdivisions authorized to contract separately.

(13) "Office" means the office of the state chief information officer within the consolidated technology services agency.

(14) "Oversight" means a process of comprehensive risk analysis and management designed to ensure optimum use of information technology resources and telecommunications.

(15) "Proprietary software" means that software offered for sale or license.

(16) "Public agency" means any agency of this state or another state; any political subdivision or unit of local government of this state or another state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any public benefit nonprofit corporation; any agency of the United States; and any Indian tribe recognized as such by the federal government.

(17) "Public benefit nonprofit corporation" means a public benefit nonprofit corporation as defined in RCW 24.03.005 that is receiving local, state, or federal funds either directly or through a public agency other than an Indian tribe or political subdivision of another state.

(18) "Public record" has the definitions in RCW 42.56.010 and chapter 40.14 RCW and includes legislative records and court records that are available for public inspection.

(19) "Public safety" refers to any entity or services that ensure the welfare and protection of the public.

(20) "Security incident" means an accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of communication and information resources.

(21) "State agency" means every state office, department, division, bureau, board, commission, or other state agency, including offices headed by a statewide elected official.

(22) "Telecommunications" includes, but is not limited to, wireless or wired systems for transport of voice, video, and data communications, network systems, requisite facilities, equipment, system controls, simulation, electronic commerce, and all related interactions between people and machines.

(23) "Utility-based infrastructure services" includes personal computer and portable device support, servers and server administration, security administration, network administration, telephony, email, and other information technology services commonly used by state agencies. [2017 c 92 § 2; 2016 c 237 § 2. Prior: 2015 3rd sp.s. c 1 § 102; 2011 1st sp.s. c 43 § 802; 2010 1st sp.s. c 7 § 64; prior: 2009 c 565 § 32; 2009 c 509 § 7; 2009 c 486 § 14; 2003 c 18 § 2; prior: 1999 c 285 § 1; 1999 c 80 § 1; 1993 c 280 § 78; 1990 c 208 §

3; 1987 c 504 § 3; 1973 1st ex.s. c 219 § 3; 1967 ex.s. c 115 § 2.]

Short title—2016 c 237: See note following RCW 43.105.801.

Effective date—2015 3rd sp.s. c 1 §§ 101-109, 201-224, 406-408, 410, 501-507, 601, and 602: See note following RCW 43.105.007.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.330.400.

Findings—Intent—Purpose—Effective date—2009 c 509: See notes following RCW 43.105.370.

Conflict with federal requirements—Intent—2009 c 486: See notes following RCW 28B.30.530.

Intent—Finding—2003 c 18: "It is the intent of the legislature to ensure that the state's considerable investment in radio communications facilities, and the radio spectrum that is licensed to government entities in the state, are managed in a way that promotes to the maximum extent the health and safety of the state's citizens and the economic efficiencies of coordinated planning, development, management, maintenance, accountability, and performance. The legislature finds that such coordination is essential for disaster preparedness, emergency management, and public safety, and that such coordination will result in more cost-effective use of state resources and improved government services." [2003 c 18 § 1.]

Additional notes found at www.leg.wa.gov

43.105.331 State interoperability executive committee—Composition—Responsibilities. (1) The director shall appoint a state interoperability executive committee, the membership of which must include, but not be limited to, representatives of the military department, the Washington state patrol, the department of transportation, the office of the state chief information officer, the department of natural resources, the department of fish and wildlife, the department of health, the department of corrections, city and county governments, state and local fire chiefs, police chiefs, and sheriffs, state and local emergency management directors, tribal nations, and public safety answering points, commonly known as 911 call centers. The chair and legislative members of the board will serve as nonvoting ex officio members of the committee. Voting membership may not exceed twenty-two members.

(2) The director shall appoint the chair of the committee from among the voting members of the committee.

(3) The state interoperability executive committee has the following responsibilities:

(a) Develop policies and make recommendations to the office for technical standards for state wireless radio communications systems, including emergency communications systems. The standards must address, among other things, the interoperability of systems, taking into account both existing and future systems and technologies;

(b) Coordinate and manage on behalf of the office the licensing and use of state-designated and state-licensed radio frequencies, including the spectrum used for public safety and emergency communications, and serve as the point of contact with the federal communications commission and the first responders network authority on matters relating to allocation, use, and licensing of radio spectrum;

(c) Coordinate the purchasing of all state wireless radio communications system equipment to ensure that:

(i) Any new trunked radio system shall be, at a minimum, project-25; and

(ii) Any new land-mobile radio system that requires advanced digital features shall be, at a minimum, project-25;

(d) Seek support, including possible federal or other funding, for state-sponsored wireless communications systems;

(e) Develop recommendations for legislation that may be required to promote interoperability of state wireless communications systems;

(f) Foster cooperation and coordination among public safety and emergency response organizations;

(g) Work with wireless communications groups and associations to ensure interoperability among all public safety and emergency response wireless communications systems; and

(h) Perform such other duties as may be assigned by the director to promote interoperability of wireless communications systems.

(4) The office shall provide administrative support to the committee. [2017 c 92 § 1; 2015 3rd sp.s. c 1 § 213; 2011 1st sp.s. c 43 § 717. Formerly RCW 43.41A.080.]

Effective date—2015 3rd sp.s. c 1 §§ 101-109, 201-224, 406-408, 410, 501-507, 601, and 602: See note following RCW 43.105.007.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

43.105.902 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.105.903 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.131 RCW

WASHINGTON SUNSET ACT OF 1977

Sections

43.131.408	Alternative public works contracting procedures—Repeal.
43.131.413	Repealed.
43.131.414	Repealed.
43.131.415	Repealed.
43.131.416	Repealed.
43.131.422	Mercury-containing lights product stewardship program—Repeal.

43.131.408 Alternative public works contracting procedures—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2022:

(1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, & 1994 c 132 s 1;

(2) RCW 39.10.210 and 2014 c 42 s 1 & 2013 c 222 s 1;

(3) RCW 39.10.220 and 2013 c 222 s 2, 2007 c 494 s 102, & 2005 c 377 s 1;

(4) RCW 39.10.230 and 2013 c 222 s 3, 2010 1st sp.s. c 21 s 3, 2009 c 75 s 1, 2007 c 494 s 103, & 2005 c 377 s 2;

(5) RCW 39.10.240 and 2013 c 222 s 4 & 2007 c 494 s 104;

(6) RCW 39.10.250 and 2013 c 222 s 5, 2009 c 75 s 2, & 2007 c 494 s 105;

(7) RCW 39.10.260 and 2013 c 222 s 6 & 2007 c 494 s 106;

(8) RCW 39.10.270 and 2017 c 211 s 1, 2013 c 222 s 7, 2009 c 75 s 3, & 2007 c 494 s 107;

(9) RCW 39.10.280 and 2014 c 42 s 2, 2013 c 222 s 8, & 2007 c 494 s 108;

(10) RCW 39.10.290 and 2007 c 494 s 109;

(11) RCW 39.10.300 and 2013 c 222 s 9, 2009 c 75 s 4, & 2007 c 494 s 201;

(12) RCW 39.10.320 and 2013 c 222 s 10, 2007 c 494 s 203, & 1994 c 132 s 7;

(13) RCW 39.10.330 and 2014 c 19 s 1, 2013 c 222 s 11, 2009 c 75 s 5, & 2007 c 494 s 304;

(14) RCW 39.10.340 and 2014 c 42 s 3, 2013 c 222 s 12, & 2007 c 494 s 301;

(15) RCW 39.10.350 and 2014 c 42 s 4 & 2007 c 494 s 302;

(16) RCW 39.10.360 and 2014 c 42 s 5, 2013 c 222 s 13, 2009 c 75 s 6, & 2007 c 494 s 303;

(17) RCW 39.10.370 and 2014 c 42 s 6 & 2007 c 494 s 304;

(18) RCW 39.10.380 and 2013 c 222 s 14 & 2007 c 494 s 305;

(19) RCW 39.10.385 and 2013 c 222 s 15 & 2010 c 163 s 1;

(20) RCW 39.10.390 and 2014 c 42 s 7, 2013 c 222 s 16, & 2007 c 494 s 306;

(21) RCW 39.10.400 and 2013 c 222 s 17 & 2007 c 494 s 307;

(22) RCW 39.10.410 and 2007 c 494 s 308;

(23) RCW 39.10.420 and 2017 c 136 s 1 & 2016 c 52 s 1;

(24) RCW 39.10.430 and 2007 c 494 s 402;

(25) RCW 39.10.440 and 2015 c 173 s 1, 2013 c 222 s 19, & 2007 c 494 s 403;

(26) RCW 39.10.450 and 2012 c 102 s 2 & 2007 c 494 s 404;

(27) RCW 39.10.460 and 2012 c 102 s 3 & 2007 c 494 s 405;

(28) RCW 39.10.470 and 2014 c 19 s 2, 2005 c 274 s 275, & 1994 c 132 s 10;

(29) RCW 39.10.480 and 1994 c 132 s 9;

(30) RCW 39.10.490 and 2013 c 222 s 20, 2007 c 494 s 501, & 2001 c 328 s 5;

(31) RCW 39.10.900 and 1994 c 132 s 13;

(32) RCW 39.10.901 and 1994 c 132 s 14;

(33) RCW 39.10.903 and 2007 c 494 s 510;

(34) RCW 39.10.904 and 2007 c 494 s 512; and

(35) RCW 39.10.905 and 2007 c 494 s 513. [2017 c 211 § 2; 2017 c 136 § 2. Prior: 2014 c 42 § 8; 2014 c 19 § 3; prior: 2013 c 222 § 22; 2013 c 186 § 2; 2012 c 102 § 4; 2010 1st sp.s. c 21 § 5; 2007 c 494 § 507.]

Reviser's note: This section was amended by 2017 c 136 § 2 and by 2017 c 211 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2013 c 222: See note following RCW 39.10.210.

Intent—2010 1st sp.s. c 21: See note following RCW 39.10.200.

Part headings and captions not law—Effective dates—Severability—2007 c 494: See RCW 39.10.903 through 39.10.905.

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

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

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

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

43.131.422 Mercury-containing lights product stewardship program—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2026:

(1) RCW 70.275.010 (Findings—Purpose) and 2010 c 130 s 1;

(2) RCW 70.275.020 (Definitions) and 2014 c 119 s 2 & 2010 c 130 s 2;

(3) RCW 70.275.030 (Product stewardship program) and 2014 c 119 s 3 & 2010 c 130 s 3;

(4) RCW 70.275.040 (Submission of proposed product stewardship plans—Department to establish rules—Public review—Plan update—Annual report) and 2017 c 254 s 2, 2014 c 119 s 4, & 2010 c 130 s 4;

(5) RCW 70.275.050 (Financing the mercury-containing light recycling program) and 2017 c 254 s 1, 2014 c 119 s 5, & 2010 c 130 s 5;

(6) RCW 70.275.060 (Collection and management of mercury) and 2010 c 130 s 6;

(7) RCW 70.275.070 (Collectors of unwanted mercury-containing lights—Duties) and 2010 c 130 s 7;

(8) RCW 70.275.090 (Producers must participate in an approved product stewardship program) and 2010 c 130 s 9;

(9) RCW 70.275.100 (Written warning—Penalty—Appeal) and 2010 c 130 s 10;

(10) RCW 70.275.110 (Department's web site to list producers participating in product stewardship plan—Required participation in a product stewardship plan—Written warning—Penalty—Rules—Exemptions) and 2010 c 130 s 11;

(11) RCW 70.275.130 (Product stewardship programs account) and 2017 c 254 s 3 & 2010 c 130 s 13;

(12) RCW 70.275.140 (Adoption of rules—Report to the legislature—Invitation to entities to comment on issues—Estimate of statewide recycling rate for mercury-containing lights—Mercury vapor barrier packaging) and 2010 c 130 s 14;

(13) RCW 70.275.150 (Application of chapter to the Washington utilities and transportation commission) and 2010 c 130 s 15;

(14) RCW 70.275.160 (Application of chapter to entities regulated under chapter 70.105 RCW) and 2010 c 130 s 16;

(15) RCW 70.275.900 (Chapter liberally construed) and 2010 c 130 s 17;

(16) RCW 70.275.901 (Severability—2010 c 130) and 2010 c 130 s 21; and

(17) RCW 70.275.170 and 2014 c 119 s 6. [2017 c 254 § 4; 2014 c 119 § 8.]

Finding—2014 c 119: See note following RCW 70.275.020.

Chapter 43.135 RCW

STATE EXPENDITURES LIMITATIONS

Sections

43.135.033 Decoded.

43.135.033 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.155 RCW PUBLIC WORKS PROJECTS

Sections

43.155.010	Legislative findings and policy.
43.155.020	Definitions.
43.155.040	General powers of the board.
43.155.050	Public works assistance account.
43.155.060	Public works financing powers—Establishment of interest rates—Competitive bids on projects.
43.155.065	Emergency public works projects.
43.155.068	Loans or grants for preconstruction activities.
43.155.070	Eligibility, priority, limitations, and exceptions—Report.
43.155.075	Loans and grants for public works projects—Statement of environmental benefits—Sustainable asset management best practices—Development of outcome-focused performance measures.
43.155.150	Interagency, multijurisdictional system improvement team. (Expires June 30, 2021.)

43.155.010 Legislative findings and policy. The legislature finds that there exists in the state of Washington over four billion dollars worth of critical projects for the planning, acquisition, construction, repair, replacement, rehabilitation, or improvement of streets and roads, bridges, water systems, and storm and sanitary sewage systems. The December, 1983 Washington state public works report prepared by the planning and community affairs agency documented that local governments expect to be capable of financing over two billion dollars worth of the costs of those critical projects but will not be able to fund nearly half of the documented needs.

The legislature further finds that Washington's local governments have unmet financial needs for solid waste disposal, including recycling, and encourages the board to make an equitable geographic distribution of the funds.

It is the policy of the state of Washington to encourage self-reliance by local governments in meeting their public works needs and to assist in the financing of critical public works projects by making loans, grants, financing guarantees, and technical assistance available to local governments for these projects. [2017 3rd sp.s. c 10 § 1; 1996 c 168 § 1; 1985 c 446 § 7.]

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

(1) "Board" means the public works board created in RCW 43.155.030.

(2) "Capital facility plan" means a capital facility plan required by the growth management act under chapter 36.70A RCW or, for local governments not fully planning under the growth management act, a plan required by the public works board.

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

(4) "Financing guarantees" means the pledge of money in the public works assistance account, or money to be received by the public works assistance account, to the repayment of all or a portion of the principal of or interest on obligations issued by local governments to finance public works projects.

(5) "Local governments" means cities, towns, counties, special purpose districts, and any other municipal corpora-

tions or quasi-municipal corporations in the state excluding school districts and port districts.

(6) "Public works project" means a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of streets and roads, bridges, water systems, or storm and sanitary sewage systems, lead remediation of drinking water systems, and solid waste facilities, including recycling facilities. A planning project may include the compilation of biological, hydrological, or other data on a county, drainage basin, or region necessary to develop a base of information for a capital facility plan.

(7) "Solid waste or recycling project" means remedial actions necessary to bring abandoned or closed landfills into compliance with regulatory requirements and the repair, restoration, and replacement of existing solid waste transfer, recycling facilities, and landfill projects limited to the opening of landfill cells that are in existing and permitted landfills.

(8) "Technical assistance" means training and other services provided to local governments to: (a) Help such local governments plan, apply, and qualify for loans, grants, and financing guarantees from the board, and (b) help local governments improve their ability to plan for, finance, acquire, construct, repair, replace, rehabilitate, and maintain public facilities.

(9) "Value planning" means a uniform approach to assist in decision making through systematic evaluation of potential alternatives to solving an identified problem. [2017 3rd sp.s. c 10 § 2; 2009 c 565 § 33; 2001 c 131 § 1; 1996 c 168 § 2; 1995 c 399 § 85; 1985 c 446 § 8.]

43.155.040 General powers of the board. The board may:

(1) Accept from any state or federal agency, loans or grants for the planning or financing of any public works project and enter into agreements with any such agency concerning the loans or grants;

(2) Provide technical assistance to local governments;

(3) Accept any gifts, grants, or loans of funds, property, or financial or other aid in any form from any other source on any terms and conditions which are not in conflict with this chapter;

(4) Develop a program that provides grants and additional assistance to leverage federal programs, and other opportunities to target deeper financial assistance to communities with economic distress or projects that would result in rate increases to residential utility rates that exceed a determined percentage of median household income;

(5) Adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this chapter;

(6) Do all acts and things necessary or convenient to carry out the powers expressly granted or implied under this chapter. [2017 3rd sp.s. c 10 § 4; 1985 c 446 § 10.]

43.155.050 Public works assistance account. The public works assistance account is hereby established in the state treasury. Money may be placed in the public works assistance account from the proceeds of bonds when authorized by the legislature or from any other lawful source. Money in the public works assistance account shall be used to make loans and grants and to give financial guarantees to

local governments for public works projects. Moneys in the account may also be appropriated or transferred to the water pollution control revolving account and the drinking water assistance account to provide for state match requirements under federal law. Not more than twenty percent of the biennial capital budget appropriation to the public works board from this account may be expended or obligated for preconstruction loans and grants, emergency loans and grants, or loans and grants for capital facility planning under this chapter. Not more than ten percent of the biennial capital budget appropriation to the public works board from this account may be expended or obligated as grants for preconstruction, emergency, capital facility planning, and construction projects. During the 2015-2017 fiscal biennium, the legislature may transfer from the public works assistance account to the general fund, the water pollution control revolving account, and the drinking water assistance account such amounts as reflect the excess fund balance of the account. During the 2015-2017 and 2017-2019 fiscal biennia, the legislature may appropriate moneys from the account for activities related to rural economic development, the growth management act, and the voluntary stewardship program. During the 2015-2017 fiscal biennium, the legislature may transfer from the public works assistance account to the state general fund such amounts as specified by the legislature. During the 2017-2019 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys in the public works assistance account to the education legacy trust account. It is the intent of the legislature that this policy will be continued in subsequent fiscal biennia. [2017 3rd sp.s. c 10 § 5; 2017 3rd sp.s. c 1 § 974. Prior: 2015 3rd sp.s. c 4 § 959; 2015 3rd sp.s. c 3 § 7032; 2013 2nd sp.s. c 4 § 983; 2012 2nd sp.s. c 2 § 6004; 2011 1st sp.s. c 50 § 951; prior: 2010 1st sp.s. c 37 § 932; 2010 1st sp.s. c 36 § 6007; (2009 c 564 § 940 expired June 30, 2011); (2008 c 328 § 6002 expired June 30, 2011); 2007 c 520 § 6037; (2007 c 520 § 6036 expired June 30, 2011); prior: 2005 c 488 § 925; (2005 c 425 § 4 expired June 30, 2011); 2001 c 131 § 2; prior: 1995 2nd sp.s. c 18 § 918; 1995 c 376 § 11; 1993 sp.s. c 24 § 921; 1985 c 471 § 8.]

Reviser's note: This section was amended by 2017 3rd sp.s. c 1 § 974 and by 2017 3rd sp.s. c 10 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective date—2015 3rd sp.s. c 3: See note following RCW 43.160.080.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 23, 2012]." [2012 2nd sp.s. c 2 § 6013.]

Effective date—2011 1st sp.s. c 50 § 951: "Section 951 of this act takes effect June 30, 2011." [2011 1st sp.s. c 50 § 952.]

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2010 1st sp.s. c 36: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 4, 2010]." [2010 1st sp.s. c 36 § 6018.]

Expiration date—2009 c 564 § 940: "Section 940 of this act expires June 30, 2011." [2009 c 564 § 962.]

Effective date—2009 c 564: See note following RCW 2.68.020.

Expiration date—2008 c 328 § 6002: "Section 6002 of this act expires June 30, 2011." [2008 c 328 § 6018.]

Part headings not law—2008 c 328: "Part headings in this act are not any part of the law." [2008 c 328 § 6020.]

Severability—2008 c 328: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 328 § 6021.]

Effective date—2008 c 328: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2008]." [2008 c 328 § 6022.]

Expiration date—2007 c 520 § 6036: "Section 6036 of this act expires June 30, 2011." [2007 c 520 § 6039.]

Part headings not law—Severability—Effective dates—2007 c 520: See notes following RCW 43.19.125.

Finding—2005 c 425: "The legislature has and continues to recognize the vital importance of economic development to the health and prosperity of Washington state as indicated in RCW 43.160.010, *43.155.070(4)(g), 43.163.005, and 43.168.010. The legislature finds that current economic development programs and funding, which are primarily low-interest loan programs, can be enhanced by creating a grant program to assist with public infrastructure projects that directly stimulate community and economic development by supporting the creation of new jobs or the retention of existing jobs." [2005 c 425 § 1.]

***Reviser's note:** RCW 43.155.070 was amended by 2017 3rd sp.s. c 10 § 9, deleting subsection (4)(g).

Findings—1995 c 376: See note following RCW 70.116.060.

Additional notes found at www.leg.wa.gov

43.155.060 Public works financing powers—Establishment of interest rates—Competitive bids on projects. (1) In order to aid the financing of public works projects, the board may:

(a) Make loans or grants to local governments from the public works assistance account or other funds and accounts for the purpose of assisting local governments in financing public works projects. Money received from local governments in repayment of loans made under this section shall be paid into the public works assistance account for uses consistent with this chapter.

(b) Pledge money in the public works assistance account, or money to be received by the public works assistance account, to the repayment of all or a portion of the principal of or interest on obligations issued by local governments to finance public works projects. The board shall not pledge any amount greater than the sum of money in the public works assistance account plus money to be received from the payment of the debt service on loans made from that account, nor shall the board pledge the faith and credit or the taxing power of the state or any agency or subdivision thereof to the repayment of obligations issued by any local government.

(c) Create such subaccounts in the public works assistance account as the board deems necessary to carry out the purposes of this chapter.

(d) Provide a method for the allocation of loans, grants, and financing guarantees and the provision of technical assistance under this chapter.

(2) When establishing interest rates for loan programs authorized in this chapter for projects which are supported by a rate base of at least fifty thousand equivalent residential

units, the board must base interest rates on the average daily market interest rate for tax-exempt municipal bonds as published in the bond buyer's index for the period from sixty to thirty days before the start of the application cycle.

(a) For projects with a repayment period between five and twenty years, the rate must be fifty percent of the market rate.

(b) For projects with a repayment period under five years, the rate must be twenty-five percent of the market rate.

(c) For any year in which the average daily market interest rate for tax-exempt municipal bonds for the period from sixty to thirty days before the start of an application cycle is nine percent or greater, the board may cap interest rates at four percent for projects with a repayment period between five and twenty years and at two percent for projects with a repayment period under five years.

(d) The board may also provide reduced interest rates, extended repayment periods, or grants for projects that meet financial hardship criteria as measured by the affordability index or similar standard measure of financial hardship. The board may provide reduced interest rates, extended repayment periods, or grants for projects that are supported by a rate base of less than fifty thousand equivalent residential units.

(3) All local public works projects aided in whole or in part under the provisions of this chapter shall be put out for competitive bids, except for emergency public works under RCW 43.155.065 for which the recipient jurisdiction shall comply with this requirement to the extent feasible and practicable. The competitive bids called for shall be administered in the same manner as all other public works projects put out for competitive bidding by the local governmental entity aided under this chapter. [2017 3rd sp.s. c 10 § 6; 1988 c 93 § 2; 1985 c 446 § 11.]

43.155.065 Emergency public works projects. The board may make low-interest or interest-free loans or grants to local governments for emergency public works projects. Emergency public works projects shall include the construction, repair, reconstruction, replacement, rehabilitation, or improvement of a public water system that is in violation of health and safety standards and is being operated by a local government on a temporary basis. The loans or grants may be used to help fund all or part of an emergency public works project less any reimbursement from any of the following sources: (1) Federal disaster or emergency funds, including funds from the federal emergency management agency; (2) state disaster or emergency funds; (3) insurance settlements; or (4) litigation. [2017 3rd sp.s. c 10 § 7; 2001 c 131 § 3; 1990 c 133 § 7; 1988 c 93 § 1.]

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

43.155.068 Loans or grants for preconstruction activities. (1) The board may make loans or grants to local governments for preconstruction activities on public works projects before the legislature approves the construction phase of the project. Preconstruction activities include design, engineering, bid-document preparation, environmental studies, right-of-way acquisition, value planning, and other preliminary phases of public works projects as deter-

mined by the board. The purpose of the loans and grants authorized in this section is to accelerate the completion of public works projects by allowing preconstruction activities to be performed before the appropriation for the construction phase of the project by the legislature.

(2) Projects receiving loans or grants for preconstruction activities under this section must be evaluated using the priority process and factors in RCW 43.155.070. The receipt of a loan or grant for preconstruction activities does not ensure the receipt of a construction loan or grant for the project under this chapter. Construction loans or grants for projects receiving a loan or grant for preconstruction activities under this section are subject to legislative appropriation under RCW 43.155.070(7). The board shall adopt a single application process for local governments seeking both a loan or grant for preconstruction activities under this section and a construction loan for the project. [2017 3rd sp.s. c 10 § 8; 2001 c 131 § 4; 1995 c 363 § 2.]

Finding—Purpose—1995 c 363: "The legislature finds that there continues to exist a great need for capital projects to plan, acquire, design, construct, and repair local government streets, roads, bridges, water systems, and storm and sanitary sewage systems. It is the purpose of this act to accelerate the construction of these projects under the public works assistance program." [1995 c 363 § 1.]

43.155.070 Eligibility, priority, limitations, and exceptions—Report. (1) To qualify for financial assistance under this chapter the board must determine that a local government meets all of the following conditions:

(a) The city or county must be imposing a tax under chapter 82.46 RCW at a rate of at least one-quarter of one percent;

(b) The local government must have developed a capital facility plan; and

(c) The local government must be using all local revenue sources which are reasonably available for funding public works, taking into consideration local employment and economic factors.

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 may not receive financial assistance under this chapter unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting or receiving financial assistance under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 that has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 may apply for and receive financial assistance under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before executing a contractual agreement for financial assistance with the board.

(3) In considering awarding financial assistance for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, the board must consider whether the county, city, or town planning under RCW 36.70A.040 in

whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(4)(a) The board must develop a process to prioritize applications and funding of loans and grants for public works projects submitted by local governments. The board must consider, at a minimum and in any order, the following factors in prioritizing projects:

(i) Whether the project is critical in nature and would affect the health and safety of many people;

(ii) The extent to which the project leverages other funds;

(iii) The extent to which the project is ready to proceed to construction;

(iv) Whether the project is located in an area of high unemployment, compared to the average state unemployment;

(v) Whether the project promotes the sustainable use of resources and environmental quality, as applicable;

(vi) Whether the project consolidates or regionalizes systems;

(vii) Whether the project encourages economic development through mixed-use and mixed income development consistent with chapter 36.70A RCW;

(viii) Whether the system is being well-managed in the present and for long-term sustainability;

(ix) Achieving equitable distribution of funds by geography and population;

(x) The extent to which the project meets the following state policy objectives:

(A) Efficient use of state resources;

(B) Preservation and enhancement of health and safety;

(C) Abatement of pollution and protection of the environment;

(D) Creation of new, family-wage jobs, and avoidance of shifting existing jobs from one Washington state community to another;

(E) Fostering economic development consistent with chapter 36.70A RCW;

(F) Efficiency in delivery of goods and services and transportation; and

(G) Reduction of the overall cost of public infrastructure;

(xi) Whether the applicant sought or is seeking funding for the project from other sources; and

(xii) Other criteria that the board considers necessary to achieve the purposes of this chapter.

(b) Before September 1, 2018, and each year thereafter, the board must develop and submit a report regarding the construction loans and grants to the office of financial management and appropriate fiscal committees of the senate and house of representatives. The report must include:

(i) The total number of applications and amount of funding requested for public works projects;

(ii) A list and description of projects approved in the preceding fiscal year with project scores against the board's prioritization criteria;

(iii) The total amount of loan and grants disbursements made from the public works assistance account in the preceding fiscal year;

(iv) The total amount of loan repayments in the preceding fiscal year for outstanding loans from the public works assistance account;

(v) The total amount of loan repayments due for outstanding loans for each fiscal year over the following ten-year period; and

(vi) The total amount of funds obligated and timing of when the funds were obligated in the preceding fiscal year.

(c) The maximum amount of funding that the board may provide for any jurisdiction is ten million dollars per biennium.

(5) Existing debt or financial obligations of local governments may not be refinanced under this chapter. Each local government applicant must provide documentation of attempts to secure additional local or other sources of funding for each public works project for which financial assistance is sought under this chapter.

(6) Before September 1st of each year, the board must develop and submit to the appropriate fiscal committees of the senate and house of representatives a description of the loans and grants made under RCW 43.155.065 and 43.155.068.

(7) The board may not sign contracts or otherwise financially obligate funds from the public works assistance account before the legislature has appropriated funds to the board for the purpose of funding public works projects under this chapter.

(8) To qualify for loans, grants, or pledges for solid waste or recycling facilities under this chapter, a city or county must demonstrate that the solid waste or recycling facility is consistent with and necessary to implement the comprehensive solid waste management plan adopted by the city or county under chapter 70.95 RCW.

(9) After January 1, 2010, any project designed to address the effects of stormwater or wastewater on Puget Sound may be funded under this section only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(10) For projects involving repair, replacement, or improvement of a wastewater treatment plant or other public works facility for which an investment grade efficiency audit is reasonably obtainable, the public works board must require as a contract condition that the project sponsor undertake an investment grade efficiency audit. The project sponsor may finance the costs of the audit as part of its public works assistance account program loan or grant.

(11) The board must implement policies and procedures designed to maximize local government consideration of other funds to finance local infrastructure. [2017 3rd sp.s. c 10 § 9; 2015 3rd sp.s. c 3 § 7033; 2013 2nd sp.s. c 19 § 7032; 2013 c 275 § 3; 2012 c 196 § 9; 2009 c 518 § 16; 2008 c 299 § 25. Prior: 2007 c 341 § 24; 2007 c 231 § 2; 2001 c 131 § 5; 1999 c 164 § 602; 1997 c 429 § 29; 1996 c 168 § 3; 1995 c 363 § 3; 1993 c 39 § 1; 1991 sp.s. c 32 § 23; 1990 1st ex.s. c 17 § 82; 1990 c 133 § 6; 1988 c 93 § 3; 1987 c 505 § 40; 1985 c 446 § 12.]

Effective date—2015 3rd sp.s. c 3: See note following RCW 43.160.080.

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Short title—2008 c 299: See note following RCW 35.105.010.

Effective date—2007 c 341: See RCW 90.71.907.

Findings—Recommendations—Reports encouraged—2007 c 231:

"(1) The legislature finds that permit programs have been legislatively established to protect the health, welfare, economy, and environment of Washington's citizens and to provide a fair, competitive opportunity for business innovation and consumer confidence. The legislature also finds that uncertainty in government processes to permit an activity by a citizen of Washington state is undesirable and erodes confidence in government. The legislature further finds that in the case of projects that would further economic development in the state, information about the permitting process is critical for an applicant's planning and financial assessment of the proposed project. The legislature also finds that applicants have a responsibility to provide complete and accurate information.

(2) The legislature recommends that applicants be provided with the following information when applying for a development permit from a city, county, or state agency:

(a) The minimum and maximum time an agency will need to make a decision on a permit, including public comment requirements;

(b) The minimum amount of information required for an agency to make a decision on a permit;

(c) When an agency considers an application complete for processing;

(d) The minimum and maximum costs in agency fees that will be incurred by the permit applicant; and

(e) The reasons for a denial of a permit in writing.

(3) In providing this information to applicants, an agency should base estimates on the best information available about the permitting program and prior applications for similar permits, as well as on the information provided by the applicant. New information provided by the applicant subsequent to the agency estimates may change the information provided by an agency per subsection (2) of this section. Project modifications by an applicant may result in more time, more information, or higher fees being required for permit processing.

(4) This section does not create an independent cause of action, affect any existing cause of action, or establish time limits for purposes of RCW 64.40.020.

(5) City, county, and state agencies issuing development permits are encouraged to track the progress in providing the information to applicants per subsection (2) of this section by preparing an annual report of its performance for the preceding fiscal year. The report should be posted on its web site [and] made available and provided to the appropriate standing committees of the senate and house of representatives." [2007 c 231 § 1.]

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Finding—Purpose—1995 c 363: See note following RCW 43.155.068.

Intent—1990 1st ex.s. c 17: See note following RCW 43.210.010.

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

Additional notes found at www.leg.wa.gov

43.155.075 Loans and grants for public works projects—Statement of environmental benefits—Sustainable asset management best practices—Development of outcome-focused performance measures. In providing loans and grants for public works projects, the board shall require recipients to incorporate the environmental benefits of the project into their applications, and the board shall utilize the statement of environmental benefits in its prioritization and selection process, when applicable. For projects funded under this chapter, the board may require a local government to have sustainable asset management best practices in place; provide a long-term financial plan to demonstrate a sound maintenance program; have a long-term financial plan for loan repayments in place; and undergo value planning at the predesign project stage, where the greatest productivity gains and cost savings can be found. The board shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the loan and grant program. To the extent possible, the

department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The board shall consult with affected interest groups in implementing this section. [2017 3rd sp.s. c 10 § 10; 2001 c 227 § 10.]

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

43.155.150 Interagency, multijurisdictional system improvement team. (Expires June 30, 2021.) (1) An interagency, multijurisdictional system improvement team must identify, implement, and report on system improvements that achieve the designated outcomes, including:

(a) Projects that maximize value, minimize overall costs and disturbance to the community, and ensure long-term durability and resilience;

(b) Projects that are designed to meet the unique needs of each community, rather than the needs of particular funding programs;

(c) Project designs that maximize long-term value by fully considering and responding to anticipated long-term environmental, technological, economic and population changes;

(d) The flexibility to innovate, including utilizing natural systems, addressing multiple regulatory drivers, and forming regional partnerships;

(e) The ability to plan and collaborate across programs and jurisdictions so that different investments are packaged to be complementary, timely, and responsive to economic and community opportunities;

(f) The needed capacity for communities, appropriate to their unique financial, planning, and management capacities, so they can design, finance, and build projects that best meet their long-term needs and minimize costs;

(g) Optimal use and leveraging of federal and private infrastructure dollars; and

(h) Mechanisms to ensure periodic, system-wide review and ongoing achievement of the designated outcomes.

(2) The system improvement team must consist of representatives of state infrastructure programs that provide funding for drinking water, wastewater, and stormwater programs, including but not limited to representatives from the public works board, department of ecology, department of health, and the department of commerce. The system improvement team may invite representatives of other infrastructure programs, such as transportation and energy, as needed in order to achieve efficiency, minimize costs, and maximize value across infrastructure programs. The system improvement team shall also consist of representatives of users of those programs, representatives of infrastructure project builders, and other parties the system improvement team determines would contribute to achieving the desired outcomes, including but not limited to representatives from a state association of cities, a state association of counties, a state association of public utility districts, a state association of water and sewer districts, a state association of general contractors, and a state organization representing building trades. The public works board, a representative from the department of ecology, department of health, and department of commerce shall facilitate the work of the system improvement team.

(3) The system improvement team must focus on achieving the designated outcomes within existing program structures and authorities. The system improvement team shall use lean practices to achieve the designated outcomes.

(4) The system improvement team shall provide briefings as requested to the public works board on the current state of infrastructure programs to build an understanding of the infrastructure investment program landscape and the interplay of its component parts.

(5) If the system improvement team encounters statutory or regulatory barriers to system improvements, the system improvement team must inform the public works board and consult on possible solutions. When achieving the designated outcomes would be best served through changes in program structures or authorities, the system improvement team must report those findings to the public works board.

(6) This section expires June 30, 2021. [2017 3rd sp.s. c 10 § 11.]

Chapter 43.157 RCW

PROJECTS OF STATEWIDE SIGNIFICANCE

Sections

43.157.010 Definitions.

43.157.030 Application for designation—Project facilitator or coordinator.

43.157.010 Definitions. The definitions in this section apply throughout this chapter and RCW 28A.525.166, 43.21A.350, and 90.58.100, unless the context requires otherwise:

(1) "Applicant" means a person applying to the department for designation of a development project as a project of statewide significance.

(2) "Aviation biofuels production facility" means a facility primarily for the processing of nonfossil biogenic feedstocks to produce aviation fuels that meet the fuel quality technical standards of the American society for testing materials for aviation fuels and coproducts.

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

(4) "Manufacturing" shall have the meaning assigned it in RCW 82.62.010.

(5)(a) "Project of statewide significance" means:

(i) A border crossing project that involves both private and public investments carried out in conjunction with adjacent states or provinces;

(ii) A development project that will provide a net environmental benefit;

(iii) A development project in furtherance of the commercialization of innovations;

(iv) A private industrial development with private capital investment in manufacturing or research and development;

(v) An aviation biofuels production facility; or

(vi) A project designated by the legislature and codified under this chapter.

(b) To qualify for designation under RCW 43.157.030 as a project of statewide significance:

(i) The project must be completed after January 1, 2009;

(ii) The applicant must submit an application to the department for designation as a project of statewide significance to the department of commerce; and

(iii) Except for an aviation biofuels production facility, the project must have:

(A) In counties with a population less than or equal to twenty thousand, a capital investment of five million dollars;

(B) In counties with a population greater than twenty thousand but no more than fifty thousand, a capital investment of ten million dollars;

(C) In counties with a population greater than fifty thousand but no more than one hundred thousand, a capital investment of fifteen million dollars;

(D) In counties with a population greater than one hundred thousand but no more than two hundred thousand, a capital investment of twenty million dollars;

(E) In counties with a population greater than two hundred thousand but no more than four hundred thousand, a capital investment of thirty million dollars;

(F) In counties with a population greater than four hundred thousand but no more than one million, a capital investment of forty million dollars;

(G) In counties with a population greater than one million, a capital investment of fifty million dollars;

(H) In rural counties as defined by RCW 82.14.370, projected full-time employment positions after completion of construction of fifty or greater;

(I) In counties other than rural counties as defined by RCW 82.14.370, projected full-time employment positions after completion of construction of one hundred or greater; or

(J) Been qualified by the director of the department as a project of statewide significance either because:

(I) The economic circumstances of the county merit the additional assistance such designation will bring;

(II) The impact on a region due to the size and complexity of the project merits such designation;

(III) The project resulted from or is in furtherance of innovation activities at a public research institution in the state or is in or resulted from innovation activities within an innovation partnership zone; or

(IV) The project will provide a net environmental benefit as evidenced by plans for design and construction under green building standards or for the creation of renewable energy technology or components or under other environmental criteria established by the director in consultation with the director of the department of ecology.

A project may be qualified under this subsection (5)(b)(iii)(J) only after consultation on the availability of staff resources of the office of regulatory assistance.

(6) "Research and development" shall have the meaning assigned it in RCW 82.62.010. [2017 c 288 § 2. Prior: 2012 c 63 § 2; prior: 2009 c 565 § 34; 2009 c 421 § 2; 2004 c 275 § 63; 2003 c 54 § 1; 1997 c 369 § 2.]

Finding—2017 c 288: "The legislature finds that Washington is one of our nation's trade leaders, serving as a gateway to both international and interstate trade for the west. Clark county's population has grown by thirty percent over the past fifteen years. Recent southwest Washington regional transportation council data found a greater than fifty percent year-over-year increase in peak-hour vehicle and truck delays on the Interstate 5 corridor through Vancouver. Southwest Washington must find a path forward to establishing a unified plan for infrastructure investments that will serve as the basis for progress for the next one hundred years. The safety and economic well-being of our residents cannot wait. Legislators representing southwest Washington have set out some guiding principles that will enable a planning process to begin to select a new Interstate 5 bridge project that will serve as the foundation of an initial investment in the bridges that link

Washington with Oregon, supporting critical trade routes, alleviating congestion, and improving safety." [2017 c 288 § 1.]

Findings—Intent—2014 c 174; 2012 c 63: "The legislature finds that Washington is becoming a leader in the development and commercialization of aviation biofuels due to its strong tradition of market innovation, a concentrated demand for sustainable aviation fuels, leading expertise and research capacity, an established aviation manufacturing sector, and the availability of a diverse range of feedstocks for the production of biofuels. The legislature also finds that the development of aviation biofuels has the potential to reduce dependence on foreign sources of fossil fuels, reduce greenhouse gas emissions, and promote economic development and jobs in Washington. The legislature intends to support the development of commercial-scale aviation biofuels production facilities in Washington by facilitating and streamlining the permitting process for new facilities and the expansion of existing facilities and by providing access to low-cost financing through the issuance of revenue bonds.

The legislature finds that the 2012 Washington state energy strategy calls for a targeted, strategic policy focus on sustainable aviation biofuels to encourage the realization of Washington's potential. The legislature also finds that a regional stakeholder effort to explore the opportunities and challenges surrounding the production of sustainable aviation fuels, known as sustainable aviation biofuels northwest, urged policymakers in the Northwest to develop supportive public policies that will jump start the industry, attract investment, and accelerate industry growth. In order to provide focus and develop policy recommendations to support the sustainable aviation biofuels sector in Washington, the legislature intends to establish a sustainable aviation biofuels work group." [2014 c 174 § 6; 2012 c 63 § 1.]

Effective date—2009 c 421: See note following RCW 43.157.005.

Additional notes found at www.leg.wa.gov

43.157.030 Application for designation—Project facilitator or coordinator. (1) The department of commerce shall:

(a) Develop an application for designation of development projects as projects of statewide significance. The application must be accompanied by a letter of approval from the legislative authority of any jurisdiction that will have the proposed project of statewide significance within its boundaries. No designation of a project as a project of statewide significance shall be made without such letter of approval. The letter of approval must state that the jurisdiction joins in the request for the designation of the project as one of statewide significance and has or will hire the professional staff that will be required to expedite the processes necessary to the completion of a project of statewide significance. The development project proponents may provide the funding necessary for the jurisdiction to hire the professional staff that will be required to so expedite. The application shall contain information regarding the location of the project, the applicant's average employment in the state for the prior year, estimated new employment related to the project, estimated wages of employees related to the project, estimated time schedules for completion and operation, and other information required by the department; and

(b) Designate a development project as a project of statewide significance if the department determines:

(i) After review of the application under criteria adopted by rule, the development project will provide significant economic benefit to the local or state economy, or both, the project is aligned with the state's comprehensive plan for economic development under *RCW 43.162.020, and, by its designation, the project will not prevent equal consideration of all categories of proposals under RCW 43.157.010; and

(ii) The development project meets or will meet the requirements of RCW 43.157.010 regarding designation as a project of statewide significance.

[2017 RCW Supp—page 488]

(2) Any project designated by the legislature and codified in this chapter is not subject to the application requirements set out in subsection (1) of this section.

(3) The office of regulatory assistance shall assign a project facilitator or coordinator to each project of statewide significance to:

(a) Assist in the scoping and coordinating functions provided for in chapter 43.42 RCW;

(b) Assemble a team of state and local government and private officials to help meet the planning, permitting, and development needs of each project, which team shall include those responsible for planning, permitting and licensing, infrastructure development, workforce development services including higher education, transportation services, and the provision of utilities; and

(c) Work with each team member to expedite their actions in furtherance of the project. [2017 c 288 § 3; 2009 c 421 § 4; 2003 c 54 § 3; 1997 c 369 § 4.]

*Reviser's note: RCW 43.162.020 was repealed by 2014 c 112 § 123.

Finding—2017 c 288: See note following RCW 43.157.010.

Effective date—2009 c 421: See note following RCW 43.157.005.

Chapter 43.180 RCW

HOUSING FINANCE COMMISSION

Sections

43.180.295 Renewable energy systems—Report—Financing tool.

43.180.295 Renewable energy systems—Report—Financing tool. (1) It is the intent of the legislature to investigate methods by which the state may establish or facilitate financing models that allow electric utilities in the state to maximize federal tax incentives and monetize the depreciation of renewable energy systems and other distributed energy assets, with the goal of providing improved access to the benefits of these assets to low and moderate-income households as well as broad system benefits to utility rate-payers and state taxpayers.

(2) By December 31, 2017, the commission must prepare and submit to the appropriate committees of the legislature a report that assesses financing tools or models for the aggregation, by public or private entities, of federal tax incentives and other financial benefits accruing from the installation, ownership, and operation of renewable energy systems and other distributed energy resources. The report must:

(a) Assess the legal, financial, and economic feasibility of one or more financing tools or models for the aggregation of federal tax incentives and other financial benefits accruing from the installation, ownership, and operation of renewable energy systems and other distributed energy resources;

(b) Consider the state and federal legal aspects of such a financing tool or model, including considerations of how to structure the role of the state or any subdivision of the state in a manner that is consistent with the Constitution of the state of Washington; and

(c) Describe any legislation that may be necessary to facilitate, implement, or create incentives for the private sector to implement such a financing tool or model within the state.

(3) Beginning July 1, 2018, the commission may implement a financing tool or model for the aggregation, by public or private entities, of federal tax incentives and other financial benefits accruing from the installation, ownership, and operation of renewable energy systems and other distributed energy resources if the commission determines that it is legally, financially, and economically feasible and that it would further the public policy goals set forth in subsection (1) of this section. [2017 3rd sp.s. c 36 § 13.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

Chapter 43.185 RCW HOUSING ASSISTANCE PROGRAM

Sections

43.185.050 Use of moneys for loans and grant projects to provide housing—Eligible activities.

43.185.050 Use of moneys for loans and grant projects to provide housing—Eligible activities. (1) The department must use moneys from the housing trust fund and other legislative appropriations to finance in whole or in part any loans or grant projects that will provide housing for persons and families with special housing needs and with incomes at or below fifty percent of the median family income for the county or standard metropolitan statistical area where the project is located. At least thirty percent of these moneys used in any given funding cycle shall be for the benefit of projects located in rural areas of the state as defined by the department. If the department determines that it has not received an adequate number of suitable applications for rural projects during any given funding cycle, the department may allocate unused moneys for projects in nonrural areas of the state.

(2) Activities eligible for assistance from the housing trust fund and other legislative appropriations include, but are not limited to:

- (a) New construction, rehabilitation, or acquisition of low and very low-income housing units;
- (b) Rent subsidies;
- (c) Matching funds for social services directly related to providing housing for special-need tenants in assisted projects;
- (d) Technical assistance, design and finance services and consultation, and administrative costs for eligible nonprofit community or neighborhood-based organizations;
- (e) Administrative costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's access to housing funds other than those available under this chapter;
- (f) Shelters and related services for the homeless, including emergency shelters and overnight youth shelters;
- (g) Mortgage subsidies, including temporary rental and mortgage payment subsidies to prevent homelessness;
- (h) Mortgage insurance guarantee or payments for eligible projects;
- (i) Down payment or closing cost assistance for eligible first-time home buyers;
- (j) Acquisition of housing units for the purpose of preservation as low-income or very low-income housing; and

(k) Projects making housing more accessible to families with members who have disabilities.

(3) Preference shall be given for projects that include an early learning facility.

(4) Legislative appropriations from capital bond proceeds may be used only for the costs of projects authorized under subsection (2)(a), (i), and (j) of this section, and not for the administrative costs of the department.

(5) Moneys from repayment of loans from appropriations from capital bond proceeds may be used for all activities necessary for the proper functioning of the housing assistance program except for activities authorized under subsection (2)(b) and (c) of this section.

(6) Administrative costs associated with application, distribution, and project development activities of the department may not exceed three percent of the annual funds available for the housing assistance program. Reappropriations must not be included in the calculation of the annual funds available for determining the administrative costs.

(7) Administrative costs associated with compliance and monitoring activities of the department may not exceed one-quarter of one percent annually of the contracted amount of state investment in the housing assistance program. [2017 3rd sp.s. c 12 § 13; 2013 c 145 § 2; 2011 1st sp.s. c 50 § 953; 2006 c 371 § 236. Prior: 2005 c 518 § 1801; 2005 c 219 § 1; 2002 c 294 § 6; 1994 c 160 § 1; 1991 c 356 § 4; 1986 c 298 § 6.]

Findings—Intent—Effective date—2017 3rd sp.s. c 12: See notes following RCW 43.31.565.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Findings—2002 c 294: See note following RCW 36.22.178.
Additional notes found at www.leg.wa.gov

Chapter 43.185A RCW AFFORDABLE HOUSING PROGRAM

Sections

43.185A.110 Affordable housing land acquisition revolving loan fund program.

43.185A.110 Affordable housing land acquisition revolving loan fund program. (1) The affordable housing land acquisition revolving loan fund program is created in the department to assist eligible organizations, described under RCW 43.185A.040, to purchase land for affordable housing development. The department shall contract with the Washington state housing finance commission to administer the affordable housing land acquisition revolving loan fund program. Within this program, the Washington state housing finance commission shall establish and administer the Washington state housing finance commission land acquisition revolving loan fund.

(2) As used in this chapter, "market rate" means the current average market interest rate that is determined at the time any individual loan is closed upon using a widely recognized current market interest rate measurement to be selected for use by the Washington state housing finance commission with the department's approval. This interest rate must be noted in an attachment to the closing documents for each loan.

(3) Under the affordable housing land acquisition revolving loan fund program:

(a) Loans may be made to purchase vacant or improved land on which to develop affordable housing. In addition to affordable housing, facilities intended to provide supportive services to affordable housing residents and low-income households in the nearby community may be developed on the land.

(b) Eligible organizations applying for a loan must include in the loan application a proposed affordable housing development plan indicating the number of affordable housing units planned, a description of any other facilities being considered for the property, and an estimated timeline for completion of the development. The Washington state housing finance commission may require additional information from loan applicants and may consider the efficient use of land, project readiness, organizational capacity, and other factors as criteria in awarding loans.

(c) Forty percent of the loans shall go to eligible applicants operating homeownership programs for low-income households in which the households participate in the construction of their homes. Sixty percent of loans shall go to other eligible organizations. If the entire forty percent for applicants operating self-help homeownership programs cannot be lent to these types of applicants, the remainder shall be lent to other eligible organizations.

(d) Within five years of receiving a loan, a loan recipient must present the Washington state housing finance commission with an updated development plan, including a proposed development design, committed and anticipated additional financial resources to be dedicated to the development, and an estimated development schedule, which indicates completion of the development within eight years of loan receipt. This updated development plan must be substantially consistent with the development plan submitted as part of the original loan application as required in (b) of this subsection.

(e) Within eight years of receiving a loan, a loan recipient must develop affordable housing on the property for which the loan was made and place the affordable housing into service.

(f) A loan recipient must preserve the affordable rental housing developed on the property acquired under this section as affordable housing for a minimum of thirty years.

(4) If a loan recipient does not place affordable housing into service on a property for which a loan has been received under this section within the eight-year period specified in subsection (3)(e) of this section, or if a loan recipient fails to use the property for the intended affordable housing purpose consistent with the loan recipient's original affordable housing development plan, then the loan recipient must pay to the Washington state housing finance commission an amount consisting of the principal of the original loan plus compounded interest calculated at the current market rate. The Washington state housing finance commission shall develop guidelines for the time period in which this repayment must take place, which must be noted in the original loan agreement. The Washington state housing finance commission may grant a partial or total exemption from this repayment requirement if it determines that a development is substantially complete or that the property has been substantially used in keeping with the original affordable housing purpose

of the loan. Any repayment funds received as a result of non-compliance with loan requirements shall be deposited into the Washington state housing finance commission land acquisition revolving loan fund for the purposes of the affordable housing land acquisition revolving loan fund program.

(5) The Washington state housing finance commission, with approval from the department, may adopt guidelines and requirements that are necessary to administer the affordable housing land acquisition revolving loan fund program.

(6) Interest rates on property loans granted under this section may not exceed one percent. All loan repayment moneys received shall be deposited into the Washington state housing finance commission affordable housing land acquisition revolving loan fund for the purposes of the affordable housing land acquisition revolving loan fund program.

(7) The Washington state housing finance commission must develop performance measures for the program, which must be approved by the department, including, at a minimum, measures related to:

(a) The ability of eligible organizations to access land for affordable housing development;

(b) The total number of dwelling units by housing type and the total number of low-income households and persons served; and

(c) The financial efficiency of the program as demonstrated by factors, including the cost per unit developed for affordable housing units in different areas of the state and a measure of the effective use of funds to produce the greatest number of units for low-income households.

(8) By December 1st of each year, beginning in 2007, the Washington state housing finance commission shall report to the department and the appropriate committees of the legislature using, at a minimum, the performance measures developed under subsection (7) of this section. [2017 c 274 § 1; 2008 c 112 § 1; 2007 c 428 § 2.]

Findings—2007 c 428: "The legislature finds that protecting the public health, safety, and welfare by providing affordable housing resources to needy or vulnerable persons is a fundamental purpose of government. The legislature further finds that assisting eligible organizations to purchase land for affordable housing development and related supportive services facilities confers a valuable benefit on the public that constitutes consideration for financing assistance to eligible organizations in the form of low-interest loans, subject to restrictions that provide continued protection of the public interest." [2007 c 428 § 1.]

Contingency—2007 c 428: "If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2007, in the omnibus appropriations act, this act is null and void." [2007 c 428 § 3.] Funding was provided in 2007 c 520 § 1044 (capital budget).

Chapter 43.185C RCW

HOMELESS HOUSING AND ASSISTANCE

Sections

- 43.185C.010 Definitions.
- 43.185C.040 Homeless housing strategic plan—Program outcomes and performance measures and goals—Statewide data gathering instrument—Reports.
- 43.185C.250 Youth services—Duties of crisis residential center administrator and department—Multidisciplinary team.
- 43.185C.260 Youth services—Officer taking child into custody—Authorization—Duration of custody—Transporting to crisis residential center—Report on suspected abuse or neglect.
- 43.185C.285 Youth services—Unauthorized leave from crisis residential center—Notice to parents, law enforcement, and the department of social and health services.

- 43.185C.295 Youth services—Crisis residential centers—Establishment—Staff—Duties—Semi-secure facilities—Secure facilities.
- 43.185C.315 Youth services—HOPE centers—Establishment—Requirements.
- 43.185C.320 Youth services—HOPE centers—Eligibility—Minors.

43.185C.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrator" means the individual who has the daily administrative responsibility of a crisis residential center.

(2) "Child in need of services petition" means a petition filed in juvenile court by a parent, child, or the department of social and health services seeking adjudication of placement of the child.

(3) "Community action agency" means a nonprofit private or public organization established under the economic opportunity act of 1964.

(4) "Crisis residential center" means a secure or semi-secure facility established pursuant to chapter 74.13 RCW.

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

(6) "Director" means the director of the department of commerce.

(7) "Home security fund account" means the state treasury account receiving the state's portion of income from revenue from the sources established by RCW 36.22.179, RCW 36.22.1791, and all other sources directed to the homeless housing and assistance program.

(8) "Homeless housing grant program" means the vehicle by which competitive grants are awarded by the department, utilizing moneys from the home security fund account, to local governments for programs directly related to housing homeless individuals and families, addressing the root causes of homelessness, preventing homelessness, collecting data on homeless individuals, and other efforts directly related to housing homeless persons.

(9) "Homeless housing plan" means the ten-year plan developed by the county or other local government to address housing for homeless persons.

(10) "Homeless housing program" means the program authorized under this chapter as administered by the department at the state level and by the local government or its designated subcontractor at the local level.

(11) "Homeless housing strategic plan" means the ten-year plan developed by the department, in consultation with the interagency council on homelessness and the affordable housing advisory board.

(12) "Homeless person" means an individual living outside or in a building not meant for human habitation or which they have no legal right to occupy, in an emergency shelter, or in a temporary housing program which may include a transitional and supportive housing program if habitation time limits exist. This definition includes substance abusers, people with mental illness, and sex offenders who are homeless.

(13) "HOPE center" means an agency licensed by the secretary of the department of social and health services to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than

thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days.

(14) "Housing authority" means any of the public corporations created by chapter 35.82 RCW.

(15) "Housing continuum" means the progression of individuals along a housing-focused continuum with homelessness at one end and homeownership at the other.

(16) "Interagency council on homelessness" means a committee appointed by the governor and consisting of, at least, policy level representatives of the following entities: (a) The department of commerce; (b) the department of corrections; (c) the department of social and health services; (d) the department of veterans affairs; and (e) the department of health.

(17) "Local government" means a county government in the state of Washington or a city government, if the legislative authority of the city affirmatively elects to accept the responsibility for housing homeless persons within its borders.

(18) "Local homeless housing task force" means a voluntary local committee created to advise a local government on the creation of a local homeless housing plan and participate in a local homeless housing program. It must include a representative of the county, a representative of the largest city located within the county, at least one homeless or formerly homeless person, such other members as may be required to maintain eligibility for federal funding related to housing programs and services and if feasible, a representative of a private nonprofit organization with experience in low-income housing.

(19) "Long-term private or public housing" means subsidized and unsubsidized rental or owner-occupied housing in which there is no established time limit for habitation of less than two years.

(20) "Performance measurement" means the process of comparing specific measures of success against ultimate and interim goals.

(21) "Secure facility" means a crisis residential center, or portion thereof, that has locking doors, locking windows, or a secured perimeter, designed and operated to prevent a child from leaving without permission of the facility staff.

(22) "Semi-secure facility" means any facility including, but not limited to, crisis residential centers or specialized foster family homes, operated in a manner to reasonably assure that youth placed there will not run away. Pursuant to rules established by the facility administrator, the facility administrator shall establish reasonable hours for residents to come and go from the facility such that no residents are free to come and go at all hours of the day and night. To prevent residents from taking unreasonable actions, the facility administrator, where appropriate, may condition a resident's leaving the facility upon the resident being accompanied by the administrator or the administrator's designee and the resident may be required to notify the administrator or the administra-

tor's designee of any intent to leave, his or her intended destination, and the probable time of his or her return to the center.

(23) "Staff secure facility" means a structured group care facility licensed under rules adopted by the department of social and health services with a ratio of at least one adult staff member to every two children.

(24) "Washington homeless census" means an annual statewide census conducted as a collaborative effort by towns, cities, counties, community-based organizations, and state agencies, with the technical support and coordination of the department, to count and collect data on all homeless individuals in Washington.

(25) "Washington homeless client management information system" means a database of information about homeless individuals in the state used to coordinate resources to assist homeless clients to obtain and retain housing and reach greater levels of self-sufficiency or economic independence when appropriate, depending upon their individual situations. [2017 c 277 § 2; 2015 c 69 § 10. Prior: 2009 c 565 § 40; 2007 c 427 § 3; 2006 c 349 § 6; 2005 c 484 § 3.]

Short title—2015 c 69: See RCW 43.330.911.

Finding—2006 c 349: See note following RCW 43.185.130.

43.185C.040 Homeless housing strategic plan—Program outcomes and performance measures and goals—Statewide data gathering instrument—Reports. (1) Six months after the first Washington homeless census, the department shall, in consultation with the interagency council on homelessness and the affordable housing advisory board, prepare and publish a ten-year homeless housing strategic plan which shall outline statewide goals and performance measures and shall be coordinated with the plan for homeless families with children required under RCW 43.63A.650. To guide local governments in preparation of their first local homeless housing plans due December 31, 2005, the department shall issue by October 15, 2005, temporary guidelines consistent with this chapter and including the best available data on each community's homeless population. Local governments' ten-year homeless housing plans shall not be substantially inconsistent with the goals and program recommendations of the temporary guidelines and, when amended after 2005, the state strategic plan.

(2) Program outcomes and performance measures and goals shall be created by the department and reflected in the department's homeless housing strategic plan as well as interim goals against which state and local governments' performance may be measured, including:

(a) By the end of year one, completion of the first census as described in RCW 43.185C.030;

(b) By the end of each subsequent year, goals common to all local programs which are measurable and the achievement of which would move that community toward housing its homeless population; and

(c) By July 1, 2015, reduction of the homeless population statewide and in each county by fifty percent.

(3)(a) The department shall work in consultation with the interagency council on homelessness, the affordable housing advisory board, and the state advisory council on homelessness to develop performance measures that address the limitations of the annual point-in-time count on measuring the effectiveness of the document recording fee surcharge funds

in supporting homeless programs. The department must report its findings and recommendations regarding the new performance measures to the appropriate committees of the legislature by December 1, 2017.

(b) The department must implement at least three performance metrics, in addition to the point-in-time measurement, that measure the impact of surcharge funding on reducing homelessness by July 1, 2018.

(c) The joint legislative audit and review committee must review how the surcharge fees are expended to address homelessness, including a review of the related program performance measures and targets. The joint legislative audit and review committee must report its review findings by December 1, 2022, and update the review every five years thereafter.

(4) The department shall develop a consistent statewide data gathering instrument to monitor the performance of cities and counties receiving grants in order to determine compliance with the terms and conditions set forth in the grant application or required by the department.

The department shall, in consultation with the interagency council on homelessness and the affordable housing advisory board, report biennially to the governor and the appropriate committees of the legislature an assessment of the state's performance in furthering the goals of the state ten-year homeless housing strategic plan and the performance of each participating local government in creating and executing a local homeless housing plan which meets the requirements of this chapter. To increase the effectiveness of the report, the department must develop a process to ensure consistent presentation, analysis, and explanation in the report, including year-to-year comparisons, highlights of program successes and challenges, and information that supports recommended strategy or operational changes. The annual report may include performance measures such as:

(a) The reduction in the number of homeless individuals and families from the initial count of homeless persons;

(b) The reduction in the number of unaccompanied homeless youth. "Unaccompanied homeless youth" has the same meaning as in RCW 43.330.702;

(c) The number of new units available and affordable for homeless families by housing type;

(d) The number of homeless individuals identified who are not offered suitable housing within thirty days of their request or identification as homeless;

(e) The number of households at risk of losing housing who maintain it due to a preventive intervention;

(f) The transition time from homelessness to permanent housing;

(g) The cost per person housed at each level of the housing continuum;

(h) The ability to successfully collect data and report performance;

(i) The extent of collaboration and coordination among public bodies, as well as community stakeholders, and the level of community support and participation;

(j) The quality and safety of housing provided; and

(k) The effectiveness of outreach to homeless persons, and their satisfaction with the program.

(5) Based on the performance of local homeless housing programs in meeting their interim goals, on general population changes and on changes in the homeless population

recorded in the annual census, the department may revise the performance measures and goals of the state homeless housing strategic plan, set goals for years following the initial ten-year period, and recommend changes in local governments' plans. [2017 3rd sp.s. c 15 § 2; 2015 c 69 § 25; 2009 c 518 § 17; 2005 c 484 § 7.]

Findings—2017 3rd sp.s. c 15: "The legislature finds that a surcharge on documents recorded for the sale or transfer of real property have generated approximately one hundred forty million dollars for homeless programs in Washington. The legislature further finds that according to a third-party audit of the use of surcharge funds, additional performance measures are needed to effectively measure the success of the state's homeless programs. Therefore, the legislature finds that developing and adopting recommendations to improve performance measures contained in the December 5, 2016, report required under RCW 43.185C.240(1)(e) will help ensure accountability and transparency of public funds and their effectiveness in reducing homelessness in Washington." [2017 3rd sp.s. c 15 § 1.]

Short title—2015 c 69: See RCW 43.330.911.

43.185C.250 Youth services—Duties of crisis residential center administrator and department—Multidisciplinary team. (1)(a) The administrator of a crisis residential center may convene a multidisciplinary team, which is to be locally based and administered, at the request of a child placed at the center or the child's parent.

(b) If the administrator has reasonable cause to believe that a child is a child in need of services and the parent is unavailable or unwilling to continue efforts to maintain the family structure, the administrator shall immediately convene a multidisciplinary team.

(c) A parent may disband a team twenty-four hours, excluding weekends and holidays, after receiving notice of formation of the team under (b) of this subsection unless a petition has been filed under RCW 13.32A.140. If a petition has been filed the parent may not disband the team until the hearing is held under RCW 13.32A.179. The court may allow the team to continue if an out-of-home placement is ordered under RCW 13.32A.179(3). Upon the filing of an at-risk youth or dependency petition the team shall cease to exist, unless the parent requests continuation of the team or unless the out-of-home placement was ordered under RCW 13.32A.179(3).

(2) The department shall request participation of appropriate state agencies to assist in the coordination and delivery of services through the multidisciplinary teams. Those agencies that agree to participate shall provide the director or the director's designee all information necessary to facilitate forming a multidisciplinary team and the director or the director's designee shall provide this information to the administrator of each crisis residential center.

(3) The administrator shall also seek participation from representatives of mental health and drug and alcohol treatment providers as appropriate.

(4) A parent shall be advised of the request to form a multidisciplinary team and may select additional members of the multidisciplinary team. The parent or child may request any person or persons to participate including, but not limited to, educators, law enforcement personnel, court personnel, family therapists, licensed health care practitioners, social service providers, youth residential placement providers, other family members, church representatives, and members of their own community. The administrator shall assist in

obtaining the prompt participation of persons requested by the parent or child.

(5) When an administrator of a crisis residential center requests the formation of a team, the state agencies must respond as soon as possible. [2017 c 277 § 3; 2015 c 69 § 11; 2000 c 123 § 4; 1995 c 312 § 13. Formerly RCW 13.32A.042.]

Short title—2015 c 69: See RCW 43.330.911.

Additional notes found at www.leg.wa.gov

43.185C.260 Youth services—Officer taking child into custody—Authorization—Duration of custody—Transporting to crisis residential center—Report on suspected abuse or neglect. (1) A law enforcement officer shall take a child into custody:

(a) If a law enforcement agency has been contacted by the parent of the child that the child is absent from parental custody without consent; or

(b) If a law enforcement officer reasonably believes, considering the child's age, the location, and the time of day, that a child is in circumstances which constitute a danger to the child's safety or that a child is violating a local curfew ordinance; or

(c) If an agency legally charged with the supervision of a child has notified a law enforcement agency that the child has run away from placement; or

(d) If a law enforcement agency has been notified by the juvenile court that the court finds probable cause exists to believe that the child has violated a court placement order issued under this chapter or chapter 13.34 RCW or that the court has issued an order for law enforcement pick-up of the child under this chapter or chapter 13.34 RCW.

(2) Law enforcement custody shall not extend beyond the amount of time reasonably necessary to transport the child to a destination authorized by law and to place the child at that destination. Law enforcement custody continues until the law enforcement officer transfers custody to a person, agency, or other authorized entity under this chapter, or releases the child because no placement is available. Transfer of custody is not complete unless the person, agency, or entity to whom the child is released agrees to accept custody.

(3) If a law enforcement officer takes a child into custody pursuant to either subsection (1)(a) or (b) of this section and transports the child to a crisis residential center, the officer shall, within twenty-four hours of delivering the child to the center, provide to the center a written report detailing the reasons the officer took the child into custody. The center shall provide the department of social and health services with a copy of the officer's report if the youth is in the care of or receiving services from the department of social and health services children's administration.

(4) If the law enforcement officer who initially takes the juvenile into custody or the staff of the crisis residential center have reasonable cause to believe that the child is absent from home because he or she is abused or neglected, a report shall be made immediately to the department of social and health services.

(5) Nothing in this section affects the authority of any political subdivision to make regulations concerning the conduct of minors in public places by ordinance or other local law.

(6) If a law enforcement officer has a reasonable suspicion that a child is being unlawfully harbored in violation of RCW 13.32A.080, the officer shall remove the child from the custody of the person harboring the child and shall transport the child to one of the locations specified in RCW 43.185C.265.

(7) No child may be placed in a secure facility except as provided in this chapter. [2017 c 277 § 4; 2015 c 69 § 13; 2000 c 123 § 6; 1997 c 146 § 2; 1996 c 133 § 10; 1995 c 312 § 6; 1994 sp.s. c 7 § 505; 1990 c 276 § 5; 1986 c 288 § 1; 1985 c 257 § 7; 1981 c 298 § 2; 1979 c 155 § 19. Formerly RCW 13.32A.050.]

Short title—2015 c 69: See RCW 43.330.911.

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

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

Intent—1990 c 276: See RCW 13.32A.015.

Additional notes found at www.leg.wa.gov

43.185C.285 Youth services—Unauthorized leave from crisis residential center—Notice to parents, law enforcement, and the department of social and health services. The administrator of a crisis residential center shall notify parents and the appropriate law enforcement agency as to any unauthorized leave from the center by a child placed at the center. The administrator shall also notify the department of social and health services immediately as to any unauthorized leave from the center by a child who is in the care of or receiving services from the department of social and health services children's administration. [2017 c 277 § 5; 2015 c 69 § 17; 2000 c 123 § 12; 1996 c 133 § 15; 1995 c 312 § 21. Formerly RCW 13.32A.095.]

Short title—2015 c 69: See RCW 43.330.911.

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Additional notes found at www.leg.wa.gov

43.185C.295 Youth services—Crisis residential centers—Establishment—Staff—Duties—Semi-secure facilities—Secure facilities. (1) The department shall establish, through performance-based contracts with private or public vendors, regional crisis residential centers with semi-secure facilities. These facilities shall be structured group care facilities licensed under rules adopted by the department of social and health services and shall have an average of at least four adult staff members and in no event less than three adult staff members to every eight children.

(2) Crisis residential centers must record client information into a homeless management information system specified by the department.

(3) Within available funds appropriated for this purpose, the department shall establish, through performance-based contracts with private or public vendors, regional crisis residential centers with secure facilities. These facilities shall be facilities licensed under rules adopted by the department of social and health services. These centers may also include semi-secure facilities and to such extent shall be subject to subsection (1) of this section.

(4) The department shall, in addition to the facilities established under subsections (1) and (2) of this section,

establish additional crisis residential centers pursuant to performance-based contracts with licensed private group care facilities.

(5) The department is authorized to allow contracting entities to include a combination of secure or semi-secure crisis residential centers as defined in RCW 13.32A.030 and/or HOPE centers pursuant to RCW 43.185C.315 in the same building or structure. The department of social and health services shall permit the colocation of these centers only if the entity operating the facility agrees to designate a particular number of beds to each type of center that is located within the building or structure.

(6) The staff at the facilities established under this section shall be trained so that they may effectively counsel juveniles admitted to the centers, provide treatment, supervision, and structure to the juveniles that recognize the need for support and the varying circumstances that cause children to leave their families, and carry out the responsibilities stated in RCW 43.185C.280.

(7) The secure facilities located within crisis residential centers shall be operated to conform with the definition in RCW 13.32A.030. The facilities shall have an average of no less than one adult staff member to every ten children. The staffing ratio shall continue to ensure the safety of the children.

(8) If a secure crisis residential center is located in or adjacent to a secure juvenile detention facility, the center shall be operated in a manner that prevents in-person contact between the residents of the center and the persons held in such facility. [2017 c 277 § 6; 2015 c 69 § 19; 2011 c 240 § 1; 2009 c 520 § 53; 1998 c 296 § 4; 1995 c 312 § 60; 1979 c 155 § 78. Formerly RCW 74.13.032.]

Short title—2015 c 69: See RCW 43.330.911.

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Additional notes found at www.leg.wa.gov

43.185C.315 Youth services—HOPE centers—Establishment—Requirements. (1) The department shall establish HOPE centers that provide no more than seventy-five beds across the state and may establish HOPE centers by contract, within funds appropriated by the legislature specifically for this purpose. HOPE centers shall be operated in a manner to reasonably assure that street youth placed there will not run away. Pursuant to rules established by the facility administrator, residents may come and go from the facility at reasonable hours such that no residents are free to come and go at all hours of the day and night. The facility administrator, where appropriate, may condition a resident's leaving the facility upon the resident being accompanied by the administrator or the administrator's designee and the resident may be required to notify the administrator or the administrator's designee of any intent to leave, his or her intended destination, and the probable time of his or her return to the HOPE center. Any street youth who runs away from a HOPE center shall not be readmitted unless specifically authorized by the street youth's placement and liaison specialist, and the placement and liaison specialist shall document with specific factual findings an appropriate basis for readmitting any street youth to a HOPE center. HOPE centers are required to have the following:

(a) A license issued by the department of social and health services;

(b) A professional with a master's degree in counseling, social work, or related field and at least one year of experience working with street youth or a bachelor of arts degree in social work or a related field and five years of experience working with street youth. This professional staff person may be contractual or a part-time employee, but must be available to work with street youth in a HOPE center at a ratio of one to every fifteen youth staying in a HOPE center. This professional shall be known as a placement and liaison specialist. Preference shall be given to those professionals cross-credentialed in mental health and chemical dependency. The placement and liaison specialist shall:

(i) Conduct an assessment of the street youth that includes a determination of the street youth's legal status regarding residential placement;

(ii) Facilitate the street youth's return to his or her legally authorized residence at the earliest possible date or initiate processes to arrange legally authorized appropriate placement. Any street youth who may meet the definition of dependent child under RCW 13.34.030 must be referred to the department of social and health services. The department of social and health services shall determine whether a dependency petition should be filed under chapter 13.34 RCW. A shelter care hearing must be held within seventy-two hours to authorize out-of-home placement for any youth the department of social and health services determines is appropriate for out-of-home placement under chapter 13.34 RCW. All of the provisions of chapter 13.32A RCW must be followed for children in need of services or at-risk youth;

(iii) Interface with other relevant resources and system representatives to secure long-term residential placement and other needed services for the street youth;

(iv) Be assigned immediately to each youth and meet with the youth within eight hours of the youth receiving HOPE center services;

(v) Facilitate a physical examination of any street youth who has not seen a physician within one year prior to residence at a HOPE center and facilitate evaluation by a county-designated mental health professional, a chemical dependency specialist, or both if appropriate; and

(vi) Arrange an educational assessment to measure the street youth's competency level in reading, writing, and basic mathematics, and that will measure learning disabilities or special needs;

(c) Staff trained in development needs of street youth as determined by the department, including an administrator who is a professional with a master's degree in counseling, social work, or a related field and at least one year of experience working with street youth, or a bachelor of arts degree in social work or a related field and five years of experience working with street youth, who must work with the placement and liaison specialist to provide appropriate services on site;

(d) A data collection system that measures outcomes for the population served, and enables research and evaluation that can be used for future program development and service delivery. Data collection systems must have confidentiality rules and protocols developed by the department;

(e) Notification requirements that meet the notification requirements of chapter 13.32A RCW. The youth's arrival date and time must be logged at intake by HOPE center staff. The staff must immediately notify law enforcement and dependency caseworkers if a street youth runs away from a HOPE center. A child may be transferred to a secure facility as defined in RCW 13.32A.030 whenever the staff reasonably believes that a street youth is likely to leave the HOPE center and not return after full consideration of the factors set forth in RCW 43.185C.290(2)(a) (i) and (ii). The street youth's temporary placement in the HOPE center must be authorized by the court or the secretary of the department of social and health services if the youth is a dependent of the state under chapter 13.34 RCW or the department of social and health services is responsible for the youth under chapter 13.32A RCW, or by the youth's parent or legal custodian, until such time as the parent can retrieve the youth who is returning to home;

(f) HOPE centers must identify to the department of social and health services any street youth it serves who is not returning promptly to home. The department of social and health services then must contact the missing children's clearinghouse identified in chapter 13.60 RCW and either report the youth's location or report that the youth is the subject of a dependency action and the parent should receive notice from the department of social and health services; and

(g) Services that provide counseling and education to the street youth.

(2) The department shall award contracts for the operation of HOPE center beds with the goal of facilitating the coordination of services provided for youth by such programs and those services provided by secure and semi-secure crisis residential centers.

(3) Subject to funds appropriated for this purpose, the department must incrementally increase the number of available HOPE beds by at least seventeen beds in fiscal year 2017, at least seventeen beds in fiscal year 2018, and at least seventeen beds in fiscal year 2019, such that by July 1, 2019, seventy-five HOPE beds are established and operated throughout the state as set forth in subsection (1) of this section.

(4) Subject to funds appropriated for this purpose, the beds available in HOPE centers shall be increased incrementally beyond the limit of seventy-five set forth in subsection (1) of this section. The additional capacity shall be distributed around the state based upon need and, to the extent feasible, shall be geographically situated so that HOPE beds are available across the state. In determining the need for increased numbers of HOPE beds in a particular county or counties, one of the considerations should be the volume of truancy petitions filed there. [2017 c 277 § 7; 2016 c 205 § 10; 2015 c 69 § 22; 2011 c 240 § 2; 1999 c 267 § 12. Formerly RCW 74.15.220.]

Short title—2015 c 69: See RCW 43.330.911.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Additional notes found at www.leg.wa.gov

43.185C.320 Youth services—HOPE centers—Eligibility—Minors. To be eligible for placement in a HOPE center, a minor must be either a street youth, as that term is

defined in this chapter, or a youth who, without placement in a HOPE center, will continue to participate in increasingly risky behavior, including truancy. Youth may also self-refer to a HOPE center. [2017 c 277 § 8; 2016 c 205 § 11; 2015 c 69 § 23; 2008 c 267 § 10. Formerly RCW 74.15.225.]

Short title—2015 c 69: See RCW 43.330.911.

Chapter 43.215 RCW

DEPARTMENT OF EARLY LEARNING

Sections

- 43.215.005 Decodified. *(Effective July 1, 2018.)*
- 43.215.010 Recodified as RCW 43.216.010. *(Effective July 1, 2018.)*
- 43.215.020 Recodified as RCW 43.216.020. *(Effective July 1, 2018.)*
- 43.215.030 Recodified as RCW 43.216.025. *(Effective July 1, 2018.)*
- 43.215.040 Repealed. *(Effective July 1, 2018.)*
- 43.215.050 Recodified as RCW 43.216.045. *(Effective July 1, 2018.)*
- 43.215.060 Recodified as RCW 43.216.055. *(Effective July 1, 2018.)*
- 43.215.065 Recodified as RCW 43.216.060. *(Effective July 1, 2018.)*
- 43.215.070 Recodified as RCW 43.216.065. *(Effective July 1, 2018.)*
- 43.215.080 Recodified as RCW 43.216.070. *(Effective July 1, 2018.)*
- 43.215.090 Early learning advisory council—Policy development and implementation—Early achievers review subcommittee. *(Effective until July 1, 2018, then recodified as RCW 43.216.075.)*
- 43.215.090 Recodified as RCW 43.216.075. *(Effective July 1, 2018.)*
- 43.215.099 Integration with other entities. *(Effective until July 1, 2018, then recodified as RCW 43.216.080.)*
- 43.215.099 Recodified as RCW 43.216.080. *(Effective July 1, 2018.)*
- 43.215.100 Recodified as RCW 43.216.085. *(Effective July 1, 2018.)*
- 43.215.1001 Recodified as RCW 43.216.0851. *(Effective July 1, 2018.)*
- 43.215.101 Recodified as RCW 43.216.087. *(Effective July 1, 2018.)*
- 43.215.102 Recodified as RCW 43.216.089. *(Effective July 1, 2018.)*
- 43.215.103 Recodified as RCW 43.216.100. *(Effective July 1, 2018.)*
- 43.215.104 Native language development and retention—Dual language learning—Rules. *(Effective until July 1, 2018, then recodified as RCW 43.216.105.)*
- 43.215.104 Recodified as RCW 43.216.105. *(Effective July 1, 2018.)*
- 43.215.105 Recodified as RCW 43.216.110. *(Effective July 1, 2018.)*
- 43.215.110 Recodified as RCW 43.216.115. *(Effective July 1, 2018.)*
- 43.215.112 Recodified as RCW 43.216.120. *(Effective July 1, 2018.)*
- 43.215.112 Reduction of barriers for using local or private funds for early learning opportunities. *(Effective until July 1, 2018, then recodified as RCW 43.216.120.)*
- 43.215.120 Recodified as RCW 43.216.125. *(Effective July 1, 2018.)*
- 43.215.125 Decodified. *(Effective July 1, 2018.)*
- 43.215.130 Home visiting services account—Purpose—Administration—Funding. *(Effective until July 1, 2018, then recodified as RCW 43.216.130.)*
- 43.215.130 Recodified as RCW 43.216.130. *(Effective July 1, 2018.)*
- 43.215.135 Recodified as RCW 43.216.135. *(Effective July 1, 2018.)*
- 43.215.1351 Recodified as RCW 43.216.137. *(Effective July 1, 2018.)*
- 43.215.1352 Recodified as RCW 43.216.139. *(Effective July 1, 2018.)*
- 43.215.136 Recodified as RCW 43.216.141. *(Effective July 1, 2018.)*
- 43.215.137 Recodified as RCW 43.216.143. *(Effective July 1, 2018.)*
- 43.215.140 Recodified as RCW 43.216.152. *(Effective July 1, 2018.)*
- 43.215.145 Recodified as RCW 43.216.155. *(Effective July 1, 2018.)*
- 43.215.146 Recodified as RCW 43.216.157. *(Effective July 1, 2018.)*
- 43.215.147 Recodified as RCW 43.216.159. *(Effective July 1, 2018.)*
- 43.215.195 Early start account. *(Effective until July 1, 2018, then recodified as RCW 43.216.165.)*
- 43.215.195 Recodified as RCW 43.216.165. *(Effective July 1, 2018.)*
- 43.215.200 Recodified as RCW 43.216.250. *(Effective July 1, 2018.)*
- 43.215.201 Recodified as RCW 43.216.255. *(Effective July 1, 2018.)*
- 43.215.205 Recodified as RCW 43.216.260. *(Effective July 1, 2018.)*
- 43.215.210 Recodified as RCW 43.216.265. *(Effective July 1, 2018.)*
- 43.215.215 Character, suitability, and competence to provide child care and early learning services—Fingerprint criminal history record checks—Background check clearance card or certificate—Shared background checks. *(Effective until July 1, 2018, then recodified as RCW 43.216.270.)*
- 43.215.215 Recodified as RCW 43.216.270. *(Effective July 1, 2018.)*
- 43.215.216 Recodified as RCW 43.216.271. *(Effective July 1, 2018.)*
- 43.215.217 Recodified as RCW 43.216.272. *(Effective July 1, 2018.)*
- 43.215.218 Recodified as RCW 43.216.273. *(Effective July 1, 2018.)*
- 43.215.220 Recodified as RCW 43.216.280. *(Effective July 1, 2018.)*
- 43.215.230 Recodified as RCW 43.216.285. *(Effective July 1, 2018.)*
- 43.215.240 Recodified as RCW 43.216.290. *(Effective July 1, 2018.)*
- 43.215.250 Recodified as RCW 43.216.295. *(Effective July 1, 2018.)*
- 43.215.255 Recodified as RCW 43.216.300. *(Effective July 1, 2018.)*
- 43.215.260 Recodified as RCW 43.216.305. *(Effective July 1, 2018.)*
- 43.215.270 Recodified as RCW 43.216.310. *(Effective July 1, 2018.)*
- 43.215.280 Recodified as RCW 43.216.315. *(Effective July 1, 2018.)*
- 43.215.290 Recodified as RCW 43.216.320. *(Effective July 1, 2018.)*
- 43.215.300 Recodified as RCW 43.216.325. *(Effective July 1, 2018.)*
- 43.215.305 Recodified as RCW 43.216.327. *(Effective July 1, 2018.)*
- 43.215.307 Recodified as RCW 43.216.335. *(Effective July 1, 2018.)*
- 43.215.308 Recodified as RCW 43.216.340. *(Effective July 1, 2018.)*
- 43.215.310 Recodified as RCW 43.216.345. *(Effective July 1, 2018.)*
- 43.215.320 Recodified as RCW 43.216.350. *(Effective July 1, 2018.)*
- 43.215.330 Recodified as RCW 43.216.355. *(Effective July 1, 2018.)*
- 43.215.335 Recodified as RCW 43.216.360. *(Effective July 1, 2018.)*
- 43.215.340 Recodified as RCW 43.216.365. *(Effective July 1, 2018.)*
- 43.215.350 Recodified as RCW 43.216.370. *(Effective July 1, 2018.)*
- 43.215.355 Recodified as RCW 43.216.375. *(Effective July 1, 2018.)*
- 43.215.360 Recodified as RCW 43.216.380. *(Effective July 1, 2018.)*
- 43.215.370 Recodified as RCW 43.216.385. *(Effective July 1, 2018.)*
- 43.215.371 Recodified as RCW 43.216.390. *(Effective July 1, 2018.)*
- 43.215.400 Recodified as RCW 43.216.500. *(Effective July 1, 2018.)*
- 43.215.405 Recodified as RCW 43.216.505. *(Effective July 1, 2018.)*
- 43.215.410 Admission and funding. *(Effective until July 1, 2018, then recodified as RCW 43.216.510.)*
- 43.215.410 Recodified as RCW 43.216.510. *(Effective July 1, 2018.)*
- 43.215.415 Recodified as RCW 43.216.515. *(Effective July 1, 2018.)*
- 43.215.420 Recodified as RCW 43.216.520. *(Effective July 1, 2018.)*
- 43.215.425 Recodified as RCW 43.216.525. *(Effective July 1, 2018.)*
- 43.215.430 Recodified as RCW 43.216.530. *(Effective July 1, 2018.)*
- 43.215.435 Recodified as RCW 43.216.535. *(Effective July 1, 2018.)*
- 43.215.440 Recodified as RCW 43.216.540. *(Effective July 1, 2018.)*
- 43.215.445 Recodified as RCW 43.216.545. *(Effective July 1, 2018.)*
- 43.215.450 Recodified as RCW 43.216.550. *(Effective July 1, 2018.)*
- 43.215.455 Recodified as RCW 43.216.555. *(Effective July 1, 2018.)*
- 43.215.456 Early learning program—Voluntary preschool opportunities—Funding and statewide implementation. *(Effective until July 1, 2018, then recodified as RCW 43.216.556.)*
- 43.215.456 Recodified as RCW 43.216.556. *(Effective July 1, 2018.)*
- 43.215.457 Recodified as RCW 43.216.559. *(Effective July 1, 2018.)*
- 43.215.460 Recodified as RCW 43.216.565. *(Effective July 1, 2018.)*
- 43.215.470 Recodified as RCW 43.216.570. *(Effective July 1, 2018.)*
- 43.215.472 Recodified as RCW 43.216.572. *(Effective July 1, 2018.)*
- 43.215.474 Recodified as RCW 43.216.574. *(Effective July 1, 2018.)*
- 43.215.476 Recodified as RCW 43.216.576. *(Effective July 1, 2018.)*
- 43.215.490 Recodified as RCW 43.216.650. *(Effective July 1, 2018.)*
- 43.215.492 Recodified as RCW 43.216.655. *(Effective July 1, 2018.)*
- 43.215.495 Recodified as RCW 43.216.660. *(Effective July 1, 2018.)*
- 43.215.500 Recodified as RCW 43.216.665. *(Effective July 1, 2018.)*
- 43.215.502 Recodified as RCW 43.216.670. *(Effective July 1, 2018.)*
- 43.215.505 Recodified as RCW 43.216.675. *(Effective July 1, 2018.)*
- 43.215.510 Recodified as RCW 43.216.680. *(Effective July 1, 2018.)*
- 43.215.520 Recodified as RCW 43.216.685. *(Effective July 1, 2018.)*
- 43.215.525 Recodified as RCW 43.216.687. *(Effective July 1, 2018.)*
- 43.215.530 Recodified as RCW 43.216.689. *(Effective July 1, 2018.)*
- 43.215.532 Recodified as RCW 43.216.695. *(Effective July 1, 2018.)*
- 43.215.535 Recodified as RCW 43.216.700. *(Effective July 1, 2018.)*
- 43.215.540 Recodified as RCW 43.216.705. *(Effective July 1, 2018.)*
- 43.215.545 Recodified as RCW 43.216.710. *(Effective July 1, 2018.)*
- 43.215.550 Recodified as RCW 43.216.715. *(Effective July 1, 2018.)*
- 43.215.555 Recodified as RCW 43.216.720. *(Effective July 1, 2018.)*
- 43.215.560 Recodified as RCW 43.216.725. *(Effective July 1, 2018.)*
- 43.215.562 Recodified as RCW 43.216.730. *(Effective July 1, 2018.)*
- 43.215.564 Recodified as RCW 43.216.735. *(Effective July 1, 2018.)*
- 43.215.566 Outdoor, nature-based early learning and child care programs—Pilot project—Reports. *(Effective until July 1, 2018, then recodified as RCW 43.216.740.)*
- 43.215.566 Recodified as RCW 43.216.740. *(Effective July 1, 2018.)*
- 43.215.570 Child care consultation program—Creation, operation, and duties. *(Effective until July 1, 2018, then recodified as RCW 43.216.745.)*
- 43.215.570 Recodified as RCW 43.216.745. *(Effective July 1, 2018.)*
- 43.215.900 Recodified as RCW 43.216.900. *(Effective July 1, 2018.)*
- 43.215.901 Recodified as RCW 43.216.901. *(Effective July 1, 2018.)*
- 43.215.903 Decodified.
- 43.215.905 Effective date—2006 c 265. *(Effective until July 1, 2018, then recodified as RCW 43.216.902.)*
- 43.215.907 Decodified. *(Effective July 1, 2018.)*
- 43.215.908 Recodified as RCW 43.216.903. *(Effective July 1, 2018.)*
- 43.215.909 Recodified as RCW 43.216.904. *(Effective July 1, 2018.)*

43.215.005 Decodified. *(Effective July 1, 2018.)* See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.010 Recodified as RCW 43.216.010. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.020 Recodified as RCW 43.216.020. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.030 Recodified as RCW 43.216.025. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.040 Repealed. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.050 Recodified as RCW 43.216.045. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.060 Recodified as RCW 43.216.055. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.065 Recodified as RCW 43.216.060. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.070 Recodified as RCW 43.216.065. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.080 Recodified as RCW 43.216.070. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.090 Recodified as RCW 43.216.075. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.090 Early learning advisory council—Policy development and implementation—Early achievers review subcommittee. (Effective until July 1, 2018, then recodified as RCW 43.216.075.) (1) The early learning advisory council is established to advise the department on statewide early learning issues that contribute to the ongoing efforts of building a comprehensive system of quality early learning programs and services for Washington's young children and families.

(2) The council shall work in conjunction with the department to assist in policy development and implementation that assist the department in promoting alignment of private and public sector actions, objectives, and resources, ensuring school readiness.

(3) The council shall include diverse, statewide representation from public, nonprofit, and for-profit entities. Its membership shall include critical partners in service delivery and reflect regional, racial, and cultural diversity to adequately represent the needs of all children and families in the state.

(4) Councilmembers shall serve two-year terms. However, to stagger the terms of the council, the initial appointments for twelve of the members shall be for one year. Once

the initial one-year to two-year terms expire, all subsequent terms shall be for two years, with the terms expiring on June 30th of the applicable year. The terms shall be staggered in such a way that, where possible, the terms of members representing a specific group do not expire simultaneously.

(5) The council shall consist of members essential to coordinating services statewide prenatal through age five, as follows:

(a) In addition to being staffed and supported by the department, the governor shall appoint one representative from each of the following: The department of health, the student achievement council, and the state board for community and technical colleges;

(b) One representative from the office of the superintendent of public instruction, to be appointed by the superintendent of public instruction;

(c) The governor shall appoint leaders in early childhood education to represent critical service delivery and support sectors, with at least one individual representing each of the following:

(i) The head start state collaboration office director or the director's designee;

(ii) A representative of a head start, early head start, or migrant/seasonal head start program;

(iii) A representative of a local education agency;

(iv) A representative of the state agency responsible for programs under section 619 or part C of the federal individuals with disabilities education act;

(v) A representative of the early childhood education and assistance program;

(vi) A representative of licensed family day care providers;

(vii) A representative of child day care centers; and

(viii) A representative from the home visiting advisory committee established in RCW 43.215.130;

(d) Two members of the house of representatives, one from each caucus, to be appointed by the speaker of the house of representatives and two members of the senate, one from each caucus, to be appointed by the majority leader in the senate and the minority leader in the senate;

(e) Two parents, one of whom serves on the department's parent advisory group, to be appointed by the governor;

(f) One representative of the private-public partnership created in RCW 43.215.070, to be appointed by the partnership board;

(g) One representative from the developmental disabilities community;

(h) Two representatives from early learning regional coalitions;

(i) Representatives of underserved communities who have a special expertise or interest in high quality early learning, one to be appointed by each of the following commissions:

(i) The Washington state commission on Asian Pacific American affairs;

(ii) The Washington state commission on African-American affairs; and

(iii) The Washington state commission on Hispanic affairs;

(j) Two representatives designated by sovereign tribal governments, one of whom must be a representative of a

tribal early childhood education assistance program or head start program;

(k) One representative from the Washington federation of independent schools;

(l) One representative from the Washington library association; and

(m) One representative from a statewide advocacy coalition of organizations that focuses on early learning.

(6) The council shall be cochaired by two members, to be elected by the council for two-year terms and not more than one cochair may represent a state agency.

(7) The council shall appoint two members and stakeholders with expertise in early learning to sit on the technical working group created in section 2, chapter 234, Laws of 2010.

(8) Each member of the board shall be compensated in accordance with RCW 43.03.240 and reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060.

(9)(a) The council shall convene an early achievers review subcommittee to provide feedback and guidance on strategies to improve the quality of instruction and environment for early learning and provide input and recommendations on the implementation and refinement of the early achievers program. The review conducted by the subcommittee shall be a part of the annual progress report required in RCW 43.215.102. At a minimum the review shall address the following:

(i) Adequacy of data collection procedures;

(ii) Coaching and technical assistance standards;

(iii) Progress in reducing barriers to participation for low-income providers and providers from diverse cultural backgrounds, including a review of the early achievers program's rating tools, quality standard areas, and components, and how they are applied;

(iv) Strategies in response to data on the effectiveness of early achievers program standards in relation to providers and children from diverse cultural backgrounds;

(v) Status of the life circumstance exemption protocols; and

(vi) Analysis of early achievers program data trends.

(b) The subcommittee must include consideration of cultural linguistic responsiveness when analyzing the areas for review required by (a) of this subsection.

(c) The subcommittee shall include representatives from child care centers, family child care, the early childhood education and assistance program, contractors for early achievers program technical assistance and coaching, tribal governments, the organization responsible for conducting early achievers program ratings, and parents of children participating in early learning programs, including working connections child care and early childhood education and assistance programs. The subcommittee shall include representatives from diverse cultural and linguistic backgrounds.

(10) The department shall provide staff support to the council. [2017 c 171 § 1; 2015 3rd sp.s. c 7 § 16; 2012 c 229 § 589; 2011 c 177 § 2. Prior: 2010 c 234 § 3; 2010 c 12 § 1; 2007 c 394 § 3.]

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.215.100.

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Finding—Purpose—2011 c 177: "The legislature finds that to fully comply with requirements in section 642B of the federal head start act, 42 U.S.C. Sec. 9837b, regarding state advisory council membership, Washington must amend existing law to reflect necessary changes in early learning advisory council membership in accordance with the federal requirement.

Accordingly, the purpose of this act is to specify four of the governor's appointees as permanent members on the early learning advisory council to comply with state advisory council requirements as follows: The head start state collaboration office director or a designee; a representative of a head start, early head start, migrant/seasonal head start, or tribal head start program; a representative of a local education agency; and a representative of the state agency responsible for programs under section 619 or part C of the federal individuals with disabilities education act. This act also revises the categories of groups from which the governor may appoint additional representatives as members of the council." [2011 c 177 § 1.]

Intent—2010 c 234: "The department of early learning, the superintendent of public instruction, and thrive by five's joint early learning recommendations to the governor, and the quality education council's January 2010 recommendations to the legislature both suggested that a voluntary program of early learning should be included within the overall program of basic education. The legislature intends to examine these recommendations and Attorney General Opinion Number 8 (2009) through the development of a working group to identify and recommend a comprehensive plan." [2010 c 234 § 1.]

Finding—Declaration—Captions not law—2007 c 394: See notes following RCW 43.215.010.

43.215.099 Recodified as RCW 43.216.080. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.099 Integration with other entities. (Effective until July 1, 2018, then recodified as RCW 43.216.080.) (1)

The foundation of quality in the early care and education system in Washington is the quality rating and improvement system entitled the early achievers program. In an effort to build on the existing quality framework, enhance access to quality care for children, and strengthen the entire early care and education systems in the state, it is important to integrate the efforts of state and local governments, school districts, institutions of higher education as defined in RCW 28B.10.016, and nonprofit organizations.

(2) Local governments, school districts, institutions of higher education as defined in RCW 28B.10.016, and nonprofit organizations are encouraged to collaborate with the department when establishing and strengthening early learning programs for residents.

(3) Local governments, school districts, institutions of higher education as defined in RCW 28B.10.016, and nonprofit organizations may contribute funds to the department for the following purposes:

(a) Initial investments to build capacity and quality in local early care and education programming;

(b) Reductions in copayments charged to parents or caregivers;

(c) To expand access and eligibility in the early childhood education and assistance program.

(4) Funds contributed to the department by local governments, school districts, institutions of higher education as defined in RCW 28B.10.016, and nonprofit organizations must be deposited in the early start account established in RCW 43.215.195.

(5) Children enrolled in the early childhood education and assistance program with funds contributed in accordance with subsection (3)(c) of this section are not considered to be eligible children as defined in RCW 43.215.405 and are not considered to be part of the state-funded entitlement required in RCW 43.215.456. [2017 c 178 § 2; 2015 3rd sp.s. c 7 § 15.]

Intent—2017 c 178: "The legislature recognizes that local governments, school districts, institutions of higher education as defined in RCW 28B.10.016, and nonprofit organizations play an important role in strengthening the early care and education systems in the state. The legislature acknowledges that these entities may face barriers to investing in early care and education programs. The legislature intends to create a local pathway to high quality early learning to help these entities understand how they can use additional local and private funds with existing funds to expand access for existing programs. The legislature intends for this local pathway to reduce barriers and increase efficiency to provide more high quality early learning opportunities." [2017 c 178 § 1.]

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.215.100.

43.215.100 Recodified as RCW 43.216.085. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.1001 Recodified as RCW 43.216.0851. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.101 Recodified as RCW 43.216.087. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.102 Recodified as RCW 43.216.089. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.103 Recodified as RCW 43.216.100. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.104 Recodified as RCW 43.216.105. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.104 Native language development and retention—Dual language learning—Rules. (Effective until July 1, 2018, then recodified as RCW 43.216.105.) (1) The department of early learning must work with community partners to support outreach and education for parents and families around the benefits of native language development and retention, as well as the benefits of dual language learning. Native language means the language normally used by an individual or, in the case of a child or youth, the language normally used by the parents or family of the child or youth. Dual language learning means learning in two languages, generally English and a target language other than English spoken in the local community, for example Spanish, Somali, Vietnamese, Russian, Arabic, native languages, or indigenous languages where the goal is bilingualism.

(2) Within existing resources, the department must create training and professional development resources on dual language learning, such as supporting English learners, work-

ing in culturally and linguistically diverse communities, strategies for family engagement, and cultural responsiveness. The department must design the training modules to be culturally responsive.

(3) Within existing resources, the department must support dual language learning communities for teachers and coaches.

(4) The department may adopt rules to implement this section. [2017 c 236 § 5.]

Findings—Intent—2017 c 236: See note following RCW 28A.630.095.

43.215.105 Recodified as RCW 43.216.110. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.110 Recodified as RCW 43.216.115. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.112 Recodified as RCW 43.216.120. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.112 Reduction of barriers for using local or private funds for early learning opportunities. (Effective until July 1, 2018, then recodified as RCW 43.216.120.) To the greatest extent possible, the department must reduce barriers and increase efficiency for using local or private funds, or both, to provide more high quality early learning opportunities. [2017 c 178 § 3.]

Intent—2017 c 178: See note following RCW 43.215.099.

43.215.120 Recodified as RCW 43.216.125. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.125 Decodified. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.130 Recodified as RCW 43.216.130. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.130 Home visiting services account—Purpose—Administration—Funding. (Effective until July 1, 2018, then recodified as RCW 43.216.130.) (1)(a) The home visiting services account is created in the state treasury. Revenues to the account shall consist of appropriations by the legislature and all other sources deposited in the account. All federal funds received by the department for home visiting activities must be deposited into the account.

(b)(i) Expenditures from the account shall be used for state matching funds for the purposes of the program established in this section and federally funded activities for the home visiting program, including administrative expenses.

(ii) The department oversees the account and is the lead state agency for home visiting system development. The non-governmental private-public partnership supports the home

visiting service delivery system and provides support functions to funded programs.

(iii) It is the intent of the legislature that state funds invested in the account be matched by the private-public partnership each fiscal year.

(iv) Amounts used for program administration by the department may not exceed an average of ten percent in any two consecutive fiscal years.

(v) Authorizations for expenditures may be given only after private funds are committed. The nongovernmental private-public partnership must report to the department quarterly to demonstrate investment of private match funds.

(c) Expenditures from the account are subject to appropriation and the allotment provisions of chapter 43.88 RCW.

(2) The department must expend moneys from the account to provide state matching funds for partnership activities to implement home visiting services and administer the infrastructure necessary to develop, support, and evaluate evidence-based, research-based, and promising home visiting programs.

(3) Activities eligible for funding through the account include, but are not limited to:

(a) Home visiting services that achieve one or more of the following: (i) Enhancing child development and well-being by alleviating the effects on child development of poverty and other known risk factors; (ii) reducing the incidence of child abuse and neglect; or (iii) promoting school readiness for young children and their families; and

(b) Development and maintenance of the infrastructure for home visiting programs, including training, quality improvement, and evaluation.

(4) Beginning July 1, 2010, the department shall contract with the nongovernmental private-public partnership designated in RCW 43.215.070 to support programs funded through the home visiting services account. The department shall monitor performance and provide periodic reports on the uses and outcomes of the home visiting services account.

(5) The department shall, in the administration of the programs:

(a) Fund programs through a competitive bid process or in compliance with the regulations of the funding source; and

(b) Convene an advisory committee of early learning and home visiting experts, including one representative from the department, to advise the partnership regarding research and the distribution of funds from the account to eligible programs. [2017 c 171 § 2; 2013 c 165 § 1; 2010 1st sp.s. c 37 § 933.]

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

43.215.135 Recodified as RCW 43.216.135. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.1351 Recodified as RCW 43.216.137. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.1352 Recodified as RCW 43.216.139. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

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43.215.136 Recodified as RCW 43.216.141. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.137 Recodified as RCW 43.216.143. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.140 Recodified as RCW 43.216.152. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.145 Recodified as RCW 43.216.155. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.146 Recodified as RCW 43.216.157. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.147 Recodified as RCW 43.216.159. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.195 Recodified as RCW 43.216.165. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.195 Early start account. (Effective until July 1, 2018, then recodified as RCW 43.216.165.) (1) The early start account is created in the custody of the state treasurer. Revenues in the account shall consist of appropriations by the legislature and all other sources deposited into the account. Expenditures from the account may be used only for the purposes listed in RCW 43.215.099. All receipts from local governments, school districts, institutions of higher education as defined in RCW 28B.10.016, and nonprofit organizations must be deposited into the account.

(2) The department oversees the account. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(3) The department shall separately track funds received for each local government, school district, institution of higher education as defined in RCW 28B.10.016, or nonprofit organization that deposits funds into the account. Expenditures from these funds may be used only for the purposes listed in RCW 43.215.099 as identified in writing with the department by the contributing local government, school district, institution of higher education as defined in RCW 28B.10.016, or nonprofit organization. [2017 c 178 § 5; 2015 3rd sp.s. c 7 § 17.]

Intent—2017 c 178: See note following RCW 43.215.099.

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.215.100.

43.215.200 Recodified as RCW 43.216.250. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.201 Recodified as RCW 43.216.255. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.205 Recodified as RCW 43.216.260. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.210 Recodified as RCW 43.216.265. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.215 Recodified as RCW 43.216.270. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.215 Character, suitability, and competence to provide child care and early learning services—Fingerprint criminal history record checks—Background check clearance card or certificate—Shared background checks. (Effective until July 1, 2018, then recodified as RCW 43.216.270.) (1) In determining whether an individual is of appropriate character, suitability, and competence to provide child care and early learning services to children, the department may consider the history of past involvement of child protective services or law enforcement agencies with the individual for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, or welfare of a child. No report of child abuse or neglect that has been destroyed or expunged under RCW 26.44.031 may be used for such purposes. No unfounded or inconclusive allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a provider licensed under this chapter.

(2) In order to determine the suitability of individuals newly applying for an agency license, new licensees, their new employees, and other persons who newly have unsupervised access to children in care, shall be fingerprinted.

(a) The fingerprints shall be forwarded to the Washington state patrol and federal bureau of investigation for a criminal history record check.

(b)(i) Effective July 1, 2012, all individuals applying for first-time agency licenses, all new employees, and other persons who have not been previously qualified by the department to have unsupervised access to children in care must be fingerprinted and obtain a criminal history record check pursuant to this section.

(ii) Persons required to be fingerprinted and obtain a criminal history record check pursuant to this section must pay for the cost of this check as follows: The fee established by the Washington state patrol for the criminal background history check, including the cost of obtaining the fingerprints; and a fee paid to the department for the cost of administering the individual-based/portable background check clearance registry. The fee paid to the department must be deposited into the individual-based/portable background check clearance account established in RCW 43.215.218. The licensee may, but need not, pay these costs on behalf of a prospective employee or reimburse the prospective employee for these costs. The licensee and the prospective employee may share these costs.

(c) The director shall use the fingerprint criminal history record check information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children.

(d) Criminal justice agencies shall provide the director such information as they may have and that the director may require for such purpose.

(e) No later than July 1, 2013, all agency licensees holding licenses prior to July 1, 2012, persons who were employees before July 1, 2012, and persons who have been qualified by the department before July 1, 2012, to have unsupervised access to children in care, must submit a new background application to the department. The department must require persons submitting a new background application pursuant to this subsection (2)(e) to pay a fee to the department for the cost of administering the individual-based/portable background check clearance registry. This fee must be paid into the individual-based/portable background check clearance account established in RCW 43.215.218. The licensee may, but need not, pay these costs on behalf of a prospective employee or reimburse the prospective employee for these costs. The licensee and the prospective employee may share these costs.

(f) The department shall issue a background check clearance card or certificate to the applicant if after the completion of a background check the department concludes the applicant is qualified for unsupervised access to children in care. The background check clearance card or certificate is valid for three years from the date of issuance. A valid card or certificate must be accepted by a potential employer as proof that the applicant has successfully completed a background check as required under this chapter.

(g) The original applicant for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care shall submit a new background check application to the department, on a form and by a date as determined by the department.

(h) The applicant and agency shall maintain on-site for inspection a copy of the background check clearance card or certificate.

(i) Individuals who have been issued a background check clearance card or certificate shall report nonconviction and conviction information to the department within twenty-four hours of the event constituting the nonconviction or conviction information.

(j) The department shall investigate and conduct a reevaluation of an applicant's or licensee's background clearance if the department receives a complaint or information from individuals, a law enforcement agency, or other federal, state, or local government agency. Subject to the requirements contained in RCW 43.215.300 and 43.215.305 and based on a determination that an individual lacks the appropriate character, suitability, or competence to provide child care or early learning services to children, the department may: (i) Invalidate the background card or certificate; or (ii) suspend, modify, or revoke any license authorized by this chapter.

(3) To satisfy the shared background check requirements of the department of early learning, the office of the superin-

tendent of public instruction, and the department of social and health services, each department shall share federal fingerprint-based background check results as permitted under the law. The purpose of this provision is to allow these departments to fulfill their joint background check responsibility of checking any individual who may have unsupervised access to vulnerable adults, children, or juveniles. These departments may not share the federal background check results with any other state agency or person.

(4) Individuals who have completed a fingerprint background check as required by the office of the superintendent of public instruction, consistent with RCW 28A.400.303, and have been continuously employed by the same school district or educational service district, can meet the requirements in subsection (2) of this section by providing a true and accurate copy of their Washington state patrol and federal bureau of investigation background check report results to the department or if the school district or the educational service district provides an affidavit to the department that the individual has been authorized to work by the school district or educational service district after completing a record check consistent with RCW 28A.400.303. The department may require that additional background checks be completed that do not require additional fingerprinting and may charge a fee for these additional background checks. [2017 3rd sp.s. c 33 § 6. Prior: 2011 c 295 § 2; 2011 c 253 § 4; 2007 c 415 § 5.]

43.215.216 Recodified as RCW 43.216.271. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.217 Recodified as RCW 43.216.272. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.218 Recodified as RCW 43.216.273. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.220 Recodified as RCW 43.216.280. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.230 Recodified as RCW 43.216.285. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.240 Recodified as RCW 43.216.290. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.250 Recodified as RCW 43.216.295. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.255 Recodified as RCW 43.216.300. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.260 Recodified as RCW 43.216.305. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.270 Recodified as RCW 43.216.310. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.280 Recodified as RCW 43.216.315. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.290 Recodified as RCW 43.216.320. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.300 Recodified as RCW 43.216.325. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.305 Recodified as RCW 43.216.327. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.307 Recodified as RCW 43.216.335. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.308 Recodified as RCW 43.216.340. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.310 Recodified as RCW 43.216.345. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.320 Recodified as RCW 43.216.350. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.330 Recodified as RCW 43.216.355. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.335 Recodified as RCW 43.216.360. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.340 Recodified as RCW 43.216.365. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.350 Recodified as RCW 43.216.370. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.355 Recodified as RCW 43.216.375. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.360 Recodified as RCW 43.216.380. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.370 Recodified as RCW 43.216.385. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.371 Recodified as RCW 43.216.390. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.400 Recodified as RCW 43.216.500. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.405 Recodified as RCW 43.216.505. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.410 Recodified as RCW 43.216.510. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.410 Admission and funding. (Effective until July 1, 2018, then recodified as RCW 43.216.510.) The department shall administer a state-supported early childhood education and assistance program to assist eligible children with educational, social, health, nutritional, and cultural development to enhance their opportunity for success in the common school system. Eligible children shall be admitted to approved early childhood programs to the extent that the legislature provides funds, and additional children may be admitted to the extent that grants and contributions from community sources provide sufficient funds for a program equivalent to that supported by state funds. Grants and contributions from community sources shall not supplant the funding required for the full statewide implementation of the early learning program in RCW 43.215.456. [2017 c 178 § 4; 2006 c 265 § 211; 1994 c 166 § 4; 1988 c 174 § 3; 1985 c 418 § 3. Formerly RCW 28A.215.120, 28A.34A.030.]

Intent—2017 c 178: See note following RCW 43.215.099.

Findings—1994 c 166; 1988 c 174: See note following RCW 43.215.405.

Additional notes found at www.leg.wa.gov

43.215.415 Recodified as RCW 43.216.515. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.420 Recodified as RCW 43.216.520. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.425 Recodified as RCW 43.216.525. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.430 Recodified as RCW 43.216.530. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.435 Recodified as RCW 43.216.535. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.440 Recodified as RCW 43.216.540. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.445 Recodified as RCW 43.216.545. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.450 Recodified as RCW 43.216.550. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.455 Recodified as RCW 43.216.555. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.456 Recodified as RCW 43.216.556. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.456 Early learning program—Voluntary preschool opportunities—Funding and statewide implementation. (Effective until July 1, 2018, then recodified as RCW 43.216.556.) (1) Funding for the program of early learning established under this chapter must be appropriated to the department. Allocations must be made on the basis of eligible children enrolled with eligible providers.

(2) The program shall be implemented in phases, so that full implementation is achieved in the 2022-23 school year.

(3) For the initial phase of the early learning program in school years 2011-12 and 2012-13, the legislature shall appropriate funding to the department for implementation of the program in an amount not less than the 2009-2011 enacted budget for the early childhood education and assistance program. The appropriation shall be sufficient to fund an equivalent number of slots as funded in the 2009-2011 enacted budget.

(4) Beginning in the 2013-14 school year, additional funding for the program must be phased in beginning in school districts providing all-day kindergarten programs under RCW 28A.150.315.

(5) Funding shall continue to be phased in each year until full statewide implementation of the early learning program is achieved in the 2022-23 school year, at which time any eligible child shall be entitled to be enrolled in the program.

(6) School districts and approved community-based early learning providers may contract with the department to provide services under the program. The department shall collaborate with school districts, community-based providers, and educational service districts to promote an adequate supply of approved providers. [2017 3rd sp.s. c 22 § 1; 2015 3rd sp.s. c 7 § 12; 2015 c 128 § 4; 2010 c 231 § 4. Formerly RCW 43.215.142.]

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.215.100.

43.215.457 Recodified as RCW 43.216.559. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.460 Recodified as RCW 43.216.565. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.470 Recodified as RCW 43.216.570. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.472 Recodified as RCW 43.216.572. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.474 Recodified as RCW 43.216.574. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.476 Recodified as RCW 43.216.576. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.490 Recodified as RCW 43.216.650. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.492 Recodified as RCW 43.216.655. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.495 Recodified as RCW 43.216.660. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.500 Recodified as RCW 43.216.665. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.502 Recodified as RCW 43.216.670. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.505 Recodified as RCW 43.216.675. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.510 Recodified as RCW 43.216.680. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.520 Recodified as RCW 43.216.685. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.525 Recodified as RCW 43.216.687. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.530 Recodified as RCW 43.216.689. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.532 Recodified as RCW 43.216.695. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.535 Recodified as RCW 43.216.700. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.540 Recodified as RCW 43.216.705. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.545 Recodified as RCW 43.216.710. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.550 Recodified as RCW 43.216.715. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.555 Recodified as RCW 43.216.720. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.560 Recodified as RCW 43.216.725. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.562 Recodified as RCW 43.216.730. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.564 Recodified as RCW 43.216.735. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.566 Recodified as RCW 43.216.740. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.566 Outdoor, nature-based early learning and child care programs—Pilot project—Reports. (Effective until July 1, 2018, then recodified as RCW 43.216.740.) (1) The department shall establish a pilot project to license outdoor, nature-based early learning and child care programs. The pilot project shall commence beginning August 31, 2017, and conclude June 30, 2021.

(2) The department shall adopt rules to implement the pilot project and may waive or adapt licensing requirements when necessary to allow for the operation of outdoor classrooms.

(3) As part of the pilot project, the department shall explore options for developing a quality rating and improvement system for outdoor preschools. Options may include, but are not limited to, adapting the early achievers program to assess quality in outdoor learning environments, as well as excluding or replacing the early achievers indoor environmental rating scale. The department may receive and expend

funds from philanthropic organizations in order to implement this subsection and subsection (6) of this section. The department shall include a discussion of options and recommendations in the final report required under subsection (8) of this section.

(4) The department shall select up to ten pilot locations during the first year of the pilot project. Beginning August 31, 2018, additional outdoor, nature-based early learning and child care programs may apply to participate in the pilot project. When selecting and approving pilot project locations, the department shall aim to select a mix of rural, urban, and suburban locations, and may give priority to:

(a) Areas where there are few or limited licensed early learning programs;

(b) Areas of need where licensed early learning programs are at or near full capacity, and where access may be restricted by one or more enrollment wait-lists; and

(c) Areas where an outdoor early learning program would provide more family choice.

(5) A child care or early learning program operated by a federally recognized tribe may participate in the pilot project through an interlocal agreement between the tribe and the department. The interlocal agreement must reflect the government-to-government relationship between the state and the tribe, including recognition of tribal sovereignty.

(6) Subject to the availability of funds, the department may convene an advisory group of outdoor, nature-based early learning practitioners to inform and support implementation of the pilot project.

(7) For purposes of this section, "outdoor, nature-based early learning and child care program" means an agency-offered program operated primarily outdoors in which children are enrolled on a regular basis for three or more hours per day.

(8) The department shall provide the following reports to the legislature and the governor:

(a) By January 15, 2018, and annually thereafter through January 15, 2020, a brief status report describing implementation of the pilot project, including a description of participating providers and the number of children and families being served;

(b) By November 30, 2020, a full report on findings from the pilot project, including recommendations for modifying or expanding the availability of outdoor, nature-based early learning and child care programs. The final report also must include a discussion of potential options to mitigate the uncertainty for families and participating providers during the final six months of the pilot project when legislation may be pending.

(9) The provisions of this section are subject to appropriation.

(10) This section expires August 1, 2021. [2017 c 162 § 2.]

Findings—Intent—2017 c 162: "The legislature finds that, over the past decade, more than forty outdoor, nature-based early learning and child care programs have opened in Washington, several of which are in high demand based on existing wait-lists. The legislature finds, however, that these programs currently are unlicensed and thus unable to offer full-day programs, which many working families are seeking. Unlicensed outdoor programs also are unable to serve families who are eligible for assistance through the working connections child care program. The legislature further finds that the outdoor preschool model could help expand the number of high

quality early learning opportunities available to families throughout Washington, particularly in areas where preschool-appropriate indoor space is unavailable or unaffordable. Additionally, when early learning programs spend less on their physical facilities, they are able to spend more on recruiting and retaining teachers and other early learning professionals. The legislature also finds that research on outdoor preschools operating in Scandinavian countries for decades has demonstrated a positive impact on children's development, including improved cognitive and social skills when children transition to grade school. The legislature, therefore, intends to establish a pilot project to license outdoor preschools in order to expand access to affordable, high quality early learning programs, and to further investigate the benefits of outdoor, nature-based classrooms for Washington's children and families." [2017 c 162 § 1.]

43.215.570 Recodified as RCW 43.216.745. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.570 Child care consultation program—Creation, operation, and duties. (Effective until July 1, 2018, then recodified as RCW 43.216.745.) (1) Subject to the availability of amounts appropriated for this specific purpose, the department shall establish a child care consultation program linking child care providers with evidence-based, trauma-informed, and best practice resources regarding caring for infants and young children who present behavioral concerns or symptoms of trauma. The department may contract with an entity with expertise in child development and early learning programs in order to operate the child care consultation program.

(2) In establishing and operating the program, the department or contracted entity shall: (a) Assist child care providers in recognizing the signs and symptoms of trauma in children; (b) provide support and guidance to child care staff; (c) consult and coordinate with parents, other caregivers, and experts or practitioners involved with the care and well-being of the young children; and (d) provide referrals for children who need additional services. [2017 c 202 § 5.]

Findings—Intent—2017 c 202: See note following RCW 74.09.492.

43.215.900 Recodified as RCW 43.216.900. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.901 Recodified as RCW 43.216.901. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.903 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.905 Effective date—2006 c 265. (Effective until July 1, 2018, then recodified as RCW 43.216.902.) This act takes effect July 1, 2006. [2006 c 265 § 604.]

Reviser's note: RCW 43.215.905 was recodified by 2017 3rd sp.s. c 6 § 821, effective July 1, 2018, and decodified by 2017 3rd sp.s. c 25 § 7.

43.215.907 Decodified. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.908 Recodified as RCW 43.216.903. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.215.909 Recodified as RCW 43.216.904. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.216 RCW

DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

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GENERAL PROVISIONS

43.216.005 Findings. (1) The legislature finds that state services are not currently organized and delivered in a way that achieves the optimal outcomes for children, youth, and families. The legislature believes that, to improve service delivery and outcomes, existing services must be restructured into a comprehensive agency dedicated to the safety, development, and well-being of children that emphasizes prevention, early childhood development, and early intervention, and supporting parents to be their children's first and most important teachers.

(2) The legislature finds that:

(a) The early years of a child's life are critical to the child's healthy brain development and that the quality of caregiving during the early years can significantly impact the child's intellectual, social, and emotional development;

(b) A successful outcome for every child obtaining a K-12 education depends on children being prepared from birth for academic and social success in school. For children at risk of school failure, the opportunity gap often emerges as early as eighteen months of age;

(c) A more cohesive and integrated early learning system has been established that provides a solid foundation for further improvements in the quality and availability of early learning programs; and

(d) Increasing the availability of high quality services for children ages birth to three and their parents or caregivers will result in improved school and life outcomes.

(3) Research is clear that quality culturally and linguistically responsive early care and education builds the foundation for a child's success in school and in life. In restructuring early learning and child welfare services, the legislature seeks to build on the success of Washington's early learning efforts to assure children most at risk of experiencing adversity are provided high quality early learning experiences.

(4) The legislature finds that advancements in research and science have identified indicators of risk, how they impact healthy development, and the critical importance of stable, nurturing relationships, particularly in the early years. Services for families and children should be prioritized for those who are most at risk of neglect, physical harm, and other adverse factors.

(5) The legislature finds that a focus on adolescent development is needed to ensure that effective supports and interventions are targeted to support adolescents successfully transitioning to adulthood. Youth known to both the child welfare and juvenile justice systems often suffer from childhood trauma, have multisystem involvement, and experience homelessness. Increased integration of the child welfare and juvenile justice systems can increase opportunities for prevention and improve outcomes for youth in both systems.

(6) The legislature finds that children and youth of color are disproportionately impacted at every point in the child welfare and juvenile justice systems. The department of children, youth, and families must prioritize addressing equity, disproportionality, and disparity in service delivery and outcomes, and provide transparent, frequent reporting of outcomes by race, ethnicity, and geography. The legislature finds that the state values the partnership with tribes in providing services for our children and youth and intends to honor the government-to-government relationship between the state and tribes.

(7) The department of children, youth, and families must be anchored in a culture of innovation, transparency, accountability, rigorous data analysis, and reliance on research and evidence-based interventions.

(8) The legislature finds that the public expects an effective service delivery system that is comprehensive, accountable, and goes beyond a single department's role. For this reason, the legislature is creating a mechanism in the department of children, youth, and families to align, integrate, and ensure accountability of state services for children, youth, and their families across state agencies so that there is a seamless, effective, prevention and early intervention-based service system regardless of which state agency is responsible for particular services.

(9) The legislature finds that the work of the department of children, youth, and families will only be as successful as the workforce—both the agency employees and community-based providers. Increased support for the professionals working with children, youth, and families is critical to improving outcomes.

(10) The legislature further finds that other states have successfully established integrated departments dedicated to serving children, youth, and families. These departments have improved the visibility of child and family issues, increased authority and accountability, enabled system improvements, and created a stronger focus on improving child outcomes. [2017 3rd sp.s. c 6 § 1.]

43.216.010 Definitions. (Effective July 1, 2018.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" means any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child's own home and includes the following irrespective of whether there is compensation to the agency:

(a) "Child day care center" means an agency that regularly provides early childhood education and early learning services for a group of children for periods of less than twenty-four hours;

(b) "Early learning" includes but is not limited to programs and services for child care; state, federal, private, and nonprofit preschool; child care subsidies; child care resource and referral; parental education and support; and training and professional development for early learning professionals;

(c) "Family day care provider" means a child care provider who regularly provides early childhood education and early learning services for not more than twelve children in the provider's home in the family living quarters;

(d) "Nongovernmental private-public partnership" means an entity registered as a nonprofit corporation in Washington state with a primary focus on early learning, school readiness, and parental support, and an ability to raise a minimum of five million dollars in contributions;

(e) "Service provider" means the entity that operates a community facility.

(2) "Agency" does not include the following:

(a) Persons related to the child in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law; or

(iv) Spouses of any persons named in (a)(i), (ii), or (iii) of this subsection, even after the marriage is terminated;

(b) Persons who are legal guardians of the child;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) Nursery schools that are engaged primarily in early childhood education with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(f) Schools, including boarding schools, that are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, and accept only school age children;

(g) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(h) Facilities providing child care for periods of less than twenty-four hours when a parent or legal guardian of the child remains on the premises of the facility for the purpose of participating in:

(i) Activities other than employment; or

(ii) Employment of up to two hours per day when the facility is operated by a nonprofit entity that also operates a licensed child care program at the same facility in another location or at another facility;

(i) Any entity that provides recreational or educational programming for school age children only and the entity meets all of the following requirements:

(i) The entity utilizes a drop-in model for programming, where children are able to attend during any or all program hours without a formal reservation;

(ii) The entity does not assume responsibility in lieu of the parent, unless for coordinated transportation;

(iii) The entity is a local affiliate of a national nonprofit; and

(iv) The entity is in compliance with all safety and quality standards set by the associated national agency;

(j) A program operated by any unit of local, state, or federal government;

(k) A program located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(l) A program located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(m) A program that offers early learning and support services, such as parent education, and does not provide child care services on a regular basis.

(3) "Applicant" means a person who requests or seeks employment in an agency.

(4) "Conviction information" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the applicant.

(5) "Department" means the department of children, youth, and families.

(6) "Early achievers" means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

(7) "Early childhood education and assistance program contractor" means an organization that provides early childhood education and assistance program services under a signed contract with the department.

(8) "Early childhood education and assistance program provider" means an organization that provides site level, direct, and high quality early childhood education and assistance program services under the direction of an early childhood education and assistance program contractor.

(9) "Early start" means an integrated high quality continuum of early learning programs for children birth-to-five years of age. Components of early start include, but are not limited to, the following:

(a) Home visiting and parent education and support programs;

(b) The early achievers program described in RCW 43.216.085;

(c) Integrated full-day and part-day high quality early learning programs; and

(d) High quality preschool for children whose family income is at or below one hundred ten percent of the federal poverty level.

(10) "Education data center" means the education data center established in RCW 43.41.400, commonly referred to as the education research and data center.

(11) "Employer" means a person or business that engages the services of one or more people, especially for wages or salary to work in an agency.

(12) "Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325(1) or assessment of civil monetary penalties pursuant to RCW 43.216.325(3).

(13) "Extended day program" means an early childhood education and assistance program that offers early learning education for at least ten hours per day, a minimum of two thousand hours per year, at least four days per week, and operates year-round.

(14) "Full day program" means an early childhood education and assistance program that offers early learning education for a minimum of one thousand hours per year.

(15) "Low-income child care provider" means a person who administers a child care program that consists of at least eighty percent of children receiving working connections child care subsidy.

(16) "Low-income neighborhood" means a district or community where more than twenty percent of households are below the federal poverty level.

(17) "Negative action" means a court order, court judgment, or an adverse action taken by an agency, in any state, federal, tribal, or foreign jurisdiction, which results in a finding against the applicant reasonably related to the individual's character, suitability, and competence to care for or have unsupervised access to children in child care. This may include, but is not limited to:

(a) A decision issued by an administrative law judge;

(b) A final determination, decision, or finding made by an agency following an investigation;

(c) An adverse agency action, including termination, revocation, or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification, or contract in lieu of the adverse action;

(d) A revocation, denial, or restriction placed on any professional license; or

(e) A final decision of a disciplinary board.

(18) "Nonconviction information" means arrest, founded allegations of child abuse, or neglect pursuant to chapter 26.44 RCW, or other negative action adverse to the applicant.

(19) "Nonschool age child" means a child who is age six years or younger and who is not enrolled in a public or private school.

(20) "Part day program" means an early childhood education and assistance program that offers early learning education for at least two and one-half hours per class session, at least three hundred twenty hours per year, for a minimum of thirty weeks per year.

(21) "Private school" means a private school approved by the state under chapter 28A.195 RCW.

(22) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(23) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(24) "School age child" means a child who is five years of age through twelve years of age and is attending a public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

(25) "Secretary" means the secretary of the department.

(26) "Washington state preschool program" means an education program for children three-to-five years of age who have not yet entered kindergarten, such as the early childhood education and assistance program. [2017 3rd sp.s. c 6 § 201. Prior: 2016 c 231 § 1; 2016 c 169 § 3; 2015 3rd sp.s. c 7 § 19; prior: 2013 c 323 § 3; 2013 c 130 § 1; prior: 2011 c 295 § 3; 2011 c 78 § 1; prior: 2007 c 415 § 2; 2007 c 394 § 2; 2006 c 265 § 102. Formerly RCW 43.215.010.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Finding—Intent—2016 c 169: See note following RCW 43.216.735.

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

Finding—Declaration—2007 c 394: "The legislature finds that education is the single most effective investment that can be made in children, the state, the economy, and the future. A well-educated citizenry is essential both for the preservation of democracy and for enhancing the state's ability to compete in the knowledge-based global economy.

As recommended by Washington learns, the legislature declares that the overarching goal for education in the state is to have a world-class, learner-focused, seamless education system that educates more Washingtonians to the highest levels of educational attainment." [2007 c 394 § 1.]

Captions not law—2007 c 394: "Captions used in this act are not any part of the law." [2007 c 394 § 8.]

43.216.015 Department of children, youth, and families—Created—Duties—Agency performance data—"Performance-based contract" defined—Oversight board for children, youth, and families—Powers and restrictions—Stakeholder meetings—Appointment of secretary. (1)(a) The department of children, youth, and families is created as an executive branch agency. The department is vested with all powers and duties transferred to it under chapter 6, Laws of 2017 3rd sp. sess. and such other powers and duties as may be authorized by law. The vision for the department is that Washington state's children and youth grow up safe and health-[healthy—]thriving physically, emotionally, and academically, nurtured by family and community.

(b) The department, in partnership with state and local agencies, tribes, and communities, shall protect children and youth from harm and promote healthy development with effective, high quality prevention, intervention, and early education services delivered in an equitable manner. An important role for the department shall be to provide preventative services to help secure and preserve families in crisis. The department shall partner with the federally recognized Indian tribes to develop effective services for youth and families while respecting the sovereignty of those tribes and the government-to-government relationship. Nothing in chapter 6, Laws of 2017 3rd sp. sess. alters the duties, requirements, and policies of the federal Indian child welfare act, 25 U.S.C. Secs. 1901 through 1963, as amended, or the Indian child welfare act, chapter 13.38 RCW.

(2) Beginning July 1, 2018, the department must develop definitions for, work plans to address, and metrics to measure the outcomes for children, youth, and families served by the department and must work with state agencies to ensure services for children, youth, and families are science-based, outcome-driven, data-informed, and collaborative.

(3)(a) Beginning July 1, 2018, the department must establish short and long-term population level outcome measure goals, including metrics regarding reducing disparities by family income, race, and ethnicity in each outcome.

(b) The department must report to the legislature on outcome measures, actions taken, progress toward these goals, and plans for the future year, no less than annually, beginning December 1, 2018.

(c) The outcome measures must include, but are not limited to:

(i) Improving child development and school readiness through voluntary, high quality early learning opportunities as measured by: (A) Increasing the number and proportion of

children kindergarten-ready as measured by the Washington kindergarten inventory of developing skills (WAKids) assessment including mathematics; (B) increasing the proportion of children in early learning programs that have achieved the level 3 or higher early achievers quality standard; and (C) increasing the available supply of licensed child care in both child care centers and family homes, including providers not receiving state subsidy;

(ii) Preventing child abuse and neglect;

(iii) Improving child and youth safety, permanency, and well-being as measured by: (A) Reducing the number of children entering out-of-home care; (B) reducing a child's length of stay in out-of-home care; (C) reducing maltreatment of youth while in out-of-home care; (D) licensing more foster homes than there are children in foster care; (E) reducing the number of children that reenter out-of-home care within twelve months; (F) increasing the stability of placements for children in out-of-home care; and (G) developing strategies to demonstrate to foster families that their service and involvement is highly valued by the department, as demonstrated by the development of strategies to consult with foster families regarding future placement of a foster child currently placed with a foster family;

(iv) Improving reconciliation of children and youth with their families as measured by: (A) Increasing family reunification; and (B) increasing the number of youth who are reunified with their family of origin;

(v) In collaboration with county juvenile justice programs, improving adolescent outcomes including reducing multisystem involvement and homelessness; and increasing school graduation rates and successful transitions to adulthood for youth involved in the child welfare and juvenile justice systems;

(vi) Reducing future demand for mental health and substance use disorder treatment for youth involved in the child welfare and juvenile justice systems;

(vii) In collaboration with county juvenile justice programs, reducing criminal justice involvement and recidivism as measured by: (A) An increase in the number of youth who successfully complete the terms of diversion or alternative sentencing options; (B) a decrease in the number of youth who commit subsequent crimes; and (C) eliminating the discharge of youth from institutional settings into homelessness; and

(viii) Reducing racial and ethnic disproportionality and disparities in system involvement and across child and youth outcomes in collaboration with other state agencies.

(4) Beginning July 1, 2018, the department must:

(a) Lead ongoing collaborative work to minimize or eliminate systemic barriers to effective, integrated services in collaboration with state agencies serving children, youth, and families;

(b) Identify necessary improvements and updates to statutes relevant to their responsibilities and proposing legislative changes to the governor no less than biennially;

(c) Help create a data-focused environment in which there are aligned outcomes and shared accountability for achieving those outcomes, with shared, real-time data that is accessible to authorized persons interacting with the family, child, or youth to identify what is needed and which services would be effective;

(d) Lead the provision of state services to adolescents, focusing on key transition points for youth, including exiting foster care and institutions, and coordinating with the office of homeless youth prevention and protection programs to address the unique needs of homeless youth; and

(e) Create and annually update a list of the rights and responsibilities of foster parents in partnership with foster parent representatives. The list of foster parent rights and responsibilities must be posted on the department's web site and provided to foster parents in writing at the time of licensure.

(5) The department is accountable to the public. To ensure transparency, beginning December 30, 2018, agency performance data for the services provided by the department, including outcome data for contracted services, must be available to the public, consistent with confidentiality laws, federal protections, and individual rights to privacy. Publicly available data must include budget and funding decisions, performance-based contracting data, including data for contracted services, and performance data on metrics identified in this section. The oversight board for children, youth, and families must work with the secretary and director to develop the most effective and cost-efficient ways to make department data available to the public, including making this data readily available on the department's web site.

(6) The department shall ensure that all new and renewed contracts for services are performance-based.

(7) As used in this section, "performance-based contract" means results-oriented contracting that focuses on the quality or outcomes that tie at least a portion of the contractor's payment, contract extensions, or contract renewals to the achievement of specific measurable performance standards and requirements.

(8) The department must execute all new and renewed contracts for services in accordance with this section and consistent with RCW 74.13B.020. When contracted services are managed through a network administrator or other third party, the department must execute data-sharing agreements with the entities managing the contracts to track provider performance measures. Contracts with network administrators or other third parties must provide the contract administrator the ability to shift resources from one provider to another, to evaluate individual provider performance, to add or delete services in consultation with the department, and to reinvest savings from increased efficiencies into new or improved services in their catchment area. Whenever possible, contractor performance data must be made available to the public, consistent with confidentiality laws and individual rights to privacy.

(9)(a) The oversight board for children, youth, and families shall begin its work and call the first meeting of the board on or after July 1, 2018. The oversight board shall immediately assume the duties of the legislative children's oversight committee, as provided for in RCW 74.13.570 and assume the full functions of the board as provided for in this section by July 1, 2019. The office of innovation, alignment, and accountability shall provide quarterly updates regarding the implementation of the department of children, youth, and families to the board between July 1, 2018, and July 1, 2019.

(b) The ombuds shall establish the oversight board for children, youth, and families. The board is authorized for the

purpose of monitoring and ensuring that the department of children, youth, and families achieves the stated outcomes of chapter 6, Laws of 2017 3rd sp. sess., and complies with administrative acts, relevant statutes, rules, and policies pertaining to early learning, juvenile rehabilitation, juvenile justice, and children and family services.

(10)(a) The oversight board for children, youth, and families shall consist of two senators and two representatives from the legislature with one member from each major caucus, one nonvoting representative from the governor's office, one subject matter expert in early learning, one subject matter expert in child welfare, one subject matter expert in juvenile rehabilitation and justice, one subject matter expert in reducing disparities in child outcomes by family income and race and ethnicity, one tribal representative from the west of the crest of the Cascade mountains, one tribal representative from the east of the crest of the Cascade mountains, one current or former foster parent representative, one representative of an organization that advocates for the best interest of the child, one parent stakeholder group representative, one law enforcement representative, one child welfare caseworker representative, one early childhood learning program implementation practitioner, and one judicial representative presiding over child welfare court proceedings or other children's matters.

(b) The senate members of the board shall be appointed by the leaders of the two major caucuses of the senate. The house of representatives members of the board shall be appointed by the leaders of the two major caucuses of the house of representatives. Members shall be appointed before the close of each regular session of the legislature during an odd-numbered year.

(c) The remaining board members shall be nominated by the governor, subject to the approval of the appointed legislators by majority vote, and serve four-year terms.

(11) The oversight board for children, youth, and families has the following powers, which may be exercised by majority vote of the board:

(a) To receive reports of the family and children's ombuds;

(b) To obtain access to all relevant records in the possession of the family and children's ombuds, except as prohibited by law;

(c) To select its officers and adoption of rules for orderly procedure;

(d) To request investigations by the family and children's ombuds of administrative acts;

(e) To request and receive information, outcome data, documents, materials, and records from the department of children, youth, and families relating to children and family welfare, juvenile rehabilitation, juvenile justice, and early learning;

(f) To determine whether the department of children, youth, and families is achieving the performance measures;

(g) If final review is requested by a licensee, to review whether department of children, youth, and families' licensors appropriately and consistently applied agency rules in child care facility licensing compliance agreements as defined in RCW 43.216.395 that do not involve a violation of health and safety standards as defined in RCW 43.216.395 in cases that have already been reviewed by the internal review

process described in RCW 43.216.395 with the authority to overturn, change, or uphold such decisions;

(h) To conduct annual reviews of a sample of department of children, youth, and families contracts for services from a variety of program and service areas to ensure that those contracts are performance-based and to assess the measures included in each contract; and

(i) Upon receipt of records or data from the family and children's ombuds or the department of children, youth, and families, the oversight board for children, youth, and families is subject to the same confidentiality restrictions as the family and children's ombuds is under RCW 43.06A.050. The provisions of RCW 43.06A.060 also apply to the oversight board for children, youth, and families.

(12) The oversight board for children, youth, and families has general oversight over the performance and policies of the department and shall provide advice and input to the department and the governor.

(13) The oversight board for children, youth, and families must no less than twice per year convene stakeholder meetings to allow feedback to the board regarding contracting with the department of children, youth, and families, departmental use of local, state, private, and federal funds, and other matters as relating to carrying out the duties of the department.

(14) The oversight board for children, youth, and families shall review existing surveys of providers, customers, parent groups, and external services to assess whether the department of children, youth, and families is effectively delivering services, and shall conduct additional surveys as needed to assess whether the department is effectively delivering services.

(15) The oversight board for children, youth, and families is subject to the open public meetings act, chapter 42.30 RCW.

(16) Records or information received by the oversight board for children, youth, and families is confidential to the extent permitted by state or federal law. This subsection does not create an exception for records covered by RCW 13.50.100.

(17) The oversight board for children, youth, and families members shall receive no compensation for their service on the board, but shall be reimbursed for travel expenses incurred while attending meetings of the board when authorized by the board in accordance with RCW 43.03.050 and 43.03.060.

(18) The oversight board for children, youth, and families shall select, by majority vote, an executive director who shall be the chief administrative officer of the board and shall be responsible for carrying out the policies adopted by the board. The executive director is exempt from the provisions of the state civil service law, chapter 41.06 RCW, and shall serve at the pleasure of the board established in this section.

(19) The oversight board for children, youth, and families shall maintain a staff not to exceed one full-time equivalent employee. The board-selected executive director of the board is responsible for coordinating staff appointments.

(20) The oversight board for children, youth, and families shall issue an annual report to the governor and legislature by December 1st of each year with an initial report delivered by December 1, 2019. The report must review the

department of children, youth, and families' progress towards meeting stated performance measures and desired performance outcomes, and must also include a review of the department's strategic plan, policies, and rules.

(21) As used in this section, "department" means the department of children, youth, and families, "director" means the director of the office of innovation, alignment, and accountability, and "secretary" means the secretary of the department.

(22) The governor must appoint the secretary of the department within thirty days of July 6, 2017. [2017 3rd sp.s. c 6 § 101.]

Effective date—2017 3rd sp.s. c 6 §§ 101 and 103: "Sections 101 and 103 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [July 6, 2017]." [2017 3rd sp.s. c 6 § 824.]

Office of innovation, alignment, and accountability—2017 3rd sp.s. c 6: "(1) The office of innovation, alignment, and accountability is created within the department of children, youth, and families. The secretary of the department of children, youth, and families is the executive head and appointing authority, and serves at the pleasure of the governor. The secretary has the responsibility to work with the governor's office, the office of financial management, the department of social and health services, the department of early learning, and other impacted agencies to plan for the implementation of the department of children, youth, and families until July 1, 2018. The secretary shall be paid a salary to be fixed by the governor in accordance with RCW 43.03.040. If a vacancy occurs in the position of secretary, the governor shall fill the vacancy. Beginning July 1, 2018, the secretary of the department of children, youth, and families shall appoint a separate director of the office of innovation, alignment, and accountability.

(2) Until July 1, 2018, the primary duties and focus of the office of innovation, alignment, and accountability is on developing and presenting a plan for the establishment of the department of children, youth, and families, including consulting with stakeholders on the development of the plan and the functions in this subsection:

(a) Coordination among the department of early learning and the department of social and health services including technical and policy work groups to aid in the development of the items in (c) of this subsection;

(b) To convene research institutions that include federally recognized tribal representatives and address tribal specific topics, including university-based research institutions, the education data center, the department of social and health services' research and data analysis office, the Washington state institute for public policy, and the Washington state center for court research, to establish priorities for (c) of this subsection;

(c) Developing an integrated portfolio management and administrative structure for the department of children, youth, and families, that includes:

(i) Establishing mechanisms for effectively partnering with community-based agencies, courts, small businesses, the federally recognized tribes in the state of Washington, federally recognized Indian tribes that are signatories to the Centennial Accord, providers of services for children and families, communities of color, and families themselves;

(ii) Establishing outcomes that the department of children, youth, and families and other partner state government agencies will be held accountable to in order to measure the performance of the reforms and the priorities created in this section;

(d) Coordinating, partnering, and building lines of communication with other state agencies including, but not limited to, the department of social and health services, the health care authority, the office of the superintendent of public instruction, the administrative office of the courts, and the department of commerce;

(e) Developing a stakeholder advisory mechanism for the department of children, youth, and families. The office of innovation, alignment, and accountability must review and consult with advisory bodies from the department of early learning, the children's administration of the department of social and health services, and the juvenile rehabilitation division of the department of social and health services in order to devise this mechanism. The office shall ensure that tribes, parents, families, kinship care providers, and foster parents are also included in the development of the stakeholder advisory mechanism. The office must review existing advisory committees and recommend continuation or consolidation. The office will further develop an external review protocol for the department to ensure effective

implementation of the policies and practices established by the office. Both the stakeholder advisory mechanism and external review protocol must include ongoing consultation with tribes, families, and a cross-cultural representation of communities of color. The office must also make recommendations for external oversight on disparity and disproportionality in the department's outcomes, programs, and services;

(f) In coordination with the office of the chief information officer and the department of social and health services and in consultation with experts in the technology field, development of an information technology design and investment plan required to effectively integrate the department of early learning, the children's administration of the department of social and health services, and the juvenile rehabilitation division of the department of social and health services, and to meet other goals of this section. The plan must be provided to the governor and to the legislature for consideration in the 2018 supplemental omnibus appropriations act;

(g) Developing a consultation policy and protocol with the twenty-nine federally recognized tribes in the state of Washington and the federally recognized Indian tribes that are signatories to the Centennial Accord. This consultation policy and protocol shall include comprehensive dialogues. Tribal-state consultation should be a process of decision making that works cooperatively toward reaching a true consensus before a decision is made or action taken. The department shall honor the provisions of the Indian child welfare act, chapter 13.38 RCW. The office of innovation, alignment, and accountability must strive to honor and integrate the existing agreements between these twenty-nine federally recognized tribes and the department of early learning, the children's administration of the department of social and health services, and the juvenile rehabilitation division of the department of social and health services;

(h) Reviewing existing statutes affecting the department of early learning and the department of social and health services and identification of any conflicts or barriers that these statutes present in the execution of the plan in this subsection (2); and

(i) Preparing a report, in coordination with the department of early learning and the department of social and health services on how to incorporate the staff responsible for determining eligibility for the working connections child care program into the department of children, youth, and families. The report must outline a plan for transferring child care eligibility staff, the treatment of shared client data, information technology systems, phone systems, staff training, federal cost allocation, and service delivery from the department of social and health services to the department of children, youth, and families. This report must include recommendations for effectively integrating working connections child care eligibility into the department of children, youth, and families by July 1, 2019.

(3) The reports and plans in this section must be delivered to the governor and the appropriate committees of the legislature by December 1, 2017.

(4) This section expires July 1, 2018." [2017 3rd sp.s. c 6 § 103.]

43.216.020 Department duties. (Effective July 1, 2018.) (1) The department shall implement state early learning policy and coordinate, consolidate, and integrate child care and early learning programs in order to administer programs and funding as efficiently as possible. The department's duties include, but are not limited to, the following:

(a) To support both public and private sectors toward a comprehensive and collaborative system of early learning that serves parents, children, and providers and to encourage best practices in child care and early learning programs;

(b) To make early learning resources available to parents and caregivers;

(c) To carry out activities, including providing clear and easily accessible information about quality and improving the quality of early learning opportunities for young children, in cooperation with the nongovernmental private-public partnership;

(d) To administer child care and early learning programs;

(e) To safeguard and promote the health, safety, and well-being of children receiving child care and early learning assistance, which is paramount over the right of any person to provide such care;

(f) To apply data already collected comparing the following factors and make biennial recommendations to the legislature regarding working connections subsidy and state-funded preschool rates and compensation models that would attract and retain high quality early learning professionals:

(i) State-funded early learning subsidy rates and market rates of licensed early learning homes and centers;

(ii) Compensation of early learning educators in licensed centers and homes and early learning teachers at state higher education institutions;

(iii) State-funded preschool program compensation rates and Washington state head start program compensation rates; and

(iv) State-funded preschool program compensation to compensation in similar comprehensive programs in other states;

(g) To serve as the state lead agency for Part C of the federal individuals with disabilities education act (IDEA) and to develop and adopt rules that establish minimum requirements for the services offered through Part C programs, including allowable allocations and expenditures for transition into Part B of the federal individuals with disabilities education act (IDEA);

(h) To standardize internal financial audits, oversight visits, performance benchmarks, and licensing criteria, so that programs can function in an integrated fashion;

(i) To support the implementation of the nongovernmental private-public partnership and cooperate with that partnership in pursuing its goals including providing data and support necessary for the successful work of the partnership;

(j) To work cooperatively and in coordination with the early learning council;

(k) To collaborate with the K-12 school system at the state and local levels to ensure appropriate connections and smooth transitions between early learning and K-12 programs;

(l) To develop and adopt rules for administration of the program of early learning established in RCW 43.216.555;

(m) To develop a comprehensive birth-to-three plan to provide education and support through a continuum of options including, but not limited to, services such as: Home visiting; quality incentives for infant and toddler child care subsidies; quality improvements for family home and center-based child care programs serving infants and toddlers; professional development; early literacy programs; and informal supports for family, friend, and neighbor caregivers; and

(n) Upon the development of an early learning information system, to make available to parents timely inspection and licensing action information and provider comments through the internet and other means.

(2) When additional funds are appropriated for the specific purpose of home visiting and parent and caregiver support, the department must reserve at least eighty percent for home visiting services to be deposited into the home visiting services account and up to twenty percent of the new funds for other parent or caregiver support.

(3) Home visiting services must include programs that serve families involved in the child welfare system.

(4) The department's programs shall be designed in a way that respects and preserves the ability of parents and legal guardians to direct the education, development, and

upbringing of their children, and that recognizes and honors cultural and linguistic diversity. The department shall include parents and legal guardians in the development of policies and program decisions affecting their children. [2017 3rd sp.s. c 6 § 202; 2016 c 57 § 5; 2013 c 323 § 5. Prior: 2010 c 233 § 1; 2010 c 232 § 2; 2010 c 231 §6; 2007 c 394 § 5; 2006 c 265 § 103. Formerly RCW 43.215.020.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Effective date—2010 c 233: "This act takes effect July 1, 2010." [2010 c 233 § 4.]

Finding—Declaration—Captions not law—2007 c 394: See notes following RCW 43.216.010.

43.216.025 Secretary—Appointment—Salary. (Effective July 1, 2018.) (1) The executive head and appointing authority of the department is the secretary. The secretary shall be appointed by the governor with the consent of the senate, and shall serve at the pleasure of the governor. The secretary shall be paid a salary to be fixed by the governor in accordance with RCW 43.03.040. If a vacancy occurs in the position of secretary while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate when the governor's nomination for the office of secretary shall be presented.

(2) The secretary may employ staff members, who shall be exempt from chapter 41.06 RCW, and any additional staff members as are necessary to administer this chapter and such other duties as may be authorized by law. The employment of such additional staff shall be in accordance with chapter 41.06 RCW, except as otherwise provided. The secretary may delegate any power or duty vested in him or her by chapter 6, Laws of 2017 3rd sp. sess. or other law, including authority to make final decisions and enter final orders in hearings conducted under chapter 34.05 RCW.

(3) The internal affairs of the department are under the control of the secretary in order that the secretary may manage the department in a flexible and intelligent manner as dictated by changing contemporary circumstances. Unless specifically limited by law, the secretary has the complete charge and supervisory powers over the department. The secretary may create the administrative structures in consultation with the office of innovation, alignment, and accountability established in RCW 43.216.035, except as otherwise specified in law, and the secretary may employ personnel as may be necessary in accordance with chapter 41.06 RCW, except as otherwise provided by law. [2017 3rd sp.s. c 6 § 102; 2006 c 265 § 104. Formerly RCW 43.215.030.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: "Sections 102, 104 through 115, 201 through 227, 301 through 337, 401 through 419, 501 through 513, and 801 through 803 and 805 through 822 of this act take effect July 1, 2018." [2017 3rd sp.s. c 6 § 825.]

43.216.030 Secretary's authority. (Effective July 1, 2018.) (1) The secretary or the secretary's designee has the full authority to administer oaths and take testimony, to issue subpoenas requiring the attendance of witnesses before him or her together with all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclo-

sure by those witnesses of all facts known to them relative to the matters under investigation.

(2) Subpoenas issued in adjudicative proceedings are governed by RCW 34.05.588(1).

(3) Subpoenas issued in the conduct of investigations required or authorized by other statutory provisions or necessary in the enforcement of other statutory provisions are governed by RCW 34.05.588(2).

(4) When a judicially approved subpoena is required by law, the secretary or the secretary's designee may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or in the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

- (a) State that an order is sought under this section;
- (b) Adequately specify the documents, records, evidence, or testimony; and
- (c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(5) When an application under subsection (4) of this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. When a judicially approved subpoena is required by law, an order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(6) The secretary or the secretary's designee may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3). [2017 3rd sp.s. c 6 § 106.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

43.216.035 Office of innovation, alignment, and accountability—Duties and focus. (Effective July 1, 2018.) (1) Beginning July 1, 2018, the office of innovation, alignment, and accountability shall have a director, appointed by the secretary, who shall set the agenda and oversee the office, who reports to the secretary. The secretary shall ensure that the leadership and staff of the office do not have responsibility for service delivery but are wholly dedicated to directing and implementing the innovation, alignment, integration, collaboration, systemic reform work, and building external partnerships for which the office is responsible.

(2) The primary duties and focus of the office are on continuous improvement and includes the functions in this subsection:

- (a) To review and recommend implementation of advancements in research;
- (b) To work with other state government agencies and tribal governments to align and measure outcomes across state agencies and state-funded agencies serving children,

youth, and families including, but not limited to, the use of evidence-based and research-based practices and contracting;

(c) To work with other state government agencies, tribal governments, partner agencies, and state-funded organizations on the use of data-driven, research-based interventions that effectively intervene in the lives of at-risk young people and align systems that serve children, youth, and their families;

(d) To develop approaches for integrated real-time data sharing, aligned outcomes, and collective accountability across state government agencies to the public;

(e) To conduct quality assurance and evaluation of programs and services within the department;

(f) To lead partnerships with the community, research and teaching institutions, philanthropic organizations, and nonprofit organizations;

(g) To lead collaboration with courts, tribal courts and tribal attorneys, attorneys, court-appointed special advocates, and guardians ad litem to align and integrate the work of the department with those involved in decision making in child welfare and juvenile justice cases;

(h) To produce, in collaboration with key stakeholders, an annual work plan that includes priorities for ongoing policy, practice, and system reform, tracking, and reporting out on the performance of department reforms;

(i) To appoint members of an external stakeholder committee who value racial and ethnic diversity and that includes representatives from a philanthropic organization, research entity representatives, representatives from the business community, one or more parent representatives, youth representatives, tribal representatives, representatives from communities of color, foster parent representatives, representatives from an organization that advocates for the best interest of the child, and community-based providers, who will advise the office on priorities for practice, policy, and system reform and on effective management policies, development of appropriate organizational culture, external partnerships, knowledge of best practices, and leveraging additional resources to carry out the duties of the department;

(j) To provide a report to the governor and the appropriate committees of the legislature by November 1, 2018, that includes recommendations regarding whether the juvenile rehabilitation division of the department of social and health services should be integrated into the department of children, youth, and families, and if so, what the appropriate timing and process is for integration of the juvenile rehabilitation division into the department of children, youth, and families;

(k) To provide a report to the governor and the appropriate committees of the legislature by November 1, 2018, that includes:

(i) A review of the current process for addressing foster parent complaints and concerns through the department and through the office of the family and children's ombuds established in chapter 43.06A RCW that includes an examination of any deficiencies of the current system; and

(ii) Recommendations for expanding, modifying, and enhancing the current system for addressing individual foster parent complaints to improve child welfare, the experience of foster parents, and the overall functioning of the child welfare system; and

(l) To provide a report to the governor and the appropriate committees of the legislature by November 1, 2018, that includes recommendations regarding whether the office of homeless youth prevention and protection programs in the department of commerce should be integrated into the department, and the process for that integration if recommended. [2017 3rd sp.s. c 6 § 104.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

43.216.040 Family services and programs—Administration. (Effective July 1, 2018.) The secretary shall administer family services and programs to promote the state's policy as provided in RCW 74.14A.025. [2017 3rd sp.s. c 6 § 107.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

43.216.045 Advisory committees or councils—Travel expenses. (Effective July 1, 2018.) The *director may appoint such advisory committees or councils as may be required by any federal legislation as a condition to the receipt of federal funds by the department. The *director may also appoint statewide committees or councils on such subject matters as are or come within the department's responsibilities. The committees or councils shall be constituted as required by federal law or as the *director may determine.

Members of such state advisory committees or councils may be paid their travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2006 c 265 § 106. Formerly RCW 43.215.050.]

***Reviser's note:** The term "director" refers to the director of the department of early learning. The head of the department of children, youth, and families is the "secretary," effective July 1, 2018.

43.216.050 Evaluation and research materials and data on private nonprofit group homes—Availability. (Effective July 1, 2018.) The secretary shall make all of the department's evaluation and research materials and data on private nonprofit group homes available to group home contractors. The department may delete any information from the materials that identifies a specific client or contractor, other than the contractor requesting the materials. [2017 3rd sp.s. c 6 § 108.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

43.216.055 Federal and state cooperation—Rules—Construction. (Effective July 1, 2018.) In furtherance of the policy of the state to cooperate with the federal government in all of the programs under the jurisdiction of the department, such rules as may become necessary to entitle the state to participate in federal funds may be adopted, unless expressly prohibited by law. Any internal reorganization carried out under the terms of this chapter shall meet federal requirements that are a necessary condition to state receipt of federal funds. Any section or provision of law dealing with the department that may be susceptible to more than one construction shall be interpreted in favor of the construction most

likely to comply with federal laws entitling this state to receive federal funds for the various programs of the department. [2006 c 265 § 107. Formerly RCW 43.215.060.]

43.216.060 Policies to support children of incarcerated parents. (Effective July 1, 2018.) (1)(a) The secretary shall review current department policies and assess the adequacy and availability of programs targeted at persons who receive assistance who are the children and families of a person who is incarcerated in a department of corrections facility. Great attention shall be focused on programs and policies affecting foster youth who have a parent who is incarcerated.

(b) The secretary shall adopt policies that support the children of incarcerated parents and meet their needs with the goal of facilitating normal child development, while reducing intergenerational incarceration.

(2) The secretary shall conduct the following activities to assist in implementing the requirements of subsection (1) of this section:

(a) Gather information and data on the recipients of assistance who are the children and families of inmates incarcerated in department of corrections facilities; and

(b) Participate in the children of incarcerated parents advisory committee and report information obtained under this section to the advisory committee. [2017 3rd sp.s. c 6 § 203; 2007 c 384 § 4. Formerly RCW 43.215.065.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Intent—Finding—2007 c 384: See note following RCW 72.09.495.

43.216.065 Private-public partnership—Secretary's duties. (Effective July 1, 2018.) (1) In addition to other duties under this chapter, the secretary shall actively participate in a nongovernmental private-public partnership focused on supporting government's investments in early learning and ensuring that every child in the state is prepared to succeed in school and in life. Except for licensing as required by Washington state law and to the extent permitted by federal law, the secretary shall grant waivers from the rules of state agencies for the operation of early learning programs requested by the nongovernmental private-public partnership to allow for flexibility to pursue market-based approaches to achieving the best outcomes for children and families.

(2) In addition to other powers granted to the secretary, the secretary may:

(a) Enter into contracts on behalf of the department to carry out the purposes of this chapter;

(b) Accept gifts, grants, or other funds for the purposes of this chapter; and

(c) Adopt, in accordance with chapter 34.05 RCW, rules necessary to implement this chapter, including rules governing child day care and early learning programs under this chapter. This section does not expand the rule-making authority of the *director beyond that necessary to implement and administer programs and services existing July 1, 2006, as transferred to the department of early learning under section 501, chapter 265, Laws of 2006. The rule-making authority does not include any authority to set mandatory curriculum or establish what must be taught in child day care

centers or by family day care providers. [2017 3rd sp.s. c 6 § 204; 2006 c 265 § 108. Formerly RCW 43.215.070.]

***Reviser's note:** In 2006, "director" referred to the director of the department of early learning.

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

43.216.070 Reports to the governor and legislature. (Effective July 1, 2018.) Two years after the implementation of the department's early learning program, and every two years thereafter by July 1st, the department shall submit to the governor and the legislature a report measuring the effectiveness of its programs in improving early childhood education. The first report shall include program objectives and identified valid performance measures for evaluating progress toward achieving the objectives, as well as a plan for commissioning a longitudinal study comparing the kindergarten readiness of children participating in the department's programs with the readiness of other children, using nationally accepted testing and assessment methods. Such comparison shall include, but not be limited to, achievement as children of both groups progress through the K-12 system and identify year-to-year changes in achievement, if any, in later years of elementary, middle school, and high school education. [2006 c 265 § 109. Formerly RCW 43.215.080.]

43.216.075 Early learning advisory council—Policy development and implementation—Early achievers review subcommittee. (Effective July 1, 2018.) (1) The early learning advisory council is established to advise the department on statewide early learning issues that contribute to the ongoing efforts of building a comprehensive system of quality early learning programs and services for Washington's young children and families.

(2) The council shall work in conjunction with the department to assist in policy development and implementation that assist the department in promoting alignment of private and public sector actions, objectives, and resources, ensuring school readiness.

(3) The council shall include diverse, statewide representation from public, nonprofit, and for-profit entities. Its membership shall include critical partners in service delivery and reflect regional, racial, and cultural diversity to adequately represent the needs of all children and families in the state.

(4) Councilmembers shall serve two-year terms. However, to stagger the terms of the council, the initial appointments for twelve of the members shall be for one year. Once the initial one-year to two-year terms expire, all subsequent terms shall be for two years, with the terms expiring on June 30th of the applicable year. The terms shall be staggered in such a way that, where possible, the terms of members representing a specific group do not expire simultaneously.

(5) The council shall consist of members essential to coordinating services statewide prenatal through age five, as follows:

(a) In addition to being staffed and supported by the department, the governor shall appoint one representative from each of the following: The department of health, the student achievement council, and the state board for community and technical colleges;

(b) One representative from the office of the superintendent of public instruction, to be appointed by the superintendent of public instruction;

(c) The governor shall appoint leaders in early childhood education to represent critical service delivery and support sectors, with at least one individual representing each of the following:

(i) The head start state collaboration office director or the director's designee;

(ii) A representative of a head start, early head start, or migrant/seasonal head start program;

(iii) A representative of a local education agency;

(iv) A representative of the state agency responsible for programs under section 619 or part C of the federal individuals with disabilities education act;

(v) A representative of the early childhood education and assistance program;

(vi) A representative of licensed family day care providers;

(vii) A representative of child day care centers; and

(viii) A representative from the home visiting advisory committee established in *RCW 43.215.130;

(d) Two members of the house of representatives, one from each caucus, to be appointed by the speaker of the house of representatives and two members of the senate, one from each caucus, to be appointed by the majority leader in the senate and the minority leader in the senate;

(e) Two parents, one of whom serves on the department's parent advisory group, to be appointed by the governor;

(f) One representative of the private-public partnership created in *RCW 43.215.070, to be appointed by the partnership board;

(g) One representative from the developmental disabilities community;

(h) Two representatives from early learning regional coalitions;

(i) Representatives of underserved communities who have a special expertise or interest in high quality early learning, one to be appointed by each of the following commissions:

(i) The Washington state commission on Asian Pacific American affairs;

(ii) The Washington state commission on African-American affairs; and

(iii) The Washington state commission on Hispanic affairs;

(j) Two representatives designated by sovereign tribal governments, one of whom must be a representative of a tribal early childhood education assistance program or head start program;

(k) One representative from the Washington federation of independent schools;

(l) One representative from the Washington library association; and

(m) One representative from a statewide advocacy coalition of organizations that focuses on early learning.

(6) The council shall be cochaired by two members, to be elected by the council for two-year terms and not more than one cochair may represent a state agency.

(7) The council shall appoint two members and stakeholders with expertise in early learning to sit on the technical

working group created in section 2, chapter 234, Laws of 2010.

(8) Each member of the board shall be compensated in accordance with RCW 43.03.240 and reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060.

(9)(a) The council shall convene an early achievers review subcommittee to provide feedback and guidance on strategies to improve the quality of instruction and environment for early learning and provide input and recommendations on the implementation and refinement of the early achievers program. The review conducted by the subcommittee shall be a part of the annual progress report required in *RCW 43.215.102. At a minimum the review shall address the following:

(i) Adequacy of data collection procedures;

(ii) Coaching and technical assistance standards;

(iii) Progress in reducing barriers to participation for low-income providers and providers from diverse cultural backgrounds, including a review of the early achievers program's rating tools, quality standard areas, and components, and how they are applied;

(iv) Strategies in response to data on the effectiveness of early achievers program standards in relation to providers and children from diverse cultural backgrounds;

(v) Status of the life circumstance exemption protocols; and

(vi) Analysis of early achievers program data trends.

(b) The subcommittee must include consideration of cultural linguistic responsiveness when analyzing the areas for review required by (a) of this subsection.

(c) The subcommittee shall include representatives from child care centers, family child care, the early childhood education and assistance program, contractors for early achievers program technical assistance and coaching, tribal governments, the organization responsible for conducting early achievers program ratings, and parents of children participating in early learning programs, including working connections child care and early childhood education and assistance programs. The subcommittee shall include representatives from diverse cultural and linguistic backgrounds.

(10) The department shall provide staff support to the council. [2017 c 171 § 1; 2015 3rd sp.s. c 7 § 16; 2012 c 229 § 589; 2011 c 177 § 2. Prior: 2010 c 234 § 3; 2010 c 12 § 1; 2007 c 394 § 3. Formerly RCW 43.215.090.]

***Reviser's note:** RCW 43.215.130, 43.215.070, and 43.215.102 were recodified as RCW 43.216.130, 43.216.065, and 43.216.089, respectively, pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Finding—Purpose—2011 c 177: "The legislature finds that to fully comply with requirements in section 642B of the federal head start act, 42 U.S.C. Sec. 9837b, regarding state advisory council membership, Washington must amend existing law to reflect necessary changes in early learning advisory council membership in accordance with the federal requirement.

Accordingly, the purpose of this act is to specify four of the governor's appointees as permanent members on the early learning advisory council to comply with state advisory council requirements as follows: The head start state collaboration office director or a designee; a representative of a head start, early head start, migrant/seasonal head start, or tribal head start pro-

gram; a representative of a local education agency; and a representative of the state agency responsible for programs under section 619 or part C of the federal individuals with disabilities education act. This act also revises the categories of groups from which the governor may appoint additional representatives as members of the council." [2011 c 177 § 1.]

Intent—2010 c 234: "The department of early learning, the superintendent of public instruction, and thrive by five's joint early learning recommendations to the governor, and the quality education council's January 2010 recommendations to the legislature both suggested that a voluntary program of early learning should be included within the overall program of basic education. The legislature intends to examine these recommendations and Attorney General Opinion Number 8 (2009) through the development of a working group to identify and recommend a comprehensive plan." [2010 c 234 § 1.]

Finding—Declaration—Captions not law—2007 c 394: See notes following RCW 43.216.010.

43.216.080 Integration with other entities. (Effective July 1, 2018.) (1) The foundation of quality in the early care and education system in Washington is the quality rating and improvement system entitled the early achievers program. In an effort to build on the existing quality framework, enhance access to quality care for children, and strengthen the entire early care and education systems in the state, it is important to integrate the efforts of state and local governments, school districts, institutions of higher education as defined in RCW 28B.10.016, and nonprofit organizations.

(2) Local governments, school districts, institutions of higher education as defined in RCW 28B.10.016, and nonprofit organizations are encouraged to collaborate with the department when establishing and strengthening early learning programs for residents.

(3) Local governments, school districts, institutions of higher education as defined in RCW 28B.10.016, and nonprofit organizations may contribute funds to the department for the following purposes:

(a) Initial investments to build capacity and quality in local early care and education programming;

(b) Reductions in copayments charged to parents or caregivers;

(c) To expand access and eligibility in the early childhood education and assistance program.

(4) Funds contributed to the department by local governments, school districts, institutions of higher education as defined in RCW 28B.10.016, and nonprofit organizations must be deposited in the early start account established in *RCW 43.215.195.

(5) Children enrolled in the early childhood education and assistance program with funds contributed in accordance with subsection (3)(c) of this section are not considered to be eligible children as defined in *RCW 43.215.405 and are not considered to be part of the state-funded entitlement required in *RCW 43.215.456. [2017 c 178 § 2; 2015 3rd sp.s. c 7 § 15. Formerly RCW 43.215.099.]

***Reviser's note:** RCW 43.215.195, 43.215.405, and 43.215.456 were recodified as RCW 43.216.165, 43.216.505, and 43.216.556, respectively, pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Intent—2017 c 178: "The legislature recognizes that local governments, school districts, institutions of higher education as defined in RCW 28B.10.016, and nonprofit organizations play an important role in strengthening the early care and education systems in the state. The legislature acknowledges that these entities may face barriers to investing in early care and education programs. The legislature intends to create a local pathway to high quality early learning to help these entities understand how they can use additional local and private funds with existing funds to expand access for

existing programs. The legislature intends for this local pathway to reduce barriers and increase efficiency to provide more high quality early learning opportunities." [2017 c 178 § 1.]

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

43.216.085 Early achievers program—Quality rating and improvement system. (Effective July 1, 2018.) (1) The department, in collaboration with tribal governments and community and statewide partners, shall implement a quality rating and improvement system, called the early achievers program. The early achievers program provides a foundation of quality for the early care and education system. The early achievers program is applicable to licensed or certified child care centers and homes and early learning programs such as working connections child care and early childhood education and assistance programs.

(2) The objectives of the early achievers program are to:

(a) Improve short-term and long-term educational outcomes for children as measured by assessments including, but not limited to, the Washington kindergarten inventory of developing skills in RCW 28A.655.080;

(b) Give parents clear and easily accessible information about the quality of child care and early education programs;

(c) Support improvement in early learning and child care programs throughout the state;

(d) Increase the readiness of children for school;

(e) Close the disparities in access to quality care;

(f) Provide professional development and coaching opportunities to early child care and education providers; and

(g) Establish a common set of expectations and standards that define, measure, and improve the quality of early learning and child care settings.

(3)(a) Licensed or certified child care centers and homes serving nonschool-age children and receiving state subsidy payments must participate in the early achievers program by the required deadlines established in RCW 43.216.135.

(b) Approved early childhood education and assistance program providers receiving state-funded support must participate in the early achievers program by the required deadlines established in RCW 43.216.515.

(c) Participation in the early achievers program is voluntary for:

(i) Licensed or certified child care centers and homes not receiving state subsidy payments; and

(ii) Early learning programs not receiving state funds.

(d) School-age child care providers are exempt from participating in the early achievers program. By July 1, 2017, the department and the office of the superintendent of public instruction shall jointly design a plan to incorporate school-age child care providers into the early achievers program or other appropriate quality improvement system. To test implementation of the early achievers system for school-age child care providers the department and the office of the superintendent of public instruction shall implement a pilot program.

(4) There are five levels in the early achievers program. Participants are expected to actively engage and continually advance within the program.

(5) The department has the authority to determine the rating cycle for the early achievers program. The department shall streamline and eliminate duplication between early

achievers standards and state child care rules in order to reduce costs associated with the early achievers rating cycle and child care licensing.

(a) Early achievers program participants may request to be rated at any time after the completion of all level 2 activities.

(b) The department shall provide an early achievers program participant an update on the participant's progress toward completing level 2 activities after the participant has been enrolled in the early achievers program for fifteen months.

(c) The first rating is free for early achievers program participants.

(d) Each subsequent rating within the established rating cycle is free for early achievers program participants.

(6)(a) Early achievers program participants may request to be rerated outside the established rating cycle.

(b) The department may charge a fee for optional rerating requests made by program participants that are outside the established rating cycle.

(c) Fees charged are based on, but may not exceed, the cost to the department for activities associated with the early achievers program.

(7)(a) The department must create a single source of information for parents and caregivers to access details on a provider's early achievers program rating level, licensing history, and other indicators of quality and safety that will help parents and caregivers make informed choices. The licensing history that the department must provide for parents and caregivers pursuant to this subsection shall only include license suspension, surrender, revocation, denial, stayed suspension, or reinstatement. No unfounded child abuse or neglect reports may be provided to parents and caregivers pursuant to this subsection.

(b) The department shall publish to the department's web site, or offer a link on its web site to, the following information:

(i) By November 1, 2015, early achievers program rating levels 1 through 5 for all child care programs that receive state subsidy, early childhood education and assistance programs, and federal head start programs in Washington; and

(ii) New early achievers program ratings within thirty days after a program becomes licensed or certified, or receives a rating.

(c) The early achievers program rating levels shall be published in a manner that is easily accessible to parents and caregivers and takes into account the linguistic needs of parents and caregivers.

(d) The department must publish early achievers program rating levels for child care programs that do not receive state subsidy but have voluntarily joined the early achievers program.

(e) Early achievers program participants who have published rating levels on the department's web site or on a link on the department's web site may include a brief description of their program, contingent upon the review and approval by the department, as determined by established marketing standards.

(8)(a) The department shall create a professional development pathway for early achievers program participants to obtain a high school diploma or equivalency or higher educa-

tion credential in early childhood education, early childhood studies, child development, or an academic field related to early care and education.

(b) The professional development pathway must include opportunities for scholarships and grants to assist early achievers program participants with the costs associated with obtaining an educational degree.

(c) The department shall address cultural and linguistic diversity when developing the professional development pathway.

(9) The early achievers quality improvement awards shall be reserved for participants offering programs to an enrollment population consisting of at least five percent of children receiving a state subsidy.

(10) In collaboration with tribal governments, community and statewide partners, and the early achievers review subcommittee created in RCW 43.216.075, the department shall develop a protocol for granting early achievers program participants an extension in meeting rating level requirement timelines outlined for the working connections child care program and the early childhood education and assistance program.

(a) The department may grant extensions only under exceptional circumstances, such as when early achievers program participants experience an unexpected life circumstance.

(b) Extensions shall not exceed six months, and early achievers program participants are only eligible for one extension in meeting rating level requirement timelines.

(c) Extensions may only be granted to early achievers program participants who have demonstrated engagement in the early achievers program.

(11)(a) The department shall accept national accreditation that meets the requirements of this subsection (11) as a qualification for the early achievers program ratings.

(b) Each national accreditation agency will be allowed to submit its most current standards of accreditation to establish potential credit earned in the early achievers program. The department shall grant credit to accreditation bodies that can demonstrate that their standards meet or exceed the current early achievers program standards.

(c) Licensed child care centers and child care home providers must meet national accreditation standards approved by the department for the early achievers program in order to be granted credit for the early achievers program standards. Eligibility for the early achievers program is not subject to bargaining, mediation, or interest arbitration under RCW 41.56.028, consistent with the legislative reservation of rights under RCW 41.56.028(4)(d).

(12) The department shall explore the use of alternative quality assessment tools that meet the culturally specific needs of the federally recognized tribes in the state of Washington.

(13) A child care or early learning program that is operated by a federally recognized tribe and receives state funds shall participate in the early achievers program. The tribe may choose to participate through an interlocal agreement between the tribe and the department. The interlocal agreement must reflect the government-to-government relationship between the state and the tribe, including recognition of

tribal sovereignty. The interlocal agreement must provide that:

(a) Tribal child care facilities and early learning programs may volunteer, but are not required, to be licensed by the department;

(b) Tribal child care facilities and early learning programs are not required to have their early achievers program rating level published to the department's web site or through a link on the department's web site; and

(c) Tribal child care facilities and early learning programs must provide notification to parents or guardians who apply for or have been admitted into their program that early achievers program rating level information is available and provide the parents or guardians with the program's early achievers program rating level upon request.

(14) The department shall consult with the early achievers review subcommittee on all substantial policy changes to the early achievers program.

(15) Nothing in this section changes the department's responsibility to collectively bargain over mandatory subjects or limits the legislature's authority to make programmatic modifications to licensed child care and early learning programs under RCW 41.56.028(4)(d). [2017 3rd sp.s. c 6 § 113; 2015 3rd sp.s. c 7 § 2; 2013 c 323 § 6; 2007 c 394 § 4. Formerly RCW 43.215.100.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Finding—Intent—2015 3rd sp.s. c 7: "(1) The legislature finds that quality early care and education builds the foundation for a child's success in school and in life. The legislature acknowledges that a quality framework is necessary for the early care and education system in Washington. The legislature recognizes that empirical evidence supports the conclusion that high quality programs consistently yield more positive outcomes for children, with the strongest positive impacts on the most vulnerable children. The legislature acknowledges that critical developmental windows exist in early childhood, and low quality child care has damaging effects for children. The legislature further understands that the proper dosage, duration of programming, and stability of care are critical to enhancing program quality and improving child outcomes. The legislature acknowledges that the early care and education system should strive to address the needs of Washington's culturally and linguistically diverse populations. The legislature understands that parental choice and provider diversity are guiding principles for early learning programs.

(2) The legislature intends to prioritize the integration of child care and preschool in an effort to promote full day programming. The legislature further intends to reward quality and create incentives for providers to participate in a quality rating and improvement system that will also provide valuable information to parents regarding the quality of care available in their communities." [2015 3rd sp.s. c 7 § 1.]

Finding—Declaration—Captions not law—2007 c 394: See notes following RCW 43.216.010.

43.216.0851 Early achievers program—Joint select committee. (Effective July 1, 2018, until December 1, 2019.) (1)(a) A joint select committee on the early achievers program is established with members as provided in this subsection.

(i) Chair and ranking minority member of the house of representatives appropriations committee, or his or her designee who must be a member of the house of representatives appropriations committee;

(ii) Chair and ranking minority member of the senate ways and means committee, or his or her designee who must be a member of the senate ways and means committee;

(iii) Chair and ranking minority member of the house of representatives early learning and human services committee, or his or her designee who must be a member of the house of representatives early learning and human services committee; and

(iv) Chair and ranking minority member of the senate early learning and K-12 education committee, or his or her designee who must be a member of the senate early learning and K-12 education committee.

(b) The committee shall choose its chair or cochairs from among its legislative membership. The chair of the house of representatives early learning and human services committee, or his or her designee, and the chair of the senate early learning and K-12 education committee, or his or her designee, shall convene the initial meeting of the committee.

(2) Between July 1, 2018, and December 1, 2018, the early achievers joint select committee shall review the demand and availability of licensed or certified child care family homes and centers, approved early childhood education and assistance programs, head start programs, and family, friend, and neighbor caregivers by geographic region, including rural and low-income neighborhoods. This review shall specifically look at the following:

(a) The geographic distribution of these child care programs by type of program, programs that accept state subsidy, enrollment in the early achievers program, and early achievers rating levels; and

(b) The demand and availability of these child care programs for major ethnic populations.

(3) By December 1, 2018, the early achievers joint select committee shall make recommendations to the legislature on the following:

(a) The sufficiency of funding provided for the early achievers program;

(b) The need for targeted funding for specific geographic regions or major ethnic populations; and

(c) Whether to modify the deadlines established in *RCW 43.215.135 for purposes of the early achievers program mandate established in *RCW 43.215.100.

(4) Staff support for the committee must be provided by the senate committee services and the house of representatives office of program research.

(5) Legislative members of the committee must be reimbursed for travel expenses in accordance with RCW 44.04.120.

(6) The expenses of the committee must be paid jointly by the senate and the house of representatives. Committee expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

(7) The committee shall report its findings and recommendations to the appropriate committees of the legislature by December 1, 2018.

(8) This section expires December 1, 2019. [2015 3rd sp.s. c 7 § 20. Formerly RCW 43.215.1001.]

***Reviser's note:** RCW 43.215.135 and 43.215.100 were recodified as RCW 43.216.140 and 43.216.085, respectively, pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

43.216.087 Early achievers program—Participation of culturally diverse and low-income center and family home child care providers. (Effective July 1, 2018.) (1)(a) The department shall, in collaboration with tribal governments and community and statewide partners, implement a protocol to maximize and encourage participation in the early achievers program for culturally diverse and low-income center and family home child care providers. Amounts appropriated for the encouragement of culturally diverse and low-income center and family home child care provider participation shall be appropriated separately from the other funds appropriated for the department, are the only funds that may be used for the protocol, and may not be used for any other purposes. Funds appropriated for the protocol shall be considered an ongoing program for purposes of future departmental budget requests.

(b) During the first thirty months of implementation of the early achievers program the department shall prioritize the resources authorized in this section to assist providers rating at a level 2 in the early achievers program to help them reach a level 3 rating wherever access to subsidized care is at risk.

(2) The protocol should address barriers to early achievers program participation and include at a minimum the following:

(a) The creation of a substitute pool;

(b) The development of needs-based grants for providers at level 2 in the early achievers program to assist with purchasing curriculum development, instructional materials, supplies, and equipment to improve program quality. Priority for the needs-based grants shall be given to culturally diverse and low-income providers;

(c) The development of materials and assessments in a timely manner, and to the extent feasible, in the provider and family home languages; and

(d) The development of flexibility in technical assistance and coaching structures to provide differentiated types and amounts of support to providers based on individual need and cultural context. [2015 3rd sp.s. c 7 § 5. Formerly RCW 43.215.101.]

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

43.216.089 Early achievers program—Annual progress report—Mitigation plan for areas not achieving required rating levels. (Effective July 1, 2018.) (1) Beginning December 15, 2015, and each December 15th thereafter, the department, in collaboration with the statewide child care resource and referral organization, and the early achievers review subcommittee of the early learning advisory council, shall submit, in compliance with RCW 43.01.036, a progress report to the governor and the legislature regarding providers' progress in the early achievers program. Each progress report must include the following elements:

(a) The number, and relative percentage, of family child care and center providers who have enrolled in the early achievers program and who have:

(i) Completed the level 2 activities;

(ii) Completed rating readiness consultation and are waiting to be rated;

(iii) Achieved the required rating level to remain eligible for state-funded support under the early childhood education and assistance program or a subsidy under the working connections child care program;

(iv) Not achieved the required rating level initially but qualified for and are working through intensive targeted support in preparation for a partial rerate outside the standard rating cycle;

(v) Not achieved the required rating level initially and engaged in remedial activities before successfully achieving the required rating level;

(vi) Not achieved the required rating level after completing remedial activities; or

(vii) Received an extension from the department based on exceptional circumstances pursuant to *RCW 43.215.100;

(b) A review of the services available to providers and children from diverse cultural backgrounds;

(c) An examination of the effectiveness of efforts to increase successful participation by providers serving children and families from diverse cultural and linguistic backgrounds and providers who serve children from low-income households;

(d) A description of the primary obstacles and challenges faced by providers who have not achieved the required rating level to remain eligible to receive:

(i) A subsidy under the working connections child care program; or

(ii) State-funded support under the early childhood education and assistance program;

(e) A summary of the types of exceptional circumstances for which the department has granted an extension pursuant to *RCW 43.215.100;

(f) The average amount of time required for providers to achieve local level milestones within each level of the early achievers program;

(g) To the extent data is available, an analysis of the distribution of early achievers program-rated facilities in relation to child and provider demographics, including but not limited to race and ethnicity, home language, and geographical location;

(h) Recommendations for improving access for children from diverse cultural backgrounds to providers rated at a level 3 or higher in the early achievers program;

(i) Recommendations for improving the early achievers program standards;

(j) An analysis of any impact from quality strengthening efforts on the availability and quality of infant and toddler care;

(k) The number of contracted slots that use both early childhood education and assistance program funding and working connections child care program funding; and

(l) A description of the early childhood education and assistance program implementation to include the following:

(i) Progress on early childhood education and assistance program implementation as required pursuant to *RCW 43.215.415, 43.215.425, and 43.215.455;

(ii) An examination of the regional distribution of new preschool programming by zip code;

(iii) An analysis of the impact of preschool expansion on low-income neighborhoods and communities;

(iv) Recommendations to address any identified barriers to access to quality preschool for children living in low-income neighborhoods;

(v) An analysis of any impact of extended day early care and education opportunities directives;

(vi) An examination of any identified barriers for providers to offer extended day early care and education opportunities;

(vii) An analysis of the demand for full-day programming for early childhood education and assistance program providers required under *RCW 43.215.415; and

(viii) To the extent data is available, an analysis of the cultural diversity of early childhood education and assistance program providers and participants.

(2) The first annual report due under subsection (1) of this section also shall include a description of the early achievers program extension protocol required under *RCW 43.215.100.

(3) The elements required to be reported under subsection (1)(a) of this section must be reported at the county level, and for those counties with a population of five hundred thousand and higher, the data must be reported at the zip code level.

(4) If, based on information in an annual report submitted in 2018 or later under this section, fifteen percent or more of the licensed or contracted providers who are participating in the early achievers program in a county or in a single zip code have not achieved the rating levels under *RCW 43.215.135 and 43.215.415, the department must:

(a) Analyze the reasons providers in the affected counties or zip codes have not attained the required rating levels; and

(b) Develop a plan to mitigate the effect on the children and families served by these providers. The plan must be submitted to the legislature as part of the annual progress report along with any recommendations for legislative action to address the needs of the providers and the children and families they serve. [2015 3rd sp.s. c 7 § 18. Formerly RCW 43.215.102.]

***Reviser's note:** RCW 43.215.100, 43.215.415, 43.215.425, 43.215.455, and 43.215.135 were recodified as RCW 43.216.085, 43.216.515, 43.216.525, 43.216.555, and 43.216.140, respectively, pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

43.216.100 Community information and involvement plan—Informing home-based, tribal, and family early learning providers of early achievers program. (Effective July 1, 2018.) The department, in collaboration with the office of the superintendent of public instruction, shall create a community information and involvement plan to inform home-based, tribal, and family early learning providers of the early achievers program under *RCW 43.215.100. [2016 c 72 § 701. Formerly RCW 43.215.103.]

***Reviser's note:** RCW 43.215.100 were recodified as RCW 43.216.085, pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Finding—Intent—2016 c 72: See note following RCW 28A.600.015.

43.216.105 Native language development and retention—Dual language learning—Rules. (Effective July 1, 2018.) (1) The *department of early learning must work with

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community partners to support outreach and education for parents and families around the benefits of native language development and retention, as well as the benefits of dual language learning. Native language means the language normally used by an individual or, in the case of a child or youth, the language normally used by the parents or family of the child or youth. Dual language learning means learning in two languages, generally English and a target language other than English spoken in the local community, for example Spanish, Somali, Vietnamese, Russian, Arabic, native languages, or indigenous languages where the goal is bilingualism.

(2) Within existing resources, the department must create training and professional development resources on dual language learning, such as supporting English learners, working in culturally and linguistically diverse communities, strategies for family engagement, and cultural responsiveness. The department must design the training modules to be culturally responsive.

(3) Within existing resources, the department must support dual language learning communities for teachers and coaches.

(4) The department may adopt rules to implement this section. [2017 c 236 § 5. Formerly RCW 43.215.104.]

***Reviser's note:** The department of early learning, chapter 43.215 RCW, was abolished and its powers, duties, and functions were transferred to the department of children, youth, and families, chapter 43.216 RCW, by chapter 6, Laws of 2017 3rd sp. sess., effective July 1, 2018.

Findings—Intent—2017 c 236: See note following RCW 28A.630.095.

43.216.110 Core competencies for early care and education professionals and child and youth development professionals—Adoption and implementation—Updating. (Effective July 1, 2018.) By December 31, 2012, the department shall adopt core competencies for early care and education professionals and child and youth development professionals and develop an implementation plan. The department shall incorporate the core competencies into all appropriate professional development opportunities including, but not limited to, the quality rating and improvement system, the early childhood education and assistance program, child care licensing, and the early support for infants and toddlers program. The purpose of the core competencies is to serve as a foundation for what early care and education professionals and child and youth development professionals need to know and do to provide quality care for children. The core competencies must be reviewed and updated every five years. [2012 c 149 § 2. Formerly RCW 43.215.105.]

Findings—2012 c 149: "The legislature finds that adopting statewide core competencies for early care and education professionals and child and youth development professionals is important because the competencies:

(1) Define what early care and education professionals and child and youth development professionals need to know and be able to do to provide quality care and education for children;

(2) Serve as the foundation for decisions and practices carried out by professionals in all early care and education settings and school-age child care settings;

(3) Establish a set of standards for early care and education professionals and child and youth development professionals that support the professionalism for the field;

(4) Are an integral part of a comprehensive professional development system; and

(5) Recognize existing standards met by nationally chartered nonprofit youth development agencies providing facility-based after school services

for school-age children as relevant and sufficient standards." [2012 c 149 § 1.]

43.216.115 Partnership responsibilities—Department's duties—Partnership's duties. (Effective July 1, 2018.) (1) In order to meet its partnership responsibilities, the department shall:

(a) Work collaboratively with the nongovernmental private-public partnership; and

(b) Actively seek public and private money for distribution as grants to the nongovernmental private-public partnership.

(2) In order to meet its partnership responsibilities, the nongovernmental private-public partnership shall:

(a) Work with and complement existing statewide efforts by enhancing parent resources and support, child care, preschool, and other early learning environments;

(b) Accept and expend funds to be used for quality improvement initiatives, including but not limited to parent resources and support, and support the alignment of existing funding streams and coordination of efforts across sectors;

(c) In conjunction with the department, provide leadership to early learning private-public partnerships forming in communities across the state. These local partnerships shall be encouraged to seek local funding and develop strategies to improve coordination and exchange information between the community, early care and education programs, and the K-12 system; and

(d) Assist the statewide movement to high quality early learning and the support of parents as a child's first and best teacher. [2007 c 394 § 6. Formerly RCW 43.215.110.]

Finding—Declaration—Captions not law—2007 c 394: See notes following RCW 43.216.010.

43.216.120 Reduction of barriers for using local or private funds for early learning opportunities. (Effective July 1, 2018.) To the greatest extent possible, the department must reduce barriers and increase efficiency for using local or private funds, or both, to provide more high quality early learning opportunities. [2017 c 178 § 3. Formerly RCW 43.215.112.]

Intent—2017 c 178: See note following RCW 43.216.080.

43.216.125 Parental notification of report alleging sexual misconduct or abuse—Notice of parental rights. (Effective July 1, 2018.) The department and an agency must, at the first opportunity but in all cases within forty-eight hours of receiving a report alleging sexual misconduct or abuse by an agency employee, notify the parents or guardian of a child alleged to be the victim, target, or recipient of the misconduct or abuse. The department and an agency shall provide parents annually with information regarding their rights under the public records act, chapter 42.56 RCW, to request the public records regarding the employee. [2007 c 415 § 8. Formerly RCW 43.215.120.]

43.216.130 Home visiting services account—Purpose—Administration—Funding. (Effective July 1, 2018.) (1)(a) The home visiting services account is created in the state treasury. Revenues to the account shall consist of appropriations by the legislature and all other sources deposited in

the account. All federal funds received by the department for home visiting activities must be deposited into the account.

(b)(i) Expenditures from the account shall be used for state matching funds for the purposes of the program established in this section and federally funded activities for the home visiting program, including administrative expenses.

(ii) The department oversees the account and is the lead state agency for home visiting system development. The nongovernmental private-public partnership supports the home visiting service delivery system and provides support functions to funded programs.

(iii) It is the intent of the legislature that state funds invested in the account be matched by the private-public partnership each fiscal year.

(iv) Amounts used for program administration by the department may not exceed an average of ten percent in any two consecutive fiscal years.

(v) Authorizations for expenditures may be given only after private funds are committed. The nongovernmental private-public partnership must report to the department quarterly to demonstrate investment of private match funds.

(c) Expenditures from the account are subject to appropriation and the allotment provisions of chapter 43.88 RCW.

(2) The department must expend moneys from the account to provide state matching funds for partnership activities to implement home visiting services and administer the infrastructure necessary to develop, support, and evaluate evidence-based, research-based, and promising home visiting programs.

(3) Activities eligible for funding through the account include, but are not limited to:

(a) Home visiting services that achieve one or more of the following: (i) Enhancing child development and well-being by alleviating the effects on child development of poverty and other known risk factors; (ii) reducing the incidence of child abuse and neglect; or (iii) promoting school readiness for young children and their families; and

(b) Development and maintenance of the infrastructure for home visiting programs, including training, quality improvement, and evaluation.

(4) Beginning July 1, 2010, the department shall contract with the nongovernmental private-public partnership designated in *RCW 43.215.070 to support programs funded through the home visiting services account. The department shall monitor performance and provide periodic reports on the uses and outcomes of the home visiting services account.

(5) The department shall, in the administration of the programs:

(a) Fund programs through a competitive bid process or in compliance with the regulations of the funding source; and

(b) Convene an advisory committee of early learning and home visiting experts, including one representative from the department, to advise the partnership regarding research and the distribution of funds from the account to eligible programs. [2017 c 171 § 2; 2013 c 165 § 1; 2010 1st sp.s. c 37 § 933. Formerly RCW 43.215.130.]

***Reviser's note:** RCW 43.215.070 was recodified as RCW 43.216.065 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

43.216.135 Working connections child care program—Subsidy requirements—Tiered reimbursements—Copayments. (Effective July 1, 2018, until December 1, 2018.) (1) The department shall establish and implement policies in the working connections child care program to promote stability and quality of care for children from low-income households. These policies shall focus on supporting school readiness for young learners. Policies for the expenditure of funds constituting the working connections child care program must be consistent with the outcome measures defined in RCW 74.08A.410 and the standards established in this section intended to promote stability, quality, and continuity of early care and education programming.

(2) As recommended by Public Law 113-186, authorizations for the working connections child care subsidy shall be effective for twelve months beginning July 1, 2016, unless an earlier date is provided in the omnibus appropriations act.

(3) Existing child care providers serving nonschool-age children and receiving state subsidy payments must complete the following requirements to be eligible for a state subsidy under this section:

(a) Enroll in the early achievers program by August 1, 2016;

(b) Complete level 2 activities in the early achievers program by August 1, 2017; and

(c) Rate at a level 3 or higher in the early achievers program by December 31, 2019. If a child care provider rates below a level 3 by December 31, 2019, the provider must complete remedial activities with the department, and rate at a level 3 or higher no later than June 30, 2020.

(4) Effective July 1, 2016, a new child care provider serving nonschool-age children and receiving state subsidy payments must complete the following activities to be eligible to receive a state subsidy under this section:

(a) Enroll in the early achievers program within thirty days of receiving the initial state subsidy payment;

(b) Complete level 2 activities in the early achievers program within twelve months of enrollment; and

(c) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. If a child care provider rates below a level 3 within thirty months from enrollment into the early achievers program, the provider must complete remedial activities with the department, and rate at a level 3 or higher within six months of beginning remedial activities.

(5) If a child care provider does not rate at a level 3 or higher following the remedial period, the provider is no longer eligible to receive state subsidy under this section.

(6) If a child care provider serving nonschool-age children and receiving state subsidy payments has successfully completed all level 2 activities and is waiting to be rated by the deadline provided in this section, the provider may continue to receive a state subsidy pending the successful completion of the level 3 rating activity.

(7) The department shall implement tiered reimbursement for early achievers program participants in the working connections child care program rating at level 3, 4, or 5.

(8) The department shall account for a child care copayment collected by the provider from the family for each contracted slot and establish the copayment fee by rule. [2015 3rd sp.s. c 7 § 6; 2013 c 323 § 9. Prior: 2012 c 253 § 5; 2012

c 251 § 1; 2011 1st sp.s. c 42 § 11; 2010 c 273 § 2. Formerly RCW 43.215.135.]

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

Findings—Purpose—2012 c 253: See note following RCW 74.08.580.

Effective date—2012 c 251: "This act takes effect July 1, 2012." [2012 c 251 § 3.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Intent—2010 c 273: "It is the intent of the legislature that this act be implemented within the funding appropriated in the 2009-11 biennial budget. No additional appropriations will be provided for its implementation." [2010 c 273 § 7.]

43.216.135 Working connections child care program—Subsidy requirements—Tiered reimbursements—Copayments—Eligibility. (Effective December 1, 2018.) (1) The department shall establish and implement policies in the working connections child care program to promote stability and quality of care for children from low-income households. These policies shall focus on supporting school readiness for young learners. Policies for the expenditure of funds constituting the working connections child care program must be consistent with the outcome measures defined in RCW 74.08A.410 and the standards established in this section intended to promote stability, quality, and continuity of early care and education programming.

(2) As recommended by Public Law 113-186, authorizations for the working connections child care subsidy shall be effective for twelve months beginning July 1, 2016, unless an earlier date is provided in the omnibus appropriations act.

(3) Existing child care providers serving nonschool-age children and receiving state subsidy payments must complete the following requirements to be eligible for a state subsidy under this section:

(a) Enroll in the early achievers program by August 1, 2016;

(b) Complete level 2 activities in the early achievers program by August 1, 2017; and

(c) Rate at a level 3 or higher in the early achievers program by December 31, 2019. If a child care provider rates below a level 3 by December 31, 2019, the provider must complete remedial activities with the department, and rate at a level 3 or higher no later than June 30, 2020.

(4) Effective July 1, 2016, a new child care provider serving nonschool-age children and receiving state subsidy payments must complete the following activities to be eligible to receive a state subsidy under this section:

(a) Enroll in the early achievers program within thirty days of receiving the initial state subsidy payment;

(b) Complete level 2 activities in the early achievers program within twelve months of enrollment; and

(c) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. If a child care provider rates below a level 3 within thirty months from enrollment into the early achievers program, the provider must complete remedial activities with the department, and rate at a level 3 or higher within six months of beginning remedial activities.

(5) If a child care provider does not rate at a level 3 or higher following the remedial period, the provider is no longer eligible to receive state subsidy under this section.

(6) If a child care provider serving nonschool-age children and receiving state subsidy payments has successfully completed all level 2 activities and is waiting to be rated by the deadline provided in this section, the provider may continue to receive a state subsidy pending the successful completion of the level 3 rating activity.

(7) The department shall implement tiered reimbursement for early achievers program participants in the working connections child care program rating at level 3, 4, or 5.

(8) The department shall account for a child care copayment collected by the provider from the family for each contracted slot and establish the copayment fee by rule.

(9) The department shall establish and implement policies in the working connections child care program to allow eligibility for families with children who:

(a) In the last six months have:

(i) Received child protective services as defined and used by chapters 26.44 and 74.13 RCW;

(ii) Received child welfare services as defined and used by chapter 74.13 RCW; or

(iii) Received services through a family assessment response as defined and used by chapter 26.44 RCW;

(b) Have been referred for child care as part of the family's case management as defined by RCW 74.13.020; and

(c) Are residing with a biological parent or guardian.

(10) Children who are eligible for working connections child care pursuant to subsection (9) of this section do not have to keep receiving services through the department of social and health services to maintain twelve-month authorization. The department of social and health services' involvement with the family referred for working connections child care ends when the family's child protective services, child welfare services, or family assessment response case is closed. [2017 3rd sp.s. c 9 § 2; 2015 3rd sp.s. c 7 § 6; 2013 c 323 § 9. Prior: 2012 c 253 § 5; 2012 c 251 § 1; 2011 1st sp.s. c 42 § 11; 2010 c 273 § 2. Formerly RCW 43.215.135.]

Findings—Intent—2017 3rd sp.s. c 9: "The legislature finds that children with the greatest needs benefit significantly from child care programs that promote stability, quality, and continuity of care. The legislature recognizes that empirical evidence supports the conclusion that high quality child care programs consistently yield more positive outcomes for children, with the strongest positive impacts on the most vulnerable children.

Children in the child welfare system are some of the most vulnerable children. The legislature finds that a child who experiences child abuse or neglect is over four times more likely to abuse substances as an adult and forty-three percent of youth in the juvenile justice system were involved in the child welfare system.

The legislature finds that the child care and development block grant act of 2014 allows the *department of early learning to provide working connections child care to children in need of, or receiving, protective services. The legislature further understands that as of July 1, 2016, authorizations for the working connections child care subsidy are effective for twelve months.

The legislature finds that the children's mental health work group, in its December 2016 final report, recommended that state agencies provide at least twelve months of stable child care through the working connections child care program for certain children involved in the child welfare system, regardless of the employment status of their parents or guardians. Many of these child welfare-involved families are addressing chemical dependency issues, which require a significant amount of time to overcome. For these reasons, the legislature intends to allow certain populations of vulnerable children to be eligible for the working connections child care subsidy for a minimum of twelve months." [2017 3rd sp.s. c 9 § 1.]

***Reviser's note:** The department of early learning was abolished and its powers, duties, and functions were transferred to the department of children, youth, and families by 2017 3rd sp.s. c 6 § 802, effective July 1, 2018.

Effective date—2017 3rd sp.s. c 9: "This act takes effect December 1, 2018." [2017 3rd sp.s. c 9 § 3.]

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

Findings—Purpose—2012 c 253: See note following RCW 74.08.580.

Effective date—2012 c 251: "This act takes effect July 1, 2012." [2012 c 251 § 3.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Intent—2010 c 273: "It is the intent of the legislature that this act be implemented within the funding appropriated in the 2009-11 biennial budget. No additional appropriations will be provided for its implementation." [2010 c 273 § 7.]

43.216.135 Working connections child care program—Subsidy requirements—Tiered reimbursements—Copayments—Eligibility. (Effective December 1, 2018.) (1) The department shall establish and implement policies in the working connections child care program to promote stability and quality of care for children from low-income households. These policies shall focus on supporting school readiness for young learners. Policies for the expenditure of funds constituting the working connections child care program must be consistent with the outcome measures defined in RCW 74.08A.410 and the standards established in this section intended to promote stability, quality, and continuity of early care and education programming.

(2) As recommended by Public Law 113-186, authorizations for the working connections child care subsidy shall be effective for twelve months beginning July 1, 2016, unless an earlier date is provided in the omnibus appropriations act.

(3) Existing child care providers serving nonschool-age children and receiving state subsidy payments must complete the following requirements to be eligible for a state subsidy under this section:

(a) Enroll in the early achievers program by August 1, 2016;

(b) Complete level 2 activities in the early achievers program by August 1, 2017; and

(c) Rate at a level 3 or higher in the early achievers program by December 31, 2019. If a child care provider rates below a level 3 by December 31, 2019, the provider must complete remedial activities with the department, and rate at a level 3 or higher no later than June 30, 2020.

(4) Effective July 1, 2016, a new child care provider serving nonschool-age children and receiving state subsidy payments must complete the following activities to be eligible to receive a state subsidy under this section:

(a) Enroll in the early achievers program within thirty days of receiving the initial state subsidy payment;

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(c) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. If a child care provider rates below a level 3 within thirty months from enrollment into the early achievers program, the provider must complete remedial activities with the department, and rate at

a level 3 or higher within six months of beginning remedial activities.

(5) If a child care provider does not rate at a level 3 or higher following the remedial period, the provider is no longer eligible to receive state subsidy under this section.

(6) If a child care provider serving nonschool-age children and receiving state subsidy payments has successfully completed all level 2 activities and is waiting to be rated by the deadline provided in this section, the provider may continue to receive a state subsidy pending the successful completion of the level 3 rating activity.

(7) The department shall implement tiered reimbursement for early achievers program participants in the working connections child care program rating at level 3, 4, or 5.

(8) The department shall account for a child care copayment collected by the provider from the family for each contracted slot and establish the copayment fee by rule.

(9) The department shall establish and implement policies in the working connections child care program to allow eligibility for families with children who:

(a) In the last six months have:

(i) Received child protective services as defined and used by chapters 26.44 and 74.13 RCW;

(ii) Received child welfare services as defined and used by chapter 74.13 RCW; or

(iii) Received services through a family assessment response as defined and used by chapter 26.44 RCW;

(b) Have been referred for child care as part of the family's case management as defined by RCW 74.13.020; and

(c) Are residing with a biological parent or guardian.

(10) Children who are eligible for working connections child care pursuant to subsection (9) of this section do not have to keep receiving services through the department of social and health services to maintain twelve-month authorization. The department of social and health services' involvement with the family referred for working connections child care ends when the family's child protective services, child welfare services, or family assessment response case is closed. [2017 3rd sp.s. c 9 § 2; 2015 3rd sp.s. c 7 § 6; 2013 c 323 § 9. Prior: 2012 c 253 § 5; 2012 c 251 § 1; 2011 1st sp.s. c 42 § 11; 2010 c 273 § 2. Formerly RCW 43.215.135.]

Findings—Intent—2017 3rd sp.s. c 9: "The legislature finds that children with the greatest needs benefit significantly from child care programs that promote stability, quality, and continuity of care. The legislature recognizes that empirical evidence supports the conclusion that high quality child care programs consistently yield more positive outcomes for children, with the strongest positive impacts on the most vulnerable children.

Children in the child welfare system are some of the most vulnerable children. The legislature finds that a child who experiences child abuse or neglect is over four times more likely to abuse substances as an adult and forty-three percent of youth in the juvenile justice system were involved in the child welfare system.

The legislature finds that the child care and development block grant act of 2014 allows the *department of early learning to provide working connections child care to children in need of, or receiving, protective services. The legislature further understands that as of July 1, 2016, authorizations for the working connections child care subsidy are effective for twelve months.

The legislature finds that the children's mental health work group, in its December 2016 final report, recommended that state agencies provide at least twelve months of stable child care through the working connections child care program for certain children involved in the child welfare system, regardless of the employment status of their parents or guardians. Many of these child welfare-involved families are addressing chemical dependency issues, which require a significant amount of time to overcome. For these reasons, the legislature intends to allow certain populations of vulnerable

children to be eligible for the working connections child care subsidy for a minimum of twelve months." [2017 3rd sp.s. c 9 § 1.]

***Reviser's note:** The department of early learning was abolished and its powers, duties, and functions were transferred to the department of children, youth, and families by 2017 3rd sp.s. c 6 § 802, effective July 1, 2018.

Effective date—2017 3rd sp.s. c 9: "This act takes effect December 1, 2018." [2017 3rd sp.s. c 9 § 3.]

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

Findings—Purpose—2012 c 253: See note following RCW 74.08.580.

Effective date—2012 c 251: "This act takes effect July 1, 2012." [2012 c 251 § 3.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Intent—2010 c 273: "It is the intent of the legislature that this act be implemented within the funding appropriated in the 2009-11 biennial budget. No additional appropriations will be provided for its implementation." [2010 c 273 § 7.]

43.216.137 Working connections child care program—Unemployment compensation. (Effective July 1, 2018.) For the working connections child care program, the department shall not count the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1202 when determining a consumer's income eligibility and copayment. [2011 c 4 § 17. Formerly RCW 43.215.1351.]

Effective date—2011 c 4 §§ 1-6 and 16-21: See note following RCW 50.20.1202.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

43.216.139 Working connections child care program—Notification of change in providers. (Effective July 1, 2018.) Beginning July 1, 2016, or earlier if a different date is provided in the omnibus appropriations act, when an applicant or recipient applies for or receives working connections child care benefits, the applicant or recipient is required to notify the department of social and health services, within five days, of any change in providers. [2015 3rd sp.s. c 7 § 7; 2012 c 251 § 2. Formerly RCW 43.215.1352.]

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

Effective date—2012 c 251: See note following RCW 43.216.135.

43.216.141 Working connections child care program—Standards and guidelines—Duties of the department—Duties of the department of social and health services. (Effective July 1, 2018.) (1) The standards and guidelines described in this section are intended for the guidance of the department and the department of social and health services. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party in litigation with the state.

(2) When providing services to parents applying for or receiving working connections child care benefits, the department must provide training to departmental employees on professionalism.

(3) When providing services to parents applying for or receiving working connections child care benefits, the department of social and health services has the following responsibilities:

(a) To return all calls from parents receiving working connections child care benefits within two business days of receiving the call;

(b) To develop a process by which parents receiving working connections child care benefits can submit required forms and information electronically by June 30, 2015;

(c) To notify providers and parents ten days before the loss of working connections child care benefits; and

(d) To provide parents with a document that explains in detail and in easily understood language what services they are eligible for, how they can appeal an adverse decision, and the parents' responsibilities in obtaining and maintaining eligibility for working connections child care. [2013 c 337 § 1. Formerly RCW 43.215.136.]

43.216.143 Working connections child care program—Contracted child care slots and vouchers. (Effective July 1, 2018.) (1) The department may employ a combination of vouchers and contracted slots for the subsidized child care programs in *RCW 43.215.135. Child care vouchers preserve parental choice. Child care contracted slots promote access to continuous quality care for children, provide parents and caregivers stable child care that supports employment, and allow providers to have predictable funding. Any contracted slots the department may create under this section must meet the requirements in subsections (2) through (6) of this section.

(2) Only child care providers who participate in the early achievers program and rate at a level 3, 4, or 5 are eligible to be awarded a contracted slot.

(3)(a) The department is required to use data to calculate a set number of targeted contracted slots. In calculating the number, the department must take into account a balance of family home and center child care programs and the overall geographic distribution of child care programs in the state and the distribution of slots between ages zero and five.

(b) The targeted contracted slots are reserved for programs meeting both of the following conditions:

(i) Programs in low-income neighborhoods; and

(ii) Programs that consist of at least fifty percent of children receiving subsidy pursuant to *RCW 43.215.135.

(c) Until August 1, 2017, the department shall assure an even distribution of contracted slots for children birth to age five.

(4) The department shall award the remaining contracted slots via a competitive process and prioritize child care programs with at least one of the following characteristics:

(a) Programs located in a high-need geographic area;

(b) Programs partnering with elementary schools to offer transitional planning and support to children as they advance to kindergarten;

(c) Programs serving children involved in the child welfare system; or

(d) Programs serving children diagnosed with a special need.

(5) The department shall pay a provider for each contracted slot, unless a contracted slot is not used for thirty days.

(6) The department shall include the number of contracted slots that use both early childhood education and assistance program funding and working connections child

care program funding in the annual report to the legislature required under *RCW 43.215.102. [2015 3rd sp.s. c 7 § 14. Formerly RCW 43.215.137.]

***Reviser's note:** RCW 43.215.135 and 43.215.102 were recodified as RCW 43.216.135 and 43.216.089, respectively, pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

43.216.152 Definitions. (Effective July 1, 2018.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Community-based early learning providers" includes for-profit and nonprofit licensed providers of child care and preschool programs.

(2) "Program" means the program of early learning established in *RCW 43.215.141 for eligible children who are three and four years of age. [2010 c 231 § 2. Formerly RCW 43.215.140.]

***Reviser's note:** RCW 43.215.141 was recodified as RCW 43.215.455 pursuant to 2013 2nd sp.s. c 16 § 5. RCW 43.215.455 was subsequently recodified as RCW 43.216.555 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

43.216.155 Home visitation programs—Findings—Intent. (Effective July 1, 2018.) The legislature finds that:

(1) The years from birth to three are critical in building the social, emotional, and cognitive developmental foundations of a young child. Research into the brain development of young children reveals that children are born learning.

(2) The farther behind children are in their social, emotional, physical, and cognitive development, the more difficult it will be for them to catch up.

(3) A significant number of children age birth to five years are born with two or more of the following risk factors and have a greater chance of failure in school and beyond: Poverty; single or no parent; no parent employed full time or full year; all parents with disability; and mother without a high school degree.

(4) Parents and children involved in home visitation programs exhibit better birth outcomes, enhanced parent and child interactions, more efficient use of health care services, enhanced child development including improved school readiness, and early detection of developmental delays, as well as reduced welfare dependence, higher rates of school completion and job retention, reduction in frequency and severity of maltreatment, and higher rates of school graduation.

The legislature intends to promote the use of voluntary home visitation services to families as an early intervention strategy to alleviate the effect on child development of factors such as poverty, single parenthood, parental unemployment or underemployment, parental disability, or parental lack of a high school diploma, which research shows are risk factors for child abuse and neglect and poor educational outcomes. [2007 c 466 § 1. Formerly RCW 43.215.145, 43.121.170.]

43.216.157 Home visitation programs—Definitions. (Effective July 1, 2018.) The definitions in this section apply throughout this section and RCW *43.215.145, *43.215.147,

and **43.121.185 unless the context clearly requires otherwise.

(1) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population.

(2) "Home visitation" means providing services in the permanent or temporary residence, or in other familiar surroundings, of the family receiving such services.

(3) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices. [2011 1st sp.s. c 32 § 6; 2007 c 466 § 2. Formerly RCW 43.215.146, 43.121.175.]

Reviser's note: *(1) RCW 43.215.145 and 43.215.147 were recodified as RCW 43.216.155 and 43.216.159, respectively, pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

***(2) RCW 43.121.185 was repealed by 2011 1st sp.s. c 32 § 12, effective June 30, 2012.

Transition plan—Report to the legislature—2011 1st sp.s. c 32: See note following RCW 70.305.005.

43.216.159 Home visitation programs—Funding—Home visitation services coordination or consolidation plan. (Effective July 1, 2018.) (1) Within available funds, the department shall fund evidence-based and research-based home visitation programs for improving parenting skills and outcomes for children. Home visitation programs must be voluntary and must address the needs of families to alleviate the effect on child development of factors such as poverty, single parenthood, parental unemployment or underemployment, parental disability, or parental lack of high school diploma, which research shows are risk factors for child abuse and neglect and poor educational outcomes. In order to maximize opportunities to obtain matching funds from private entities, general funds intended to support home visiting funding shall be appropriated to the home visiting services account established in *RCW 43.215.130.

(2) The department shall work with the department of social and health services, the department of health, the private-public partnership created in *RCW 43.215.070, and key partners and stakeholders to develop a plan to coordinate or consolidate home visitation services for children and families to the extent practicable. [2011 1st sp.s. c 32 § 7; 2008 c 152 § 6; 2007 c 466 § 3. Formerly RCW 43.215.147, 43.121.180.]

***Reviser's note:** RCW 43.215.130 and 43.215.070 were recodified as RCW 43.216.135 and 43.216.065, respectively, pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Transition plan—Report to the legislature—2011 1st sp.s. c 32: See note following RCW 70.305.005.

Findings—Intent—2008 c 152: See note following RCW 13.34.136.

43.216.165 Early start account. (Effective July 1, 2018.) (1) The early start account is created in the custody of the state treasurer. Revenues in the account shall consist of appropriations by the legislature and all other sources deposited into the account. Expenditures from the account may be used only for the purposes listed in *RCW 43.215.099. All receipts from local governments, school districts, institutions of higher education as defined in RCW 28B.10.016, and non-profit organizations must be deposited into the account.

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(2) The department oversees the account. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(3) The department shall separately track funds received for each local government, school district, institution of higher education as defined in RCW 28B.10.016, or non-profit organization that deposits funds into the account. Expenditures from these funds may be used only for the purposes listed in *RCW 43.215.099 as identified in writing with the department by the contributing local government, school district, institution of higher education as defined in RCW 28B.10.016, or nonprofit organization. [2017 c 178 § 5; 2015 3rd sp.s. c 7 § 17. Formerly RCW 43.215.195.]

***Reviser's note:** RCW 43.215.099 was recodified as RCW 43.216.080 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Intent—2017 c 178: See note following RCW 43.216.080.

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

43.216.170 Applicants for positions with the department—Investigation and background checks. (Effective July 1, 2018.) (1) The secretary shall investigate the conviction records, pending charges, and disciplinary board final decisions of any current employee or applicant seeking or being considered for any position with the department who will or may have unsupervised access to children. This includes, but is not limited to, positions conducting comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards.

(2) The secretary shall require a fingerprint-based background check through both the Washington state patrol and the federal bureau of investigation as provided in RCW 43.43.837. Unless otherwise authorized by law, the secretary shall use the information solely for the purpose of determining the character, suitability, and competence of the applicant.

(3) Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose.

(4) Any person whose criminal history would otherwise disqualify the person under this section from a position that will or may have unsupervised access to children shall not be disqualified if the department of social and health services reviewed the person's otherwise disqualifying criminal history through the department of social and health services' background assessment review team process conducted in 2002 and determined that such person could remain in a position covered by this section, or if the otherwise disqualifying conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure. [2017 3rd sp.s. c 6 § 801.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

LICENSING

43.216.250 Secretary's licensing duties. (Effective July 1, 2018.) It shall be the secretary's duty with regard to licensing under this chapter:

(1) In consultation and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of child care facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages and other characteristics of the children served, variations in the purposes and services offered or size or structure of the agencies to be licensed, or because of any other factor relevant thereto;

(2)(a) In consultation with the state fire marshal's office, the secretary shall use an interagency process to address health and safety requirements for child care programs that serve school-age children and are operated in buildings that contain public or private schools that safely serve children during times in which school is in session;

(b) Any requirements in (a) of this subsection as they relate to the physical facility, including outdoor playgrounds, do not apply to before-school and after-school programs that serve only school-age children and operate in the same facilities used by public or private schools;

(3) In consultation and with the advice and assistance of parents or guardians, and persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed under this chapter;

(4) In consultation with law enforcement personnel, the secretary shall investigate the conviction record or pending charges of each agency and its staff seeking licensure or relicensure, and other persons having unsupervised access to children in care;

(5) To satisfy the shared background check requirements provided for in RCW 43.216.270 and 43.20A.710, the department of children, youth, and families and the department of social and health services shall share federal fingerprint-based background check results as permitted under the law. The purpose of this provision is to allow both departments to fulfill their joint background check responsibility of checking any individual who may have unsupervised access to vulnerable adults, children, or juveniles. Neither department may share the federal background check results with any other state agency or person;

(6) To issue, revoke, or deny licenses to agencies pursuant to this chapter. Licenses shall specify the category of care that an agency is authorized to render and the ages and number of children to be served;

(7) To prescribe the procedures and the form and contents of reports necessary for the administration of this chapter and to require regular reports from each licensee;

(8) To inspect agencies periodically to determine whether or not there is compliance with this chapter and the requirements adopted under this chapter;

(9) To review requirements adopted under this chapter at least every two years and to adopt appropriate changes after consultation with affected groups for child day care requirements; and

(10) To consult with public and private agencies in order to help them improve their methods and facilities for the care and early learning of children. [2017 3rd sp.s. c 6 § 205; 2015 3rd sp.s. c 7 § 4. Prior: 2011 c 359 § 2; 2011 c 253 § 3; 2007 c 415 § 3; 2006 c 265 § 301. Formerly RCW 43.215.200.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Effective date—2015 3rd sp.s. c 7 § 4: "Section 4 of this act takes effect July 1, 2016." [2015 3rd sp.s. c 7 § 23.]

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

Finding—Intent—2011 c 359: "(1) The legislature finds that some licensed child care centers seeking to operate in public schools incur substantial costs to renovate spaces that are considered safe for children to use for the purpose of education. Consequently, families are forced to seek before or after school child care outside of the school building, resulting in additional transitions for students.

(2) It is the legislature's intent to allow licensed child care centers that serve school-age children to operate in facilities that provide a safe and healthy environment for children to use for the purpose of education. With respect to section 2(2) of this act, the legislature intends that the development of any related child care licensing requirements shall:

- (a) Ensure safe and healthy environments for children;
- (b) Utilize existing rule-making processes and resources;
- (c) Utilize existing requirements as a starting point rather than create an entirely new set of requirements; and
- (d) Give due consideration to the burdens imposed by inconsistent licensing requirements." [2011 c 359 § 1.]

43.216.255 Licensing standards. (Effective July 1, 2018.) (1) No later than November 1, 2016, the department shall implement a single set of licensing standards for child care and the early childhood education and assistance program. The department shall produce the single set of licensing standards within the department's available appropriations. The new licensing standards must:

- (a) Provide minimum health and safety standards for child care and preschool programs;
- (b) Rely on the standards established in the early achievers program to address quality issues in participating early childhood programs;
- (c) Take into account the separate needs of family care providers and child care centers; and
- (d) Promote the continued safety of child care settings.

(2) Private schools that operate early learning programs and do not receive state subsidy payments shall be subject only to the minimum health and safety standards in subsection (1)(a) of this section and the requirements necessary to assure a sufficient early childhood education to meet usual requirements needed for transition into elementary school. The state, and any agency thereof, shall not restrict or dictate any specific educational or other programs for early learning programs operated by private schools except for programs that receive state subsidy payments. [2015 3rd sp.s. c 7 § 3. Formerly RCW 43.215.201.]

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.100.

43.216.260 Minimum requirements for licensure. (Effective July 1, 2018.) Applications for licensure shall require, at a minimum, the following information:

(1) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(2) The character, suitability, and competence of an agency and other persons associated with an agency directly responsible for the care of children;

(3) The number of qualified persons required to render the type of care for which an agency seeks a license;

(4) The health, safety, cleanliness, and general adequacy of the premises to provide for the comfort, care, and well-being of children;

(5) The provision of necessary care and early learning, including food, supervision, and discipline; physical, mental, and social well-being; and educational and recreational opportunities for those served;

(6) The financial ability of an agency to comply with minimum requirements established under this chapter; and

(7) The maintenance of records pertaining to the care of children. [2007 c 415 § 4. Formerly RCW 43.215.205.]

43.216.265 Fire protection—Powers and duties of chief of the Washington state patrol. (Effective July 1, 2018.) The chief of the Washington state patrol, through the director of fire protection, shall have the power and it shall be his or her duty:

(1) In consultation with the *director and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt recognized minimum standard requirements pertaining to each category of agency established pursuant to this chapter necessary to protect all persons residing therein from fire hazards;

(2) To adopt licensing minimum standard requirements to allow children who attend classes in a school building during school hours to remain in the same building to participate in before-school or after-school programs and to allow participation in such before-school and after-school programs by children who attend other schools and are transported to attend such before-school and after-school programs;

(3) To make or cause to be made such inspections and investigations of agencies as he or she deems necessary;

(4) To make a periodic review of requirements under **RCW 43.215.200(5) and to adopt necessary changes after consultation as required in subsection (1) of this section;

(5) To issue to applicants for licenses under this chapter who comply with the requirements, a certificate of compliance, a copy of which shall be presented to the department before a license shall be issued, except that an initial license may be issued as provided in ***RCW 43.215.280. [2013 c 227 § 1; 2006 c 265 § 302. Formerly RCW 43.215.210.]

Reviser's note: *(1) The term "director" refers to the director of the department of early learning. The head of the department of children, youth, and families is the "secretary," effective July 1, 2018.

***(2) RCW 43.215.200 was amended by 2007 c 415 § 3, changing subsection (5) to subsection (6). RCW 43.215.200 was subsequently amended by 2011 c 359 § 2 and by 2011 c 253 § 3, changing subsection (6) to subsection (8). RCW 43.215.200 was recodified as RCW 43.216.250 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

****(3) RCW 43.215.280 was recodified as RCW 43.216.315 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

43.216.270 Character, suitability, and competence to provide child care and early learning services—Fingerprint criminal history record checks—Background check clearance card or certificate—Shared background checks. (Effective July 1, 2018.) (1) In determining whether

an individual is of appropriate character, suitability, and competence to provide child care and early learning services to children, the department may consider the history of past involvement of child protective services or law enforcement agencies with the individual for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, or welfare of a child. No report of child abuse or neglect that has been destroyed or expunged under RCW 26.44.031 may be used for such purposes. No unfounded or inconclusive allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a provider licensed under this chapter.

(2) In order to determine the suitability of individuals newly applying for an agency license, new licensees, their new employees, and other persons who newly have unsupervised access to children in care, shall be fingerprinted.

(a) The fingerprints shall be forwarded to the Washington state patrol and federal bureau of investigation for a criminal history record check.

(b)(i) All individuals applying for first-time agency licenses, all new employees, and other persons who have not been previously qualified by the department to have unsupervised access to children in care must be fingerprinted and obtain a criminal history record check pursuant to this section.

(ii) Persons required to be fingerprinted and obtain a criminal history record check pursuant to this section must pay for the cost of this check as follows: The fee established by the Washington state patrol for the criminal background history check, including the cost of obtaining the fingerprints; and a fee paid to the department for the cost of administering the individual-based/portable background check clearance registry. The fee paid to the department must be deposited into the individual-based/portable background check clearance account established in RCW 43.216.273. The licensee may, but need not, pay these costs on behalf of a prospective employee or reimburse the prospective employee for these costs. The licensee and the prospective employee may share these costs.

(c) The secretary shall use the fingerprint criminal history record check information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children.

(d) Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose.

(e) No later than July 1, 2013, all agency licensees holding licenses prior to July 1, 2012, persons who were employees before July 1, 2012, and persons who have been qualified by the department before July 1, 2012, to have unsupervised access to children in care, must submit a new background application to the department. The department must require persons submitting a new background application pursuant to this subsection (2)(e) to pay a fee to the department for the cost of administering the individual-based/portable background check clearance registry. This fee must be paid into the individual-based/portable background check clearance account established in RCW 43.216.273. The licensee may, but need not, pay these costs on behalf of a prospective

employee or reimburse the prospective employee for these costs. The licensee and the prospective employee may share these costs.

(f) The department shall issue a background check clearance card or certificate to the applicant if after the completion of a background check the department concludes the applicant is qualified for unsupervised access to children in child care. The background check clearance card or certificate is valid for three years from the date of issuance. A valid card or certificate must be accepted by a potential employer as proof that the applicant has successfully completed a background check as required under this chapter.

(g) The original applicant for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care shall submit a new background check application to the department, on a form and by a date as determined by the department.

(h) The applicant and agency shall maintain on-site for inspection a copy of the background check clearance card or certificate.

(i) Individuals who have been issued a background check clearance card or certificate shall report nonconviction and conviction information to the department within twenty-four hours of the event constituting the nonconviction or conviction information.

(j) The department shall investigate and conduct a re-determination of an applicant's or licensee's background clearance if the department receives a complaint or information from individuals, a law enforcement agency, or other federal, state, or local government agency. Subject to the requirements contained in RCW 43.216.325 and 43.216.327 and based on a determination that an individual lacks the appropriate character, suitability, or competence to provide child care or early learning services to children, the department may: (i) Invalidate the background card or certificate; or (ii) suspend, modify, or revoke any license authorized by this chapter.

(3) To satisfy the shared background check requirements of the department of children, youth, and families, the office of the superintendent of public instruction, and the department of social and health services, each department shall share federal fingerprint-based background check results as permitted under the law. The purpose of this provision is to allow these departments to fulfill their joint background check responsibility of checking any individual who may have unsupervised access to vulnerable adults, children, or juveniles. These departments may not share the federal background check results with any other state agency or person.

(4) Individuals who have completed a fingerprint background check as required by the office of the superintendent of public instruction, consistent with RCW 28A.400.303, and have been continuously employed by the same school district or educational service district, can meet the requirements in subsection (2) of this section by providing a true and accurate copy of their Washington state patrol and federal bureau of investigation background check report results to the department or if the school district or the educational service district provides an affidavit to the department that the individual has been authorized to work by the school district or educational service district after completing a record check consistent with RCW 28A.400.303. The department may require that

additional background checks be completed that do not require additional fingerprinting and may charge a fee for these additional background checks. [2017 3rd sp.s. c 33 § 6; 2017 3rd sp.s. c 6 § 206. Prior: 2011 c 295 § 2; 2011 c 253 § 4; 2007 c 415 § 5. Formerly RCW 43.215.215.]

Reviser's note: This section was amended by 2017 3rd sp.s. c 33 § 6 and by 2017 3rd sp.s. c 6 § 206, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

43.216.271 Background check clearance registry—Background application form. (Effective July 1, 2018.)

Subject to appropriation, the department shall maintain an individual-based or portable background check clearance registry. Any individual seeking a child care license or employment in any child care facility licensed or regulated under current law shall submit a background application on a form prescribed by the department in rule. [2017 3rd sp.s. c 6 § 207; 2011 c 295 § 1. Formerly RCW 43.215.216.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

43.216.272 Fee for developing and administering individual-based/portable background check clearance registry. (Effective July 1, 2018.)

All agency licensees shall pay the department a one-time fee established by the department. When establishing the fee, the department must consider the cost of developing and administering the registry, and shall not set a fee which is estimated to generate revenue beyond estimated costs for the development and administration of the registry. Fee revenues must be deposited in the individual-based/portable background check clearance account created in RCW 43.216.273 and may be expended only for the costs of developing and administering the individual-based/portable background check clearance registry created in RCW 43.216.271. [2017 3rd sp.s. c 6 § 208; 2011 c 295 § 4. Formerly RCW 43.215.217.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

43.216.273 Individual-based/portable background check clearance account. (Effective July 1, 2018.)

The individual-based/portable background check clearance account is created in the custody of the state treasurer. All fees collected pursuant to RCW 43.216.270 and 43.216.272 must be deposited in the account. Expenditures from the account may be made only for development and administration, and implementation of the individual-based/portable background check registry established in RCW 43.216.271. Only the secretary or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2017 3rd sp.s. c 6 § 209; 2011 c 295 § 5. Formerly RCW 43.215.218.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

43.216.280 Licensed day care centers—Notice of pesticide use. (Effective July 1, 2018.) Licensed child day care centers shall provide notice of pesticide use to parents or guardians of students and employees pursuant to chapter 17.21 RCW. [2006 c 265 § 303. Formerly RCW 43.215.220.]

43.216.285 Articles of incorporation. (Effective July 1, 2018.) A copy of the articles of incorporation of any agency or amendments to the articles of existing corporation agencies shall be sent by the secretary of state to the department at the time such articles or amendments are filed. [2006 c 265 § 304. Formerly RCW 43.215.230.]

43.216.290 Access to agencies—Records inspection. (Effective July 1, 2018.) All agencies subject to this chapter shall accord the department, the chief of the Washington state patrol, and the director of fire protection, or their designees, the right of entrance and the privilege of access to and inspection of records for the purpose of determining whether or not there is compliance with the provisions of this chapter and the requirements adopted under it. [2006 c 265 § 305. Formerly RCW 43.215.240.]

43.216.295 License required. (Effective July 1, 2018.)
 (1) It is unlawful for any agency to care for children unless the agency is licensed as provided in this chapter.
 (2) A license issued under chapter 74.15 RCW before July 1, 2006, for an agency subject to this chapter after July 1, 2006, is valid until its next renewal, unless otherwise suspended or revoked by the department. [2006 c 265 § 306. Formerly RCW 43.215.250.]

43.216.300 License fees. (Effective July 1, 2018.) (1) The *director shall charge fees to the licensee for obtaining a license. The *director may waive the fees when, in the discretion of the *director, the fees would not be in the best interest of public health and safety, or when the fees would be to the financial disadvantage of the state.
 (2) Fees charged shall be based on, but shall not exceed, the cost to the department for the licensure of the activity or class of activities and may include costs of necessary inspection.

(3) The *director shall establish the fees charged by rule. [2007 c 17 § 1. Formerly RCW 43.215.255.]

***Reviser's note:** The term "director" refers to the director of the department of early learning. The head of the department of children, youth, and families is the "secretary," effective July 1, 2018.

43.216.305 License application—Nonexpiring licenses—Issuance, renewal, duration. (Effective July 1, 2018.) (1) Each agency shall make application for a license or the continuation of a full license to the department on forms prescribed by the department. Upon receipt of such application, the department shall either grant or deny a license or continuation of a full license within ninety days. A license or continuation shall be granted if the agency meets the minimum requirements set forth in this chapter and the departmental requirements consistent with this chapter, except that an initial license may be issued as provided in *RCW 43.215.280. The department shall consider whether an agency is in good standing, as defined in subsection (4)(b)

of this section, before granting a continuation of a full license. Full licenses provided for in this chapter shall continue to remain valid so long as the licensee meets the requirements for a nonexpiring license in subsection (2) of this section. The licensee, however, shall advise the **director of any material change in circumstances which might constitute grounds for reclassification of license as to category. The license issued under this chapter is not transferable and applies only to the licensee and the location stated in the application. For licensed family day care homes having an acceptable history of child care, the license may remain in effect for two weeks after a move.

(2) In order to qualify for a nonexpiring full license, a licensee must meet the following requirements on an annual basis as established from the date of initial licensure:

- (a) Submit the annual licensing fee;
- (b) Submit a declaration to the department indicating the licensee's intent to continue operating a licensed child care program, or the intent to cease operation on a date certain;
- (c) Submit a declaration of compliance with all licensing rules; and
- (d) Submit background check applications on the schedule established by the department.

(3) If a licensee fails to meet the requirements in subsection (2) of this section for continuation of a full license the license expires and the licensee must submit a new application for licensure under this chapter.

(4)(a) Nothing about the nonexpiring license process may interfere with the department's established monitoring practice.

(b) For the purpose of this section, an agency is considered to be in good standing if in the intervening period between monitoring visits the agency does not have any of the following:

- (i) Valid complaints;
- (ii) A history of noncompliance related to those valid complaints or pending from prior monitoring visits; or
- (iii) Other information that when evaluated would result in a finding of noncompliance with this section.

(c) The department shall consider whether an agency is in good standing when determining the most appropriate approach and process for monitoring visits, for the purposes of administrative efficiency while protecting children, consistent with this chapter. If the department determines that an agency is not in good standing, the department may issue a probationary license, as provided in *RCW 43.215.290. [2011 c 297 § 1; 2006 c 265 § 307. Formerly RCW 43.215.260.]

Reviser's note: *(1) RCW 43.215.280 and 43.215.290 were recodified as RCW 43.216.315 and 43.216.320, respectively, pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

***(2) The term "director" refers to the director of the department of early learning. The head of the department of children, youth, and families is the "secretary," effective July 1, 2018.

43.216.310 License renewal. (Effective July 1, 2018.) (1) If a licensee desires to apply for a renewal of its license, a request for a renewal shall be filed ninety days before the expiration date of the license. If the department has failed to act at the time of the expiration date of the license, the license shall continue in effect until such time as the department acts.

(2) License renewal under this section does not apply to nonexpiring licenses described in *RCW 43.215.260. [2011 c 297 § 3; 2006 c 265 § 308. Formerly RCW 43.215.270.]

*Reviser's note: RCW 43.215.260 was recodified as RCW 43.216.305 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

43.216.315 Initial licenses. (Effective July 1, 2018.)

The *director may, at his or her discretion, issue an initial license instead of a full license, to an agency or facility for a period not to exceed six months, renewable for a period not to exceed two years, to allow such agency or facility reasonable time to become eligible for full license. [2006 c 265 § 309. Formerly RCW 43.215.280.]

*Reviser's note: RCW 43.215.130, 43.215.070, and 43.215.102 were recodified as RCW 43.216.135, 43.216.065, and 43.216.089, respectively, pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

43.216.320 Probationary licenses. (Effective July 1, 2018.) (1) The department may issue a probationary license to a licensee who has had an initial, expiring, or other license but is temporarily unable to comply with a rule or has been the subject of multiple complaints or concerns about non-compliance if:

(a) The noncompliance does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue; and

(b) The licensee has a plan approved by the department to correct the area of noncompliance within the probationary period.

(2) Before issuing a probationary license, the department shall, in writing, refer the licensee to the child care resource and referral network or other appropriate resource for technical assistance. The department may issue a probationary license pursuant to subsection (1) of this section if within fifteen working days after the department has sent its referral:

(a) The licensee, in writing, has refused the department's referral for technical assistance; or

(b) The licensee has failed to respond in writing to the department's referral for technical assistance.

(3) If the licensee accepts the department's referral for technical assistance issued under subsection (2) of this section, the department, the licensee, and the technical assistance provider shall meet within thirty days after the licensee's acceptance. The licensee and the department, in consultation with the technical assistance provider, shall develop a plan to correct the areas of noncompliance identified by the department. If, after sixty days, the licensee has not corrected the areas of noncompliance identified in the plan developed in consultation with the technical assistance provider, the department may issue a probationary license pursuant to subsection (1) of this section.

(4) A probationary license may be issued for up to six months, and at the discretion of the department it may be extended for an additional six months. The department shall immediately terminate the probationary license, if at any time the noncompliance for which the probationary license was issued presents an immediate threat to the health or well-being of the children.

(5) The department may, at any time, issue a probationary license for due cause that states the conditions of probation.

(6) An existing license is invalidated when a probationary license is issued.

(7) At the expiration of the probationary license, the department shall reinstate the original license for the remainder of its term, issue a new license, or revoke the original license.

(8) A right to an adjudicative proceeding shall not accrue to the licensee whose license has been placed on probationary status unless the licensee does not agree with the placement on probationary status and the department then suspends, revokes, or modifies the license. [2011 c 297 § 2; 2006 c 265 § 310. Formerly RCW 43.215.290.]

43.216.325 Licenses—Denial, suspension, revocation, modification, nonrenewal—Proceedings—Penalties. (Effective July 1, 2018.)

(1) An agency may be denied a license, or any license issued pursuant to this chapter may be suspended, revoked, modified, or not renewed by the *director upon proof (a) that the agency has failed or refused to comply with the provisions of this chapter or the requirements adopted pursuant to this chapter; or (b) that the conditions required for the issuance of a license under this chapter have ceased to exist with respect to such licenses. *RCW 43.215.305 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(2) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of any license under this chapter, the department's decision shall be upheld if it is supported by a preponderance of the evidence.

(3)(a) The department may assess civil monetary penalties upon proof that an agency has failed or refused to comply with the rules adopted under this chapter or that an agency subject to licensing under this chapter is operating without a license except that civil monetary penalties shall not be levied against a licensed foster home.

(b) Monetary penalties levied against unlicensed agencies that submit an application for licensure within thirty days of notification and subsequently become licensed will be forgiven. These penalties may be assessed in addition to or in lieu of other disciplinary actions. Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day an agency is or was out of compliance.

(c) Civil monetary penalties shall not exceed one hundred fifty dollars per violation for a family day care home and two hundred fifty dollars per violation for child day care centers. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty.

(d) The department shall provide a notification period before a monetary penalty is effective and may forgive the penalty levied if the agency comes into compliance during this period.

(e) The department may suspend, revoke, or not renew a license for failure to pay a civil monetary penalty it has assessed pursuant to this chapter within ten days after such assessment becomes final. **RCW 43.215.307 governs notice of a civil monetary penalty and provides the right to an adjudicative proceeding. The preponderance of evidence standard shall apply in adjudicative proceedings related to assessment of civil monetary penalties.

(4)(a) In addition to or in lieu of an enforcement action being taken, the department may place a child day care center or family day care provider on nonreferral status if the center or provider has failed or refused to comply with this chapter or rules adopted under this chapter or an enforcement action has been taken. The nonreferral status may continue until the department determines that: (i) No enforcement action is appropriate; or (ii) a corrective action plan has been successfully concluded.

(b) Whenever a child day care center or family day care provider is placed on nonreferral status, the department shall provide written notification to the child day care center or family day care provider.

(5) The department shall notify appropriate public and private child care resource and referral agencies of the department's decision to: (a) Take an enforcement action against a child day care center or family day care provider; or (b) place or remove a child day care center or family day care provider on nonreferral status. [2011 c 296 § 1; 2007 c 17 § 2; 2006 c 265 § 311. Formerly RCW 43.215.300.]

Reviser's note: *(1) The term "director" refers to the director of the department of early learning. The head of the department of children, youth, and families is the "secretary," effective July 1, 2018.

***(2) RCW 43.215.305 and 43.215.307 were recodified as RCW 43.216.327 and 43.216.335, respectively, pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Short title—2011 c 296: "This act shall be known and cited as the Colby Thompson act." [2011 c 296 § 4.]

43.216.327 Licenses—Denial, revocation, suspension, or modification—Notice—Effective date of action—Adjudicative proceeding. (Effective July 1, 2018.) (1) The department shall give written notice of the denial of an application for a license to the applicant or his or her agent. The department shall give written notice of revocation, suspension, or modification of a license to the licensee or his or her agent. The notice shall state the reasons for the action. The notice shall be personally served in the manner of service of a summons in a civil action or shall be given in another manner that shows proof of receipt.

(2) Except as otherwise provided in this subsection and in subsection (4) of this section, revocation, suspension, or modification is effective twenty-eight days after the licensee or the agent receives the notice.

(a) The department may make the date the action is effective later than twenty-eight days after receipt. If the department does so, it shall state the effective date in the written notice given the licensee or agent.

(b) The department may make the date the action is effective sooner than twenty-eight days after receipt when necessary to protect the public health, safety, or welfare. When the department does so, it shall state the effective date and the reasons supporting the effective date in the written notice given to the licensee or agent.

(c) When the department has received certification pursuant to chapter 74.20A RCW from the division of child support that the licensee is a person who is not in compliance with a support order, the department shall provide that the suspension is effective immediately upon receipt of the suspension notice by the licensee.

(3) Except for licensees suspended for noncompliance with a support order under chapter 74.20A RCW, a license

applicant or licensee who is aggrieved by a department denial, revocation, suspension, or modification has the right to an adjudicative proceeding. The proceeding is governed by the administrative procedure act, chapter 34.05 RCW. The application must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice, be served on and received by the department within twenty-eight days of the license applicant's or licensee's receiving the adverse notice, and be served in a manner that shows proof of receipt.

(4)(a) If the department gives a licensee twenty-eight or more days' notice of revocation, suspension, or modification and the licensee files an appeal before its effective date, the department shall not implement the adverse action until the final order has been entered. The presiding or reviewing officer may permit the department to implement part or all of the adverse action while the proceedings are pending if the appellant causes an unreasonable delay in the proceeding, if the circumstances change so that implementation is in the public interest, or for other good cause.

(b) If the department gives a licensee less than twenty-eight days' notice of revocation, suspension, or modification and the licensee timely files a sufficient appeal, the department may implement the adverse action on the effective date stated in the notice. The presiding or reviewing officer may order the department to stay implementation of part or all of the adverse action while the proceedings are pending if staying implementation is in the public interest or for other good cause. [2007 c 17 § 3. Formerly RCW 43.215.305.]

43.216.335 Civil fines—Notice—Adjudicative proceeding. (Effective July 1, 2018.) (1) The department shall give written notice to the person against whom it assesses a civil fine. The notice shall state the reasons for the adverse action. The notice shall be personally served in the manner of service of a summons in a civil action or shall be given in another manner that shows proof of receipt.

(2) Except as otherwise provided in subsection (4) of this section, the civil fine is due and payable twenty-eight days after receipt. The department may make the date the fine is due later than twenty-eight days after receipt. When the department does so, it shall state the effective date in the written notice given the person against whom it assesses the fine.

(3) The person against whom the department assesses a civil fine has the right to an adjudicative proceeding. The proceeding is governed by the administrative procedure act, chapter 34.05 RCW. The application must be in writing, state the basis for contesting the fine, include a copy of the adverse notice, be served on and received by the department within twenty-eight days of the person's receiving the notice of civil fine, and be served in a manner that shows proof of receipt.

(4) If the person files a timely and sufficient appeal, the department shall not implement the action until the final order has been served. The presiding or reviewing officer may permit the department to implement part or all of the action while the proceedings are pending if the appellant causes an unreasonable delay in the proceedings or for other good cause. [2007 c 17 § 4. Formerly RCW 43.215.307.]

43.216.340 Licensure pending compliance with state building code, chapter 19.27 RCW—Consultation with

local officials. (Effective July 1, 2018.) (1) Before requiring any alterations to a child care facility due to inconsistencies with requirements in chapter 19.27 RCW, the department shall:

(a) Consult with the city or county enforcement official; and

(b) Receive written verification from the city or county enforcement official that the alteration is required.

(2) The department's consultation with the city or county enforcement official is limited to licensed child care space.

(3) Unless there is imminent danger to children or staff, the department may not modify, suspend, or revoke a child care license or business activities while the department is waiting to:

(a) Consult with the city or county enforcement official under subsection (1)(a) of this section; or

(b) Receive written verification from the city or county enforcement official that the alteration is required under subsection (1)(b) of this section.

(4) For the purposes of this section, "child care facility" means a family day care home, school-age care, and child day care center. [2014 c 9 § 1. Formerly RCW 43.215.308.]

43.216.345 Adjudicative proceedings—Training for administrative law judges. (Effective July 1, 2018.) (1) The office of administrative hearings shall not assign nor allow an administrative law judge to preside over an adjudicative hearing regarding denial, modification, suspension, or revocation of any license to provide child care under this chapter, unless such judge has received training related to state and federal laws and department policies and procedures regarding:

(a) Child abuse, neglect, and maltreatment;

(b) Child protective services investigations and standards;

(c) Licensing activities and standards;

(d) Child development; and

(e) Parenting skills.

(2) The office of administrative hearings shall develop and implement a training program that carries out the requirements of this section. The office of administrative hearings shall consult and coordinate with the department in developing the training program. The department may assist the office of administrative hearings in developing and providing training to administrative law judges. [2006 c 265 § 312. Formerly RCW 43.215.310.]

43.216.350 License or certificate suspension—Non-compliance with support order—Reissuance. (Effective July 1, 2018.) The *director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a **residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the *director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [2006 c 265 § 313. Formerly RCW 43.215.320.]

***Reviser's note:** *(1) The term "director" refers to the director of the department of early learning. The head of the department of children, youth, and families is the "secretary," effective July 1, 2018.

***(2) 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

43.216.355 Actions against agencies. (Effective July 1, 2018.) Notwithstanding the existence or pursuit of any other remedy, the *director may, in the manner provided by law, upon the advice of the attorney general, who shall represent the department in the proceeding, maintain an action in the name of the state for injunction or such other relief as he or she may deem advisable against any agency subject to licensing under the provisions of this chapter or against any such agency not having a license as heretofore provided in this chapter. [2006 c 265 § 314. Formerly RCW 43.215.330.]

***Reviser's note:** The term "director" refers to the director of the department of early learning. The head of the department of children, youth, and families is the "secretary," effective July 1, 2018.

43.216.360 Unlicensed providers—Notification to agency—Penalty—Posting on web site. (Effective July 1, 2018.) When the department suspects that an agency is providing child care services without a license, it shall send notice to that agency within ten days. The notice shall include, but not be limited to, the following information:

(1) That a license is required and the reasons why;

(2) That the agency is suspected of providing child care without a license;

(3) That the agency must immediately stop providing child care until the agency becomes licensed;

(4) That the department can issue a penalty of one hundred fifty dollars per day for each day a family day care home provided care without being licensed and two hundred fifty dollars for each day a child day care center provided care without being licensed;

(5) That if the agency does not initiate the licensing process within thirty days of the date of the notice, the department will post on its web site that the agency is providing child care without a license. [2011 c 296 § 3. Formerly RCW 43.215.335.]

Short title—2011 c 296: See note following RCW 43.216.325.

43.216.365 Operating without a license—Penalty. (Effective July 1, 2018.) Any agency operating without a license shall be guilty of a misdemeanor. This section shall not be enforceable against an agency until sixty days after the effective date of new rules, applicable to such agency, have been adopted under this chapter. [2006 c 265 § 315. Formerly RCW 43.215.340.]

43.216.370 Negotiated rule making. (Effective July 1, 2018.) The *director shall have the power and it shall be the *director's duty to engage in negotiated rule making pursuant to RCW 34.05.310(2)(a) with the exclusive representative of the family child care licensees selected in accordance with **RCW 43.215.355 and with other affected interests before adopting requirements that affect family child care licensees. [2007 c 17 § 15. Formerly RCW 43.215.350.]

***Reviser's note:** *(1) The term "director" refers to the director of the department of early learning. The head of the department of children, youth, and families is the "secretary," effective July 1, 2018.

***(2) RCW 43.215.355 was recodified as RCW 43.216.375 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

43.216.375 Negotiated rule making—Statewide unit of family child care licensees—Antitrust immunity, intent. (Effective July 1, 2018.) (1) Solely for the purposes of negotiated rule making pursuant to RCW 34.05.310(2)(a) and *43.215.350, a statewide unit of all family child care licensees is appropriate. As of June 7, 2006, the exclusive representative of family child care licensees in the statewide unit shall be the representative selected as the majority representative in the election held under the directive of the governor to the secretary of the department of social and health services, dated September 16, 2005. If family child care licensees seek to select a different representative thereafter, the family child care licensees may request that the American arbitration association conduct an election and certify the results of the election.

(2) In enacting this section, the legislature intends to provide state action immunity under federal and state antitrust laws for the joint activities of family child care licensees and their exclusive representative to the extent such activities are authorized by this chapter. [2007 c 17 § 16. Formerly RCW 43.215.355.]

***Reviser's note:** RCW 43.215.350 was recodified as RCW 43.216.370 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

43.216.380 Minimum licensing requirements—Window blind pull cords. (Effective July 1, 2018.) (1) Minimum licensing requirements under this chapter shall include a prohibition on the use of window blinds or other window coverings with pull cords or inner cords capable of forming a loop and posing a risk of strangulation to young children. Window blinds and other coverings that have been manufactured or properly retrofitted in a manner that eliminates the formation of loops posing a risk of strangulation are not prohibited under this section.

(2) When developing and periodically reviewing minimum licensing requirements related to safety of the premises, the *director shall consult and give serious consideration to publications of the United States consumer product safety commission.

(3) The department may provide information as available regarding reduced cost or no-cost options for retrofitting or replacing unsafe window blinds and window coverings. [2007 c 299 § 1. Formerly RCW 43.215.360.]

***Reviser's note:** The term "director" refers to the director of the department of early learning. The head of the department of children, youth, and families is the "secretary," effective July 1, 2018.

Short title—2007 c 299: "This act may be known and cited as the Jaclyn Frank act." [2007 c 299 § 2.]

43.216.385 Reporting—Actions against agency licensees—Agencies notified of licensing requirement—Posting on web site. (Effective July 1, 2018.) For the purposes of reporting actions taken against agency licensees, upon the development of an early learning information system, the following actions shall be posted to the department's web site accessible by the public: Suspension, surrender,

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revocation, denial, stayed suspension, or reinstatement of a license. The department shall also post on the web site those agencies subject to licensing that have not initiated the licensing process within thirty days of the department's notification as required in *RCW 43.215.300. [2011 c 296 § 2; 2007 c 415 § 9. Formerly RCW 43.215.370.]

***Reviser's note:** RCW 43.215.300 was recodified as RCW 43.216.325 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Short title—2011 c 296: See note following RCW 43.216.325.

43.216.390 Reporting resignation or termination of individual working in child care agency. (Effective July 1, 2018.) Upon resignation or termination with or without cause of any individual working in a child care agency, the child care agency shall report to the department within twenty-four hours if it has knowledge of the following with respect to the individual:

(1) Any charge or conviction for a crime listed in WAC 170-06-0120;

(2) Any other charge or conviction for a crime that could be reasonably related to the individual's suitability to provide care for or have unsupervised access to children or care; or

(3) Any negative action as defined in *RCW 43.215.010. [2011 c 295 § 6. Formerly RCW 43.215.371.]

***Reviser's note:** RCW 43.215.100 was recodified as RCW 43.216.010 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

43.216.395 Child care facility licensing compliance agreements—Internal review process—Definitions—Final review—First-time violators. (Effective July 1, 2018.) (1) The department shall develop an internal review process to determine whether department licensors have appropriately and consistently applied agency rules in child care facility licensing compliance agreements that do not involve a violation of health and safety standards. Adverse licensing decisions including license denial, suspension, revocation, modification, or nonrenewal pursuant to RCW 43.216.325 or imposition of civil fines pursuant to RCW 43.216.335 are not subject to the internal review process in this section, but may be appealed using the administrative procedure act, chapter 34.05 RCW.

(2) The definitions in this subsection apply throughout this section.

(a) "Child care facility licensing compliance agreement" means an agreement issued by the department in lieu of the department taking enforcement action against a child care provider that contains: (i) A description of the violation and the rule or law that was violated; (ii) a statement from the licensee regarding the proposed plan to comply with the rule or law; (iii) the date the violation must be corrected; (iv) information regarding other licensing action that may be imposed if compliance does not occur by the required date; and (v) the signature of the licensor and licensee.

(b) "Health and safety standards" means rules or requirements developed by the department to protect the health and safety of children against substantial risk of bodily injury, illness, or death.

(3) The internal review process shall be conducted by the following six individuals:

(a) Three department employees who may include child care licensors; and

(b) Three child care providers selected by the department from names submitted by the oversight board for children, youth, and families established in RCW 43.216.015.

(4) The internal review process established in this section may overturn, change, or uphold a department licensing decision by majority vote. In the event that the six individuals conducting the internal review process are equally divided, the secretary shall make the decision of the internal review process. The internal review process must provide the parties with a written decision of the outcome after completion of the internal review process. A licensee must request a review under the internal review process within ten days of the development of a child care facility licensing compliance agreement and the internal review process must be completed within thirty days after the request from the licensee to initiate the internal review process is received.

(5) A licensee may request a final review by the oversight board for children, youth, and families after completing the internal review process established in this section by giving notice to the department and the oversight board for children, youth, and families within ten days of receiving the written decision produced by the internal review process.

(6) The department shall not develop a child care facility licensing compliance agreement with a child care provider for first-time violations of rules that do not relate to health and safety standards and that can be corrected on the same day that the violation is identified. The department shall develop a procedure for providing a warning and offering technical assistance to providers in response to these first-time violations. [2017 3rd sp.s. c 6 § 114.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

EARLY CHILDHOOD EDUCATION AND ASSISTANCE

43.216.500 Intent. (Effective July 1, 2018.) It is the intent of the legislature to establish an early childhood state education and assistance program. This special assistance program is a voluntary enrichment program to help prepare some children to enter the common school system and shall be offered only as funds are available. This program is not a part of the basic program of education which must be fully funded by the legislature under Article IX, section 1 of the state Constitution. [1994 c 166 § 1; 1985 c 418 § 1. Formerly RCW 43.215.400, 28A.215.100, 28A.34A.010.]

Additional notes found at www.leg.wa.gov

43.216.505 Definitions. (Effective July 1, 2018.) Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.216.500 through 43.216.559, 43.216.900, and 43.216.901.

(1) "Advisory committee" means the advisory committee under RCW 43.216.520.

(2) "Approved programs" means those state-supported education and special assistance programs which are recognized by the department as meeting the minimum program rules adopted by the department to qualify under RCW 43.216.500 through 43.216.550, 43.216.900, and 43.216.901 and are designated as eligible for funding by the department under RCW 43.216.530 and 43.216.540.

(3) "Comprehensive" means an assistance program that focuses on the needs of the child and includes education, health, and family support services.

(4) "Eligible child" means a child not eligible for kindergarten whose family income is at or below one hundred ten percent of the federal poverty level, as published annually by the federal department of health and human services, and includes a child whose family is eligible for public assistance, and who is not a participant in a federal or state program providing comprehensive services; a child eligible for special education due to disability under RCW 28A.155.020; and may include children who are eligible under rules adopted by the department if the number of such children equals not more than ten percent of the total enrollment in the early childhood program. Priority for enrollment shall be given to children from families with the lowest income, children in foster care, or to eligible children from families with multiple needs.

(5) "Family support services" means providing opportunities for parents to:

(a) Actively participate in their child's early childhood program;

(b) Increase their knowledge of child development and parenting skills;

(c) Further their education and training;

(d) Increase their ability to use needed services in the community;

(e) Increase their self-reliance. [2017 3rd sp.s. c 6 § 210; 2014 c 160 § 4; 2014 c 160 § 3; 2013 2nd sp.s. c 16 § 4. Prior: 2010 c 231 § 7; 2006 c 265 § 210; 1999 c 350 § 1; 1994 c 166 § 2; 1990 c 33 § 213; 1988 c 174 § 2; 1985 c 418 § 2. Formerly RCW 43.215.405, 28A.215.110, 28A.34A.020.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Effective date—2014 c 160 § 4: "Section 4 of this act takes effect June 30, 2018." [2014 c 160 § 5.]

Findings—Intent—2013 2nd sp.s. c 16: "The legislature finds that high quality early learning opportunities are an important factor in lifelong success. The legislature is committed to expanding high quality evidence-based early learning opportunities in order to improve educational outcomes. The legislature further finds that moving toward effective and research-based practices are critical in achieving educational and societal outcomes from early learning investments. The legislature intends to continue improvements in early learning through ongoing evaluation, application of emerging research, and enhanced quality assurance. It is the intent of the legislature that additional investments in early learning will be based on current information regarding the most efficient, research-based, and cost-effective investments." [2013 2nd sp.s. c 16 § 1.]

Findings—1994 c 166; 1988 c 174: "The legislature finds that the early childhood education and assistance program provides for the educational, social, health, nutritional, and cultural development of children at risk of failure when they reach school age. The long-term benefits to society in the form of greater educational attainment, employment, and projected lifetime earnings as well as the savings to be realized, from lower crime rates, welfare support, and reduced teenage pregnancy, have been demonstrated through lifelong research of at-risk children and early childhood programs.

The legislature intends to encourage development of community partnerships for children at risk by authorizing a program of voluntary grants and contributions from business and community organizations to increase opportunities for children to participate in early childhood education." [1994 c 166 § 3; 1988 c 174 § 1.]

Additional notes found at www.leg.wa.gov

43.216.510 Admission and funding. (Effective July 1, 2018.) The department shall administer a state-supported

early childhood education and assistance program to assist eligible children with educational, social, health, nutritional, and cultural development to enhance their opportunity for success in the common school system. Eligible children shall be admitted to approved early childhood programs to the extent that the legislature provides funds, and additional children may be admitted to the extent that grants and contributions from community sources provide sufficient funds for a program equivalent to that supported by state funds. Grants and contributions from community sources shall not supplant the funding required for the full statewide implementation of the early learning program in *RCW 43.215.456. [2017 c 178 § 4; 2006 c 265 § 211; 1994 c 166 § 4; 1988 c 174 § 3; 1985 c 418 § 3. Formerly RCW 43.215.410, 28A.215.120, 28A.34A.030.]

***Reviser's note:** RCW 43.215.456 was recodified as RCW 43.216.556 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Intent—2017 c 178: See note following RCW 43.216.080.

Findings—1994 c 166; 1988 c 174: See note following RCW 43.216.505.

Additional notes found at www.leg.wa.gov

43.216.515 Eligible providers—State-funded support—Requirements—Data collection—Pathway to early childhood education and assistance program. (Effective July 1, 2018.) (1) Approved early childhood education and assistance programs shall receive state-funded support through the department. Public or private organizations, including, but not limited to school districts, educational service districts, community and technical colleges, local governments, or nonprofit organizations, are eligible to participate as providers of the state early childhood education and assistance program.

(2) Funds obtained by providers through voluntary grants or contributions from individuals, agencies, corporations, or organizations may be used to expand or enhance preschool programs so long as program standards established by the department are maintained.

(3) Persons applying to conduct the early childhood education and assistance program shall identify targeted groups and the number of children to be served, program components, the qualifications of instructional and special staff, the source and amount of grants or contributions from sources other than state funds, facilities and equipment support, and transportation and personal care arrangements.

(4) Existing early childhood education and assistance program providers must complete the following requirements to be eligible to receive state-funded support under the early childhood education and assistance program:

(a) Enroll in the early achievers program by October 1, 2015;

(b) Rate at a level 4 or 5 in the early achievers program by March 1, 2016. If an early childhood education and assistance program provider rates below a level 4 by March 1, 2016, the provider must complete remedial activities with the department, and rate at a level 4 or 5 within six months of beginning remedial activities.

(5) Effective October 1, 2015, a new early childhood education and assistance program provider must complete the requirements in this subsection (5) to be eligible to receive

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state-funded support under the early childhood education and assistance program:

(a) Enroll in the early achievers program within thirty days of the start date of the early childhood education and assistance program contract;

(b)(i) Except as provided in (b)(ii) of this subsection, rate at a level 4 or 5 in the early achievers program within twelve months of enrollment. If an early childhood education and assistance program provider rates below a level 4 within twelve months of enrollment, the provider must complete remedial activities with the department, and rate at a level 4 or 5 within six months of beginning remedial activities.

(ii) Licensed or certified child care centers and homes that administer an early childhood education and assistance program shall rate at a level 4 or 5 in the early achievers program within eighteen months of the start date of the early childhood education and assistance program contract. If an early childhood education and assistance program provider rates below a level 4 within eighteen months, the provider must complete remedial activities with the department, and rate at a level 4 or 5 within six months of beginning remedial activities.

(6)(a) If an early childhood education and assistance program provider has successfully completed all of the required early achievers program activities and is waiting to be rated by the deadline provided in this section, the provider may continue to participate in the early achievers program as an approved early childhood education and assistance program provider and receive state subsidy pending the successful completion of a level 4 or 5 rating.

(b) To avoid disruption, the department may allow for early childhood education and assistance program providers who have rated below a level 4 after completion of the six-month remedial period to continue to provide services until the current school year is finished.

(7) The department shall collect data periodically to determine the demand for full-day programming for early childhood education and assistance program providers. The department shall analyze this demand by geographic region and shall include the findings in the annual report required under *RCW 43.215.102.

(8) By December 1, 2015, the department shall develop a pathway for licensed or certified child care centers and homes to administer an early childhood education and assistance program. The pathway shall include an accommodation for these providers to rate at a level 4 or 5 in the early achievers program according to the timelines and standards established in subsection (5)(b)(ii) of this section. [2015 3rd sp.s. c 7 § 9; 1994 c 166 § 5; 1988 c 174 § 4; 1985 c 418 § 4. Formerly RCW 43.215.415, 28A.215.130, 28A.34A.040.]

***Reviser's note:** RCW 43.215.102 was recodified as RCW 43.216.089 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

Findings—1994 c 166; 1988 c 174: See note following RCW 43.216.505.

Additional notes found at www.leg.wa.gov

43.216.520 Advisory committee. (Effective July 1, 2018.) The department shall establish an advisory committee composed of interested parents and representatives from the

office of the superintendent of public instruction, early childhood education and development staff preparation programs, the head start programs, school districts, and such other community and business organizations as deemed necessary by the department to assist with the establishment of the preschool program and advise the department on matters regarding the ongoing promotion and operation of the program. [2017 3rd sp.s. c 6 § 211; 2006 c 263 § 413; 1988 c 174 § 5; 1985 c 418 § 5. Formerly RCW 43.215.420, 28A.215.140, 28A.34A.050.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Findings—1994 c 166; 1988 c 174: See note following RCW 43.216.505.

43.216.525 Rules. (Effective July 1, 2018.) (1) The department shall adopt rules under chapter 34.05 RCW for the administration of the early childhood education and assistance program. Approved early childhood education and assistance programs shall conduct needs assessments of their service area and identify any targeted groups of children, to include but not be limited to children of seasonal and migrant farmworkers and native American populations living either on or off reservation. Approved early childhood education and assistance programs shall provide to the department a service delivery plan, to the extent practicable, that addresses these targeted populations.

(2) The department, in developing rules for the early childhood education and assistance program, shall consult with the early learning advisory council, and shall consider such factors as coordination with existing head start and other early childhood programs, the preparation necessary for instructors, qualifications of instructors, adequate space and equipment, and special transportation needs. The rules shall specifically require the early childhood programs to provide for parental involvement in participation with their child's program, in local program policy decisions, in development and revision of service delivery systems, and in parent education and training.

(3) By January 1, 2016, the department shall adopt rules requiring early childhood education and assistance program employees who have access to children to submit to a fingerprint background check. Fingerprint background check procedures for the early childhood education and assistance program shall be the same as the background check procedures in *RCW 43.215.215. [2015 3rd sp.s. c 7 § 8; 1994 c 166 § 6; 1988 c 174 § 6; 1987 c 518 § 101; 1985 c 418 § 6. Formerly RCW 43.215.425, 28A.215.150, 28A.34A.060.]

***Reviser's note:** RCW 43.215.215 was recodified as RCW 43.216.270 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

Findings—1994 c 166; 1988 c 174: See note following RCW 43.216.505.

Intent—1994 c 166; 1987 c 518: "The long-term social, community welfare, and economic interests of the state will be served by an investment in our children. Conclusive studies and experiences show that providing children with developmental experiences and providing parents with effective parental partnership, empowerment, opportunities for involvement with their child's developmental learning, and expanding parenting skills, learning, and

training can greatly improve children's performance in school as well as increase the likelihood of children's success as adults. National studies have also confirmed that special attention to, and educational assistance for, children, their school environment, and their families are the most effective ways in which to meet the state's social and economic goals.

The legislature intends to enhance the readiness to learn of certain children and students by: Providing for an expansion of the state early childhood education and assistance program for children from low-income families and establishing an adult literacy program for certain parents; assisting school districts to establish elementary counseling programs; instituting a program to address learning problems due to drug and alcohol use and abuse; and establishing a program directed at students who leave school before graduation.

The legislature intends further to establish programs that will allow for parental, business, and community involvement in assisting the school systems throughout the state to enhance the ability of children to learn." [1994 c 166 § 7; 1987 c 518 § 1.]

Additional notes found at www.leg.wa.gov

43.216.530 Review of applications. (Effective July 1, 2018.) The department shall review applications from public or private organizations for state funding of early childhood education and assistance programs. The department shall consider local community needs, demonstrated capacity, and the need to support a mixed delivery system of early learning that includes alternative models for delivery including licensed centers and licensed family child care providers when reviewing applications. [2015 3rd sp.s. c 7 § 10; 2013 c 323 § 7; 1994 c 166 § 8; 1988 c 174 § 7; 1985 c 418 § 7. Formerly RCW 43.215.430, 28A.215.160, 28A.34A.070.]

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

Findings—1994 c 166; 1988 c 174: See note following RCW 43.216.505.

Additional notes found at www.leg.wa.gov

43.216.535 Reports. (Effective July 1, 2018.) The department shall annually report to the governor and the legislature on the findings of the longitudinal study undertaken to examine and monitor the effectiveness of early childhood educational and assistance services for eligible children to measure, among other elements, if possible, how the average level of performance of children completing this program compare to the average level of performance of all state students in their grade level, and to the average level of performance of those eligible students who did not have access to this program. The evaluation system shall examine how the percentage of these children needing access to special education or remedial programs compares to the overall percentage of children needing such services and compares to the percentage of eligible students who did not have access to this program needing such services. [1995 c 335 § 501; 1994 c 166 § 9; 1988 c 174 § 8; 1985 c 418 § 8. Formerly RCW 43.215.435, 28A.215.170, 28A.34A.080.]

Findings—1994 c 166; 1988 c 174: See note following RCW 43.216.505.

Additional notes found at www.leg.wa.gov

43.216.540 State support—Priorities—Program funding levels. (Effective July 1, 2018.) For the purposes of *RCW 28A.215.100 through 28A.215.200 and 28A.215.900 through 28A.215.908, the department may award state support under *RCW 28A.215.100 through 28A.215.160 to increase the numbers of eligible children assisted by the fed-

eral or state-supported early childhood programs in this state. Priority shall be given to those geographical areas which include a high percentage of families qualifying under the "eligible child" criteria. The overall program funding level shall be based on an average grant per child consistent with state appropriations made for program costs: PROVIDED, That programs addressing special needs of selected groups or communities shall be recognized in the department's rules. [1994 c 166 § 10; 1990 c 33 § 214; 1987 c 518 § 102; 1985 c 418 § 9. Formerly RCW 43.215.440, 28A.215.180, 28A.34A.090.]

***Reviser's note:** RCW 28A.215.100 through 28A.215.200 and 28A.215.900 through 28A.215.908 were recodified as RCW 43.215.400 through 43.215.450 and 43.215.900 through 43.215.903 pursuant to 2006 c 265 § 601, effective July 1, 2006. RCW 43.215.400 through 43.215.450 and 43.215.900 through 43.215.903 were recodified as RCW 43.216.500 through 43.216.550 and 43.216.900 and 43.216.901 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Intent—1994 c 166; 1987 c 518: See note following RCW 43.216.525.

Additional notes found at www.leg.wa.gov

43.216.545 Reimbursement of advisory committee expenses. (Effective July 1, 2018.) The department from funds appropriated for the administration of the program under chapter 418, Laws of 1985 shall reimburse the expenses of the advisory committee. [1985 c 418 § 10. Formerly RCW 43.215.445, 28A.215.190, 28A.34A.100.]

43.216.550 Authority to solicit gifts, grants, and support. (Effective July 1, 2018.) The department may solicit gifts, grants, conveyances, bequests and devises for the use or benefit of the early childhood state education and assistance program established by *RCW 28A.215.100 through 28A.215.200 and 28A.215.900 through 28A.215.908. The department shall actively solicit support from business and industry and from the federal government for the state early childhood education and assistance program and shall assist local programs in developing partnerships with the community for eligible children. [1994 c 166 § 11; 1990 c 33 § 215; 1988 c 174 § 9; 1985 c 418 § 11. Formerly RCW 43.215.450, 28A.215.200, 28A.34A.110.]

***Reviser's note:** RCW 28A.215.100 through 28A.215.200 and 28A.215.900 through 28A.215.908 were recodified as RCW 43.215.400 through 43.215.450 and 43.215.900 through 43.215.903 pursuant to 2006 c 265 § 601, effective July 1, 2006. RCW 43.215.400 through 43.215.450 and 43.215.900 through 43.215.903 were recodified as RCW 43.216.500 through 43.216.550 and 43.216.900 and 43.216.901 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Findings—1994 c 166; 1988 c 174: See note following RCW 43.216.505.

Additional notes found at www.leg.wa.gov

43.216.555 Early learning program—Voluntary preschool opportunities—Program standards—Prioritizing programs—Rules. (Effective July 1, 2018.) (1) Beginning September 1, 2011, an early learning program to provide voluntary preschool opportunities for children three and four years of age shall be implemented according to the funding and implementation plan in *RCW 43.215.456. The program must offer a comprehensive program of early childhood education and family support, including parental involvement and health information, screening, and referral services, based on family need. Participation in the program is volun-

tary. On a space available basis, the program may allow enrollment of children who are not otherwise eligible by assessing a fee.

(2) The program shall be implemented by utilizing the program standards and eligibility criteria in the early childhood education and assistance program in *RCW 43.215.400 through 43.215.450.

(3)(a) Beginning in the 2015-16 school year, the program implementation in this section shall prioritize early childhood education and assistance programs located in low-income neighborhoods within high-need geographical areas.

(b) Following the priority in (a) of this subsection, preference shall be given to programs meeting at least one of the following characteristics:

(i) Programs offering an extended day program for early care and education;

(ii) Programs offering services to children diagnosed with a special need; or

(iii) Programs offering services to children involved in the child welfare system.

(4) The **director shall adopt rules for the following program components, as appropriate and necessary during the phased implementation of the program, consistent with early achievers program standards established in *RCW 43.215.100:

(a) Minimum program standards;

(b) Approval of program providers; and

(c) Accountability and adherence to performance standards.

(5) The department has administrative responsibility for:

(a) Approving and contracting with providers according to rules developed by the **director under this section;

(b) In partnership with school districts, monitoring program quality and assuring the program is responsive to the needs of eligible children;

(c) Assuring that program providers work cooperatively with school districts to coordinate the transition from preschool to kindergarten so that children and their families are well-prepared and supported; and

(d) Providing technical assistance to contracted providers. [2015 3rd sp.s. c 7 § 11; 2010 c 231 § 3. Formerly RCW 43.215.455, 43.215.141.]

Reviser's note: *(1) RCW 43.215.456, 43.215.400 through 43.215.450, and 43.215.100 were recodified as RCW 43.216.556, 43.216.500 through 43.216.550, and 43.216.085, respectively, pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

** (2) The term "director" refers to the director of the department of early learning. The head of the department of children, youth, and families is the "secretary," effective July 1, 2018.

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

43.216.556 Early learning program—Voluntary preschool opportunities—Funding and statewide implementation. (Effective July 1, 2018.) (1) Funding for the program of early learning established under this chapter must be appropriated to the department. Allocations must be made on the basis of eligible children enrolled with eligible providers.

(2) The program shall be implemented in phases, so that full implementation is achieved in the 2022-23 school year.

(3) For the initial phase of the early learning program in school years 2011-12 and 2012-13, the legislature shall

appropriate funding to the department for implementation of the program in an amount not less than the 2009-2011 enacted budget for the early childhood education and assistance program. The appropriation shall be sufficient to fund an equivalent number of slots as funded in the 2009-2011 enacted budget.

(4) Beginning in the 2013-14 school year, additional funding for the program must be phased in beginning in school districts providing all-day kindergarten programs under RCW 28A.150.315.

(5) Funding shall continue to be phased in each year until full statewide implementation of the early learning program is achieved in the 2022-23 school year, at which time any eligible child shall be entitled to be enrolled in the program.

(6) School districts and approved community-based early learning providers may contract with the department to provide services under the program. The department shall collaborate with school districts, community-based providers, and educational service districts to promote an adequate supply of approved providers. [2017 3rd sp.s. c 22 § 1; 2015 3rd sp.s. c 7 § 12; 2015 c 128 § 4; 2010 c 231 § 4. Formerly RCW 43.215.456, 43.215.142.]

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.215.085.

43.216.556 Early learning program—Voluntary preschool opportunities—Funding and statewide implementation. (Effective July 1, 2018.) (1) Funding for the program of early learning established under this chapter must be appropriated to the department. Allocations must be made on the basis of eligible children enrolled with eligible providers.

(2) The program shall be implemented in phases, so that full implementation is achieved in the 2022-23 school year.

(3) For the initial phase of the early learning program in school years 2011-12 and 2012-13, the legislature shall appropriate funding to the department for implementation of the program in an amount not less than the 2009-2011 enacted budget for the early childhood education and assistance program. The appropriation shall be sufficient to fund an equivalent number of slots as funded in the 2009-2011 enacted budget.

(4) Beginning in the 2013-14 school year, additional funding for the program must be phased in beginning in school districts providing all-day kindergarten programs under RCW 28A.150.315.

(5) Funding shall continue to be phased in each year until full statewide implementation of the early learning program is achieved in the 2022-23 school year, at which time any eligible child shall be entitled to be enrolled in the program.

(6) School districts and approved community-based early learning providers may contract with the department to provide services under the program. The department shall collaborate with school districts, community-based providers, and educational service districts to promote an adequate supply of approved providers. [2017 3rd sp.s. c 22 § 1; 2015 3rd sp.s. c 7 § 12; 2015 c 128 § 4; 2010 c 231 § 4. Formerly RCW 43.215.456, 43.215.142.]

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

43.216.559 Early learning program—Short title—2010 c 231. (Effective July 1, 2018.) Chapter 231, Laws of 2010 may be known as the ready for school act of 2010. [2010 c 231 § 9. Formerly RCW 43.215.457, 43.215.143.]

43.216.565 Findings—Intent—Early start program. (Effective July 1, 2018.) The legislature finds that the first five years of a child's life establish the foundation for educational success. The legislature also finds that children who have high quality early learning opportunities from birth through age five are more likely to succeed throughout their K-12 education and beyond. The legislature further finds that the benefits of high quality early learning experiences are particularly significant for low-income parents and children, and provide an opportunity to narrow the opportunity gap in Washington's K-12 educational system. The legislature understands that early supports for high-risk parents of young children through home visiting services show a high return on investment due to significantly improved chances of better education, health, and life outcomes for children. The legislature further recognizes that, when parents work or go to school, high quality and full-day early learning opportunities should be available and accessible for their children. In order to improve education outcomes, particularly for low-income children, the legislature is committed to expanding high quality early learning opportunities and integrating currently disparate funding streams for all birth-to-five early learning services including, working connections child care and the early childhood education and assistance program, into a single high quality continuum of learning that provides essential services to low-income families and prepares all enrolled children for success in school. The legislature therefore intends to establish the early start program to provide a continuum of high quality and accountable early learning opportunities for Washington's parents and children. [2013 c 323 § 1. Formerly RCW 43.215.460.]

43.216.570 Early intervention services—Findings. (Effective July 1, 2018.) The legislature finds that there is an urgent and substantial need to:

(1) Enhance the development of infants and toddlers with disabilities in the state of Washington in order to minimize developmental delay and maximize individual potential and enhance the capability of families to meet the needs of their infants and toddlers with disabilities and maintain family integrity;

(2) Coordinate and enhance the state's existing early intervention services to ensure a statewide, community-based, coordinated, interagency program of early intervention services for infants and toddlers with disabilities and their families; and

(3) Facilitate the coordination of payment for early intervention services from federal, state, local, and private sources including public and private insurance coverage. [1992 c 198 § 14. Formerly RCW 43.215.470, 70.195.005.]

43.216.572 Early intervention services—Birth-to-three—Interagency coordinating council—Conditions and limitations. (Effective July 1, 2018.) For the purposes of implementing this chapter, the governor shall appoint a state birth-to-three interagency coordinating council and

ensure that state agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families shall coordinate and collaborate in the planning and delivery of such services.

No state or local agency currently providing early intervention services to infants and toddlers with disabilities may use funds appropriated for early intervention services for infants and toddlers with disabilities to supplant funds from other sources.

All state and local agencies shall ensure that the implementation of this chapter will not cause any interruption in existing early intervention services for infants and toddlers with disabilities.

Nothing in this chapter shall be construed to permit the restriction or reduction of eligibility under Title V of the Social Security Act, P.L. 90-248, relating to maternal and child health or Title XIX of the Social Security Act, P.L. 89-97, relating to medicaid for infants and toddlers with disabilities. [2016 c 57 § 1; 1998 c 245 § 125; 1992 c 198 § 15. Formerly RCW 43.215.472, 70.195.010.]

43.216.574 Early intervention services—Birth-to-three—Interagency coordinating council—Coordination with counties and communities. (Effective July 1, 2018.) The state birth-to-three interagency coordinating council shall identify and work with county early childhood interagency coordinating councils to coordinate and enhance existing early intervention services and assist each community to meet the needs of infants and toddlers with disabilities and their families. [2016 c 57 § 2; 1992 c 198 § 17. Formerly RCW 43.215.474, 70.195.020.]

43.216.576 Early intervention services—Interagency agreements. (Effective July 1, 2018.) State agencies providing or paying for early intervention services shall enter into formal interagency agreements with each other and where appropriate, with school districts, counties, and other providers, to define their relationships and financial and service responsibilities. Local agencies or entities, including local school districts, counties, and service providers receiving public money for providing or paying for early intervention services shall enter into formal interagency agreements with each other that define their relationships and financial responsibilities to provide services within each county. In establishing priorities, school districts, counties, and other service providers shall give due regard to the needs of children birth to three years of age and shall ensure that they continue to participate in providing services and collaborate with each other. The interagency agreements shall include procedures for resolving disputes, provisions for establishing maintenance requirements, and all additional components necessary to ensure collaboration and coordination. [1992 c 198 § 16. Formerly RCW 43.215.476, 70.195.030.]

CHILD CARE

43.216.650 Child fatality reviews. (Effective July 1, 2018.) (1) For the purposes of this section, "near fatality" means an act that, as certified by a physician, places the child in serious or critical condition.

(2)(a) The department shall conduct a child fatality review if a child fatality occurs in an early learning program described in *RCW 43.215.400 through 43.215.450 or a licensed child care center or a licensed child care home.

(b) The department shall convene a child fatality review committee and determine the membership of the review committee. The committee shall comprise individuals with appropriate expertise, including but not limited to experts from outside the department with knowledge of early learning licensing requirements and program standards, a law enforcement officer with investigative experience, a representative from a county or state health department, and a child advocate with expertise in child fatalities. The department shall invite one parent or guardian for membership on the child fatality review committee who has had a child die in a child care setting. The department shall ensure that the fatality review team is made up of individuals who had no previous involvement in the case.

(c) The department shall allow the parents or guardians whose child's death is being reviewed to testify before the child fatality review committee.

(d) The primary purpose of the fatality review shall be the development of recommendations to the department and legislature regarding changes in licensing requirements, practice, or policy to prevent fatalities and strengthen safety and health protections for children.

(e) Upon conclusion of a child fatality review required pursuant to this section, the department shall, within one hundred eighty days following the fatality, issue a report on the results of the review, unless an extension has been granted by the governor. Reports must be distributed to the appropriate committees of the legislature, and the department shall create a public web site where all child fatality review reports required under this section must be posted and maintained. A child fatality review report completed pursuant to this section is subject to public disclosure and must be posted on the public web site, except that confidential information may be redacted by the department consistent with the requirements of RCW 13.50.100, 68.50.105, and 74.13.500 through 74.13.525, chapter 42.56 RCW, and other applicable state and federal laws.

(3) The department shall consult with the office of the family and children's ombuds to determine if a review should be conducted in the case of a near child fatality that occurs in an early learning program described in *RCW 43.215.400 through 43.215.450 or licensed child care center or licensed child care home.

(4) In any review of a child fatality or near fatality, the department and the fatality review team must have access to all records and files regarding the child or that are otherwise relevant to the review and that have been produced or retained by the early education and assistance program provider or licensed child care center or licensed family home provider.

(5) The child fatality review committee shall coordinate with local law enforcement to ensure that the fatality or near fatality review does not interfere with any ongoing or potential criminal investigation.

(6)(a) A child fatality or near fatality review completed pursuant to this section is subject to discovery in a civil or administrative proceeding, but may not be admitted into evi-

dence or otherwise used in a civil or administrative proceeding except pursuant to this section.

(b) A department employee responsible for conducting a child fatality or near fatality review, or member of a child fatality or near fatality review team, may not be examined in a civil or administrative proceeding regarding the following:

(i) The work of the child fatality or near fatality review team;

(ii) The incident under review;

(iii) The employee's or member's statements, deliberations, thoughts, analyses, or impressions relating to the work of the child fatality or near fatality review team or the incident under review; or

(iv) Statements, deliberations, thoughts, analyses, or impressions of any other member of the child fatality or near fatality review team, or any person who provided information to the child fatality or near fatality review team, relating to the work of the child fatality or near fatality review team or the incident under review.

(c) Documents prepared by or for a child fatality or near fatality review team are inadmissible and may not be used in a civil or administrative proceeding, except that any document that exists before its use or consideration in a child fatality or near fatality review, or that is created independently of such review, does not become inadmissible merely because it is reviewed or used by a child fatality or near fatality review team. A person is not unavailable as a witness merely because the person has been interviewed by or has provided a statement for a child fatality or near fatality review, but if called as a witness, a person may not be examined regarding the person's interactions with the child fatality or near fatality review including, without limitation, whether the person was interviewed during such review, the questions that were asked during such review, and the answers that the person provided during such review. This section may not be construed as restricting a person from testifying fully in any proceeding regarding his or her knowledge of the incident under review.

(d) The restrictions in this section do not apply in a licensing or disciplinary proceeding arising from an agency's effort to revoke or suspend the license of any licensed professional based in whole or in part upon allegations of wrongdoing in connection with a minor's death or near fatality reviewed by a child fatality or near fatality review team.

(7) The department shall develop and implement procedures to carry out the requirements of this section.

(8) Nothing in this section creates a duty for the office of the family and children's ombuds under RCW 43.06A.030 as related to children in the care of an early learning program described in *RCW 43.215.400 through 43.215.450, a licensed child care center, or a licensed child care home. [2015 c 199 § 1.]

**Reviser's note:* RCW 43.215.400 through 43.215.450 were recodified as RCW 43.216.500 through 43.216.550 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Short title—2015 c 199: "This act may be known and cited as the Eve Uphold act." [2015 c 199 § 3. Formerly RCW 43.215.490.]

43.216.655 Data collection and program evaluation—Reports. (Effective July 1, 2018.) (1) The education data center established in RCW 43.41.400 must collect longi-

tudinal, student-level data on all children attending an early childhood education and assistance program. Upon completion of an electronic time and attendance record system, the education data center must collect longitudinal, student-level data on all children attending a working connections child care program. Data collected should capture at a minimum the following characteristics:

(a) Daily program attendance;

(b) Identification of classroom and teacher;

(c) Early achievers program quality level rating;

(d) Program hours;

(e) Program duration;

(f) Developmental results from the Washington kindergarten inventory of developing skills in RCW 28A.655.080; and

(g) To the extent data is available, the distinct ethnic categories within racial subgroups of children and providers that align with categories recognized by the education data center.

(2) The department shall provide early learning providers student-level data collected pursuant to this section that are specific to the early learning provider's program. Upon completion of an electronic time and attendance record system identified in subsection (1) of this section, the department shall provide child care providers student-level data that are specific to the child care provider's program.

(3)(a) The department shall review available research and best practices literature on cultural competency in early learning settings. The department shall review the K-12 components for cultural competency developed by the professional educator standards board and identify components appropriate for early learning professional development.

(b) By July 31, 2016, the department shall provide recommendations to the appropriate committees of the legislature and the early learning advisory council on research-based cultural competency standards for early learning professional training.

(4)(a) The Washington state institute for public policy shall conduct a longitudinal analysis examining relationships between the early achievers program quality ratings levels and outcomes for children participating in subsidized early care and education programs.

(b) The institute shall submit the first report to the appropriate committees of the legislature and the early learning advisory council by December 31, 2019. The institute shall submit subsequent reports annually to the appropriate committees of the legislature and the early learning advisory council by December 31st, with the final report due December 31, 2022. The final report shall include a cost-benefit analysis.

(5)(a) By December 1, 2015, the department shall provide recommendations to the appropriate committees of the legislature on child attendance policies pertaining to the working connections child care program and the early childhood education and assistance program. The recommendations shall include the following:

(i) Allowable periods of child absences;

(ii) Required contact with parents or caregivers to discuss child absences and encourage regular program attendance; and

(iii) A de-enrollment procedure when allowable child absences are exceeded.

(b) The department shall develop recommendations on child absences and attendance within the department's appropriations. [2015 3rd sp.s. c 7 § 13. Formerly RCW 43.215.492.]

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

43.216.660 Child care services—Declaration of policy. (Effective July 1, 2018.) It shall be the policy of the state of Washington to:

(1) Recognize the family as the most important social and economic unit of society and support the central role parents play in child rearing. All parents are encouraged to care for and nurture their children through the traditional methods of parental care at home. The availability of quality, affordable child care is a concern for working parents, the costs of care are often beyond the resources of working parents, and child care facilities are not located conveniently to workplaces and neighborhoods. Parents are encouraged to participate fully in the effort to improve the quality of child care services.

(2) Promote a variety of culturally and developmentally appropriate child care settings and services of the highest possible quality in accordance with the basic principle of continuity of care. These settings shall include, but not be limited to, family day care homes, mini-centers, centers and schools.

(3) Promote the growth, development and safety of children by working with community groups including providers and parents to establish standards for quality service, training of child care providers, fair and equitable monitoring, and salary levels commensurate with provider responsibilities and support services.

(4) Promote equal access to quality, affordable, socio-economically integrated child care for all children and families.

(5) Facilitate broad community and private sector involvement in the provision of quality child care services to foster economic development and assist industry through the department. [2017 3rd sp.s. c 6 § 212; 2006 c 265 § 202; 1989 c 381 § 2; 1988 c 213 § 1. Formerly RCW 43.215.495, 74.13.085.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Findings—1989 c 381: "The legislature finds that the increasing difficulty of balancing work life and family needs for parents in the workforce has made the availability of quality, affordable child care a critical concern for the state and its citizens. The prospect for labor shortages resulting from the aging of the population and the importance of the quality of the workforce to the competitiveness of Washington businesses make the availability of quality child care an important concern for the state and its businesses.

The legislature further finds that making information on child care options available to businesses can help the market for child care adjust to the needs of businesses and working families. The legislature further finds that investments are necessary to promote partnerships between the public and private sectors, educational institutions, and local governments to increase the supply, affordability, and quality of child care in the state." [1989 c 381 § 1.]

Additional notes found at www.leg.wa.gov

43.216.665 Child care workers—Findings—Intent. (Effective July 1, 2018.) The legislature finds that as of 2000, child care workers in the state earned an average hourly

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wage of eight dollars and twenty-two cents, only fifty-eight percent received medical insurance through employers, only sixty-six percent received paid sick leave, and only seventy-three percent received paid vacation. The legislature further finds that low wages for child care workers create a barrier for individuals entering the profession, result in child care workers leaving the profession in order to earn a living wage in another profession, and make it difficult for child care workers to afford professional education and training. As a result, the availability of quality child care in the state suffers.

The legislature intends to increase wages to child care workers through establishing a child care career and wage ladder that provides increased wages for child care workers based on their work experience, level of responsibility, and education. To the extent practicable within available funds, this child care career and wage ladder shall mirror the successful child care career and wage ladder pilot project operated by the state between 2000 and 2003. While it is the intent of the legislature to establish the vision of a statewide child care career and wage ladder that will enhance employment quality and stability for child care workers, the legislature also recognizes that funding allocations will determine the extent of statewide implementation of a child care career and wage ladder. [2005 c 507 § 1. Formerly RCW 43.215.500, 74.13.097.]

43.216.670 Child care provider rules review. (Effective July 1, 2018.) In conjunction with child care providers and other early learning leaders, the department shall review and revise child care provider rules in order to emphasize the need for mutual respect among parents, providers, and state staff who enforce rules. Revised rules shall clearly focus on keeping children safe and improving early learning outcomes for children. The department shall develop a plan by July 2007 that outlines the process and timelines to complete the rules review. Nothing in this section changes the department's responsibility to collectively bargain over mandatory subjects. [2007 c 394 § 7. Formerly RCW 43.215.502.]

Finding—Declaration—Captions not law—2007 c 394: See notes following RCW 43.216.010.

43.216.675 Child care workers—Career and wage ladder. (Effective July 1, 2018.) (1) Subject to the availability of funds appropriated for this specific purpose, the department shall establish a child care career and wage ladder in licensed child care centers that meet the following criteria: (a) At least ten percent of child care slots are dedicated to children whose care is subsidized by the state or any political subdivision thereof or any local government; (b) the center agrees to adopt the child care career and wage ladder, which, at a minimum, shall be at the same pay schedule as existed in the previous child care career and wage ladder pilot project; and (c) the center meets further program standards as established by rule pursuant to *section 4, chapter 507, Laws of 2005.

The child care career and wage ladder shall include wage increments for levels of education, years of relevant experience, levels of work responsibility, relevant early childhood education credits, and relevant requirements in the state training and registry system.

(2) The department shall establish procedures for the allocation of funds to implement the child care career and wage ladder among child care centers meeting the criteria identified in subsection (1) of this section. In developing these procedures, the department shall:

(a) Review past efforts or administration of the child care career and wage ladder pilot project in order to take advantage of any findings, recommendations, or administrative practices that contributed to that pilot project's success;

(b) Consult with stakeholders, including organizations representing child care teachers and providers, in developing an allocation formula that incorporates consideration of geographic and demographic distribution of child care centers adopting the child care career and wage ladder; and

(c) Develop a system for prioritizing child care centers interested in adopting the child care career and wage ladder that is based on the criteria identified in subsection (1) of this section.

(3) Notwithstanding the requirements of subsection (2) of this section, child care centers meeting the criteria in subsection (1) of this section located in urban areas of the department of social and health services region one shall receive a minimum of fifteen percent of the funds allocated through the child care career and wage ladder, and of these centers, child care centers meeting the criteria in subsection (1) of this section participating in the Spokane tiered reimbursement pilot project shall have first priority for child care career and wage ladder funding. [2006 c 265 § 205; 2005 c 507 § 2. Formerly RCW 43.215.505, 74.13.098.]

*Reviser's note: Section 4 of this act was vetoed.

43.216.680 Child care workers—Career and wage ladder—Wage increases. (Effective July 1, 2018.) Child care centers adopting the child care career and wage ladder established pursuant to *RCW 43.215.505 shall increase wages for child care workers who have earned a high school diploma or high school equivalency certificate as provided in RCW 28B.50.536, gain additional years of experience, or accept increasing levels of responsibility in providing child care, in accordance with the child care career and wage ladder. The adoption of a child care career and wage ladder shall not prohibit the provision of wage increases based upon merit. The department shall pay wage increments for child care workers employed by child care centers adopting the child care career and wage ladder established pursuant to *RCW 43.215.505 who earn early childhood education credits or meet relevant requirements in the state training and registry system, in accordance with the child care career and wage ladder. [2013 c 39 § 20; 2006 c 265 § 206; 2005 c 507 § 3. Formerly RCW 43.215.510, 74.13.099.]

*Reviser's note: RCW 43.215.505 was recodified as RCW 43.216.675 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

43.216.685 Child day care centers, family day care providers—Toll-free information number. (Effective July 1, 2018.) (1) The department shall establish and maintain a toll-free telephone number, and an interactive web-based system through which persons may obtain information regarding child day care centers and family day care providers. This number shall be available twenty-four hours a day for persons to request information. The department shall respond to

recorded messages left at the number within two business days. The number shall be published in reasonably available printed and electronic media. The number shall be easily identifiable as a number through which persons may obtain information regarding child day care centers and family day care providers as set forth in this section.

(2) Through the toll-free telephone line established by this section, the department shall provide information to callers about: (a) Whether a day care provider is licensed; (b) whether a day care provider's license is current; (c) the general nature of any enforcement against the providers; (d) how to report suspected or observed noncompliance with licensing requirements; (e) how to report alleged abuse or neglect in a day care; (f) how to report health, safety, and welfare concerns in a day care; (g) how to receive follow-up assistance, including information on the office of the family and children's ombuds; and (h) how to receive referral information on other agencies or entities that may be of further assistance to the caller.

(3) Beginning in January 2006, the department shall print the toll-free number established by this section on the face of new licenses issued to child day care centers and family day care providers.

(4) This section shall not be construed to require the disclosure of any information that is exempt from public disclosure under chapter 42.56 RCW. [2013 c 23 § 99; 2006 c 209 § 10; 2005 c 473 § 3. Formerly RCW 43.215.520, 74.15.310.]

Purpose—2005 c 473: See note following RCW 74.15.300.

Additional notes found at www.leg.wa.gov

43.216.687 Child day care centers, family day care providers—Required postings—Disclosure of complaints. (Effective July 1, 2018.) (1) Every child day care center and family day care provider shall prominently post the following items, clearly visible to parents and staff:

(a) The license issued under this chapter;

(b) The department's toll-free telephone number established by *RCW 43.215.520;

(c) The notice of any pending enforcement action. The notice must be posted immediately upon receipt. The notice must be posted for at least two weeks or until the violation causing the enforcement action is corrected, whichever is longer;

(d) A notice that inspection reports and any notices of enforcement actions for the previous three years are available from the licensee and the department; and

(e) Any other information required by the department.

(2) The department shall disclose the receipt, general nature, and resolution or current status of all complaints on record with the department after July 24, 2005, against a child day care center or family day care provider that result in an enforcement action. Information may be posted:

(a) On a web site; or

(b) In a physical location that is easily accessed by parents and potential employers.

(3) This section shall not be construed to require the disclosure of any information that is exempt from public disclosure under chapter 42.56 RCW. [2007 c 415 § 6; 2006 c 209 § 11; 2005 c 473 § 4. Formerly RCW 43.215.525, 74.15.320.]

*Reviser's note: RCW 43.215.520 was recodified as RCW 43.216.685 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Purpose—2005 c 473: See note following RCW 74.15.300.

Additional notes found at www.leg.wa.gov

43.216.689 Child day care centers, family day care providers—Public access to reports and enforcement action notices. (Effective July 1, 2018.) (1) Every child day care center and family day care provider shall have readily available for review by the department, parents, and the public a copy of each inspection report and notice of enforcement action received by the center or provider from the department for the past three years. This subsection only applies to reports and notices received on or after July 24, 2005.

(2) The department shall make available to the public during business hours all inspection reports and notices of enforcement actions involving child day care centers and family day care providers. The department shall include in the inspection report a statement of the corrective measures taken by the center or provider.

(3) The department may make available on a publicly accessible web site all inspection reports and notices of licensing actions, including the corrective measures required or taken, involving child day care centers and family day care providers.

(4) This section shall not be construed to require the disclosure of any information that is exempt from public disclosure under chapter 42.56 RCW. [2007 c 415 § 7; 2006 c 209 § 12; 2005 c 473 § 5. Formerly RCW 43.215.530, 74.15.330.]

Purpose—2005 c 473: See note following RCW 74.15.300.

Additional notes found at www.leg.wa.gov

43.216.695 County regulation of family day-care centers—Twelve-month pilot projects. (Effective July 1, 2018.) (1) Notwithstanding RCW 74.15.030, counties with a population of three thousand or less may adopt and enforce ordinances and regulations as provided in this section for family day-care providers as defined in *RCW 74.15.020(1)(f) as a twelve-month pilot project. Before a county may regulate family day-care providers in accordance with this section, it shall adopt ordinances and regulations that address, at a minimum, the following: (a) The size, safety, cleanliness, and general adequacy of the premises; (b) the plan of operation; (c) the character, suitability, and competence of a family day-care provider and other persons associated with a family day-care provider directly responsible for the care of children served; (d) the number of qualified persons required to render care; (e) the provision of necessary care, including food, clothing, supervision, and discipline; (f) the physical, mental, and social well-being of children served; (g) educational and recreational opportunities for children served; and (h) the maintenance of records pertaining to children served.

(2) The county shall notify the department of social and health services in writing sixty days prior to adoption of the family day-care regulations required pursuant to this section. The transfer of jurisdiction shall occur when the county has notified the department in writing of the effective date of the regulations, and shall be limited to a period of twelve months from the effective date of the regulations. Regulation by counties of family day-care providers as provided in this section shall be administered and enforced by those counties. The department shall not regulate these activities nor shall

the department bear any civil liability under chapter 74.15 RCW for the twelve-month pilot period. Upon request, the department shall provide technical assistance to any county that is in the process of adopting the regulations required by this section, and after the regulations become effective.

(3) Any county regulating family day-care providers pursuant to this section shall report to the governor and the appropriate committees of the legislature concerning the outcome of the pilot project upon expiration of the twelve-month pilot period. The report shall include the ordinances and regulations adopted pursuant to subsection (1) of this section and a description of how those ordinances and regulations address the specific areas of regulation identified in subsection (1) of this section. [2005 c 509 § 1. Formerly RCW 43.215.532, 74.15.031.]

***Reviser's note:** Chapter 265, Laws of 2006, deleted the definition of "family day-care provider" in RCW 74.15.020 and created it in RCW 43.215.010. RCW 43.215.010 was recodified as RCW 43.216.010 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Additional notes found at www.leg.wa.gov

43.216.700 Day care insurance. (Effective July 1, 2018.) (1) Every licensed child day care center shall, at the time of licensure or renewal and at any inspection, provide to the department proof that the licensee has day care insurance as defined in RCW 48.88.020, or is self-insured pursuant to chapter 48.90 RCW.

(a) Every licensed child day care center shall comply with the following requirements:

(i) Notify the department when coverage has been terminated;

(ii) Post at the day care center, in a manner likely to be observed by patrons, notice that coverage has lapsed or been terminated;

(iii) Provide written notice to parents that coverage has lapsed or terminated within thirty days of lapse or termination.

(b) Liability limits under this subsection shall be the same as set forth in RCW 48.88.050.

(c) The department may take action as provided in *RCW 43.215.300 if the licensee fails to maintain in full force and effect the insurance required by this subsection.

(d) This subsection applies to child day care centers holding licenses, initial licenses, and probationary licenses under this chapter.

(e) A child day care center holding a license under this chapter on July 24, 2005, is not required to be in compliance with this subsection until the time of renewal of the license or until January 1, 2006, whichever is sooner.

(2)(a) Every licensed family day care provider shall, at the time of licensure or renewal either:

(i) Provide to the department proof that the licensee has day care insurance as defined in RCW 48.88.020, or other applicable insurance; or

(ii) Provide written notice of their insurance status on a standard form developed by the department to parents with a child enrolled in family day care and keep a copy of the notice to each parent on file. Family day care providers may choose to opt out of the requirement to have day care or other applicable insurance but must provide written notice of their

insurance status to parents with a child enrolled and shall not be subject to the requirements of (b) or (c) of this subsection.

(b) Any licensed family day care provider that provides to the department proof that the licensee has insurance as provided under (a)(i) of this subsection shall comply with the following requirements:

(i) Notify the department when coverage has been terminated;

(ii) Post at the day care home, in a manner likely to be observed by patrons, notice that coverage has lapsed or been terminated;

(iii) Provide written notice to parents that coverage has lapsed or terminated within thirty days of lapse or termination.

(c) Liability limits under (a)(i) of this subsection shall be the same as set forth in RCW 48.88.050.

(d) The department may take action as provided in *RCW 43.215.300 if the licensee fails to comply with the requirements of this subsection.

(e) A family day care provider holding a license under this chapter on July 24, 2005, is not required to be in compliance with this subsection until the time of renewal of the license or until January 1, 2006, whichever is sooner.

(3) Noncompliance or compliance with the provisions of this section shall not constitute evidence of liability or nonliability in any injury litigation. [2007 c 415 § 10; 2005 c 473 § 7. Formerly RCW 43.215.535, 74.15.340.]

*Reviser's note: RCW 43.215.300 was recodified as RCW 43.216.325 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Purpose—2005 c 473: See note following RCW 74.15.300.

43.216.705 Child care providers—Tiered-reimbursement system—Pilot sites. (Effective July 1, 2018.) (1) Subject to the availability of amounts appropriated for this specific purpose, the department shall implement the tiered-reimbursement system developed pursuant to section 6, chapter 490, Laws of 2005. Implementation of the tiered-reimbursement system shall initially consist of two pilot sites in different geographic regions of the state with demonstrated public-private partnerships, with statewide implementation to follow.

(2) In implementing the tiered-reimbursement system, consideration shall be given to child care providers who provide staff wage progression.

(3) The department shall begin implementation of the two pilot sites by March 30, 2006. [2006 c 265 § 207; 2005 c 490 § 7. Formerly RCW 43.215.540, 74.15.350.]

Additional notes found at www.leg.wa.gov

43.216.710 Child care services. (Effective July 1, 2018.) The department shall:

(1) Work in conjunction with the statewide child care resource and referral network as well as local governments, nonprofit organizations, businesses, and community child care advocates to create local child care resource and referral organizations. These organizations may carry out needs assessments, resource development, provider training, technical assistance, and parent information and training;

(2) Actively seek public and private money for distribution as grants to the statewide child care resource and referral

network and to existing or potential local child care resource and referral organizations;

(3) Adopt rules regarding the application for and distribution of grants to local child care resource and referral organizations. The rules shall, at a minimum, require an applicant to submit a plan for achieving the following objectives:

(a) Provide parents with information about child care resources, including location of services and subsidies;

(b) Carry out child care provider recruitment and training programs, including training under RCW 74.25.040;

(c) Offer support services, such as parent and provider seminars, toy-lending libraries, and substitute banks;

(d) Provide information for businesses regarding child care supply and demand;

(e) Advocate for increased public and private sector resources devoted to child care;

(f) Provide technical assistance to employers regarding employee child care services; and

(g) Serve recipients of temporary assistance for needy families and working parents with incomes at or below household incomes of two hundred percent of the federal poverty line;

(4) Provide staff support and technical assistance to the statewide child care resource and referral network and local child care resource and referral organizations;

(5) Maintain a statewide child care licensing data bank and work with department licensors to provide information to local child care resource and referral organizations about licensed child care providers in the state;

(6) Through the statewide child care resource and referral network and local resource and referral organizations, compile data about local child care needs and availability for future planning and development;

(7) Coordinate with the statewide child care resource and referral network and local child care resource and referral organizations for the provision of training and technical assistance to child care providers;

(8) Collect and assemble information regarding the availability of insurance and of federal and other child care funding to assist state and local agencies, businesses, and other child care providers in offering child care services;

(9) Subject to the availability of amounts appropriated for this specific purpose, increase the base rate for all child care providers by ten percent;

(10) Subject to the availability of amounts appropriated for this specific purpose, provide tiered subsidy rate enhancements to child care providers if the provider meets the following requirements:

(a) The provider enrolls in quality rating and improvement system levels 2, 3, 4, or 5;

(b) The provider is actively participating in the early achievers program;

(c) The provider continues to advance towards level 5 of the early achievers program; and

(d) The provider must complete level 2 within thirty months or the reimbursement rate returns the level 1 rate; and

(11) Require exempt providers to participate in continuing education, if adequate funding is available. [2017 3rd sp.s. c 6 § 213; 2013 c 323 § 8; 2006 c 265 § 204; 2005 c 490 § 10; 1997 c 58 § 404; 1993 c 453 § 2; 1991 sp.s. c 16 § 924; 1989 c 381 § 5. Formerly RCW 43.215.545, 74.13.0903.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Finding—1997 c 58: "The legislature finds that informed choice is consistent with individual responsibility and that parents should be given a range of options for available child care while participating in the program." [1997 c 58 § 401.]

Finding—1993 c 453: "The legislature finds that building a system of quality, affordable child care requires coordinated efforts toward constructing partnerships at state and community levels. Through the office of child care policy, the department of social and health services is responsible for facilitating the coordination of child care efforts and establishing working partnerships among the affected entities within the public and private sectors. Through these collaborative efforts, the office of child care policy encouraged the coalition of locally based child care resource and referral agencies into a statewide network. The statewide network, in existence since 1989, supports the development and operation of community-based resource and referral programs, improves the quality and quantity of child care available in Washington by fostering statewide strategies, and generates then nurtures effective public-private partnerships. The statewide network provides important training, standards of service, and general technical assistance to its locally based child care resource and referral programs. The locally based programs enrich the availability, affordability, and quality of child care in their communities." [1993 c 453 § 1.]

Findings—Severability—1989 c 381: See notes following RCW 43.216.660.

Additional notes found at www.leg.wa.gov

43.216.715 Child care partnership employer liaison. (Effective July 1, 2018.) An employer liaison position is established in the department to be colocated with the department of commerce. The employer liaison shall, within appropriated funds:

(1) Staff and assist the child care partnership in the implementation of its duties;

(2) Provide technical assistance to employers regarding child care services, working with and through local resource and referral organizations whenever possible. Such technical assistance shall include at a minimum:

(a) Assessing the child care needs of employees and prospective employees;

(b) Reviewing options available to employers interested in increasing access to child care for their employees;

(c) Developing techniques to permit small businesses to increase access to child care for their employees;

(d) Reviewing methods of evaluating the impact of child care activities on employers; and

(e) Preparing, collecting, and distributing current information for employers on options for increasing involvement in child care; and

(3) Provide assistance to local child care resource and referral organizations to increase their capacity to provide quality technical assistance to employers in their community. [2017 3rd sp.s. c 6 § 214; 2006 c 265 § 203; 1989 c 381 § 6. Formerly RCW 43.215.550, 74.13.0902.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Findings—Severability—1989 c 381: See notes following RCW 43.216.660.

Additional notes found at www.leg.wa.gov

43.216.720 Child care expansion grant fund. (Effective July 1, 2018.) (1) The legislature recognizes that a severe shortage of child care exists to the detriment of all

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families and employers throughout the state. Many workers are unable to enter or remain in the workforce due to a shortage of child care resources. The high costs of starting a child care business create a barrier to the creation of new slots, especially for children with special needs.

(2) A child care expansion grant fund is created in the custody of the secretary of the department of social and health services. Grants shall be awarded on a one-time only basis to persons, organizations, or schools needing assistance to start a child care center or mini-center as defined by the department by rule, or to existing licensed child care providers, including family home providers, for the purpose of making capital improvements in order to accommodate handicapped children as defined under chapter 72.40 RCW, sick children, or infant care, or children needing nighttime care. No grant may exceed ten thousand dollars. Start-up costs shall not include operational costs after the first three months of business.

(3) Child care expansion grants shall be awarded on the basis of need for the proposed services in the community, within appropriated funds.

(4) The department shall adopt rules under chapter 34.05 RCW setting forth criteria, application procedures, and methods to assure compliance with the purposes described in this section. [1988 c 213 § 3. Formerly RCW 43.215.555, 74.13.095.]

Additional notes found at www.leg.wa.gov

43.216.725 Subsidized child care report and assessment. (Effective July 1, 2018.) The department and the department of social and health services, in consultation with interested individuals and organizations, shall jointly:

(1) Identify different options to track subsidized child care attendance, including methods using a land line or cellular telephone, a computer, a point of sale system, or some combination of these methods and report their recommended method to the legislature no later than December 31, 2011. Each department's recommendations must include implementation issues to be addressed and a proposed implementation timeline, and should assume a January 2013 implementation date for the attendance tracking system. The legislature shall review the recommendations and authorize implementation. The method that is chosen must interface smoothly with the current and future payment systems for subsidized child care payments.

(2) Conduct an assessment of the current subsidized child care eligibility determination system and develop recommendations to improve the accuracy, efficiency, and responsiveness of the system, including consideration of the most appropriate entity or entities to make eligibility determinations. The results of the assessment shall be reported to the legislature no later than December 31, 2011. [2011 1st sp.s. c 42 § 12. Formerly RCW 43.215.560.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

43.216.730 Child care subsidy fraud—Referral—Collection of overpayments. (Effective July 1, 2018.) (1) The department must refer all suspected incidents of child care subsidy fraud to the department of social and health ser-

vices office of fraud and accountability for appropriate investigation and action.

(2) For the purposes of this section, "fraud" has the definition in RCW 74.04.004.

(3) This section does not limit or preclude the department or the department of social and health services from establishing and collecting overpayments consistent with federal regulation or seek other remedies that may be legally available, including but not limited to criminal investigation or prosecution. [2013 2nd sp.s. c 29 § 2. Formerly RCW 43.215.562.]

Finding—Intent—2013 2nd sp.s. c 29: "The legislature finds that child care providers positively contribute to local communities by offering important services that support the well-being of children and their families. The legislature further recognizes that most child care providers make every effort to ensure that subsidy payments received are correct and align with agency rules. When a child care provider is found to have fraudulently accepted subsidy payments, however, it is the legislature's intent to prohibit such a provider from receiving future child care subsidy payments." [2013 2nd sp.s. c 29 § 1.]

43.216.735 Placement of children ages sixty months through six years. (Effective July 1, 2018.) For children ages sixty months through six years, the child's school enrollment status may not be used as a reason to require the child be placed within a specific mixed-age group. Nothing in this section changes or requires the department to change the staff-to-child ratio requirements for mixed-age groups that include children who are ages thirty months through six years. [2016 c 169 § 2. Formerly RCW 43.215.564.]

Finding—Intent—2016 c 169: "(1) The legislature recognizes that the high cost of quality child care places a heavy burden on Washington's poorest families. The legislature further acknowledges the administrative burden unnecessary regulations place on child care providers and the families they serve. The legislature finds that under current rule, child care providers may not serve five year olds attending school in the same group as five year olds not attending school.

(2) The legislature intends to allow child care centers to serve kindergartners in a mixed group or classroom without having to go through a waiver process. The legislature further intends to streamline the delivery of services to children while continuing to protect their safety and well-being." [2016 c 169 § 1.]

43.216.740 Outdoor, nature-based early learning and child care programs—Pilot project—Reports. (Effective July 1, 2018, until August 1, 2021.) (1) The department shall establish a pilot project to license outdoor, nature-based early learning and child care programs. The pilot project shall commence beginning August 31, 2017, and conclude June 30, 2021.

(2) The department shall adopt rules to implement the pilot project and may waive or adapt licensing requirements when necessary to allow for the operation of outdoor classrooms.

(3) As part of the pilot project, the department shall explore options for developing a quality rating and improvement system for outdoor preschools. Options may include, but are not limited to, adapting the early achievers program to assess quality in outdoor learning environments, as well as excluding or replacing the early achievers indoor environmental rating scale. The department may receive and expend funds from philanthropic organizations in order to implement this subsection and subsection (6) of this section. The department shall include a discussion of options and recommenda-

tions in the final report required under subsection (8) of this section.

(4) The department shall select up to ten pilot locations during the first year of the pilot project. Beginning August 31, 2018, additional outdoor, nature-based early learning and child care programs may apply to participate in the pilot project. When selecting and approving pilot project locations, the department shall aim to select a mix of rural, urban, and suburban locations, and may give priority to:

(a) Areas where there are few or limited licensed early learning programs;

(b) Areas of need where licensed early learning programs are at or near full capacity, and where access may be restricted by one or more enrollment wait-lists; and

(c) Areas where an outdoor early learning program would provide more family choice.

(5) A child care or early learning program operated by a federally recognized tribe may participate in the pilot project through an interlocal agreement between the tribe and the department. The interlocal agreement must reflect the government-to-government relationship between the state and the tribe, including recognition of tribal sovereignty.

(6) Subject to the availability of funds, the department may convene an advisory group of outdoor, nature-based early learning practitioners to inform and support implementation of the pilot project.

(7) For purposes of this section, "outdoor, nature-based early learning and child care program" means an agency-offered program operated primarily outdoors in which children are enrolled on a regular basis for three or more hours per day.

(8) The department shall provide the following reports to the legislature and the governor:

(a) By January 15, 2018, and annually thereafter through January 15, 2020, a brief status report describing implementation of the pilot project, including a description of participating providers and the number of children and families being served;

(b) By November 30, 2020, a full report on findings from the pilot project, including recommendations for modifying or expanding the availability of outdoor, nature-based early learning and child care programs. The final report also must include a discussion of potential options to mitigate the uncertainty for families and participating providers during the final six months of the pilot project when legislation may be pending.

(9) The provisions of this section are subject to appropriation.

(10) This section expires August 1, 2021. [2017 c 162 § 2. Formerly RCW 43.215.566.]

Findings—Intent—2017 c 162: "The legislature finds that, over the past decade, more than forty outdoor, nature-based early learning and child care programs have opened in Washington, several of which are in high demand based on existing wait-lists. The legislature finds, however, that these programs currently are unlicensed and thus unable to offer full-day programs, which many working families are seeking. Unlicensed outdoor programs also are unable to serve families who are eligible for assistance through the working connections child care program. The legislature further finds that the outdoor preschool model could help expand the number of high quality early learning opportunities available to families throughout Washington, particularly in areas where preschool-appropriate indoor space is unavailable or unaffordable. Additionally, when early learning programs spend less on their physical facilities, they are able to spend more on recruit-

ing and retaining teachers and other early learning professionals. The legislature also finds that research on outdoor preschools operating in Scandinavian countries for decades has demonstrated a positive impact on children's development, including improved cognitive and social skills when children transition to grade school. The legislature, therefore, intends to establish a pilot project to license outdoor preschools in order to expand access to affordable, high quality early learning programs, and to further investigate the benefits of outdoor, nature-based classrooms for Washington's children and families." [2017 c 162 § 1.]

43.216.745 Child care consultation program—Creation, operation, and duties. (Effective July 1, 2018.) (1) Subject to the availability of amounts appropriated for this specific purpose, the department shall establish a child care consultation program linking child care providers with evidence-based, trauma-informed, and best practice resources regarding caring for infants and young children who present behavioral concerns or symptoms of trauma. The department may contract with an entity with expertise in child development and early learning programs in order to operate the child care consultation program.

(2) In establishing and operating the program, the department or contracted entity shall: (a) Assist child care providers in recognizing the signs and symptoms of trauma in children; (b) provide support and guidance to child care staff; (c) consult and coordinate with parents, other caregivers, and experts or practitioners involved with the care and well-being of the young children; and (d) provide referrals for children who need additional services. [2017 c 202 § 5. Formerly RCW 43.215.570.]

Findings—Intent—2017 c 202: See note following RCW 74.09.492.

TECHNICAL PROVISIONS

43.216.900 Early childhood education and assistance program—Short title—1985 c 418. (Effective July 1, 2018.) This act shall be known as the early childhood assistance act of 1985. [1985 c 418 § 13. Formerly RCW 43.215.900, 28A.215.900, 28A.34A.904.]

43.216.901 Contingency—Effective date—1985 c 418. (Effective July 1, 2018.) If specific funding for the purposes of this act, referencing this act by bill number, is not provided by the legislature by July 1, 1987, this act shall be null and void. This act shall be of no effect until such specific funding is provided. If such funding is so provided, this act shall take effect when the legislation providing the funding takes effect. [1985 c 418 § 12. Formerly RCW 43.215.901, 28A.215.904, 28A.34A.900.]

Reviser's note: (1) 1986 c 312 § 211 provides specific funding for the purposes of this act.

(2) 1986 c 312 took effect April 4, 1986.

43.216.902 Effective date—2006 c 265. (Effective July 1, 2018.) This act takes effect July 1, 2006. [2006 c 265 § 604. Formerly RCW 43.215.905.]

Reviser's note: RCW 43.215.905 was recodified by 2017 3rd sp.s. c 6 § 821, effective July 1, 2018, and decodified by 2017 3rd sp.s. c 25 § 7.

43.216.903 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective July 1, 2018.) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, wid-

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ower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 110. Formerly RCW 43.215.908.]

43.216.904 Short title—2015 3rd sp.s. c 7. (Effective July 1, 2018.) Chapter 7, Laws of 2015 3rd sp. sess. may be known and cited as the early start act. [2015 3rd sp.s. c 7 § 22. Formerly RCW 43.215.909.]

Finding—Intent—2015 3rd sp.s. c 7: See note following RCW 43.216.085.

43.216.905 Transfer of powers, duties, and functions of the department of early learning. (Effective July 1, 2018.) (1) The department of early learning is hereby abolished and its powers, duties, and functions are hereby transferred to the department of children, youth, and families. All references to the secretary or the department of early learning in the Revised Code of Washington shall be construed to mean the secretary or the department of children, youth, and families.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of early learning shall be delivered to the custody of the department of children, youth, and families. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of early learning shall be made available to the department of children, youth, and families. All funds, credits, or other assets held by the department of early learning shall be assigned to the department of children, youth, and families.

(b) Any appropriations made to the department of early learning shall, on July 1, 2018, be transferred and credited to the department of children, youth, and families.

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

(3) All employees of the department of early learning are transferred to the jurisdiction of the department of children, youth, and families. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of children, youth, and families to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the department of early learning shall be continued and acted upon by

the department of children, youth, and families. All existing contracts and obligations shall remain in full force and shall be performed by the department of children, youth, and families.

(5) The transfer of the powers, duties, functions, and personnel of the department of early learning shall not affect the validity of any act performed before July 1, 2018.

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

(7)(a) The bargaining units of employees at the department of early learning existing on July 1, 2018, that are transferred to the department of children, youth, and families shall be considered separate appropriate units within the department of children, youth, and families unless and until modified by the public employment relations commission pursuant to Title 391 WAC. The exclusive bargaining representatives recognized as representing the bargaining units of employees at the department of early learning existing on July 1, 2018, shall continue as the exclusive bargaining representatives of the transferred bargaining units without the necessity of an election.

(b) The public employment relations commission may review the appropriateness of the collective bargaining units that are a result of the transfer from the department of early learning to the department of children, youth, and families under chapter 6, Laws of 2017 3rd sp. sess. The employer or the exclusive bargaining representative may petition the public employment relations commission to review the bargaining units in accordance with this section. [2017 3rd sp.s. c 6 § 802.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

43.216.906 Transfer of child welfare provisions from the department of social and health services. (Effective July 1, 2018.) (1) All powers, duties, and functions of the department of social and health services pertaining to child welfare services under chapters 13.34, 13.36, 13.38, 13.50, 13.60, 13.64, 26.33, 26.44, 74.13, 74.13A, 74.14B, 74.14C, and 74.15 RCW are transferred to the department of children, youth, and families. All references to the secretary or the department of social and health services in the Revised Code of Washington shall be construed to mean the secretary or the department of children, youth, and families when referring to the functions transferred in this section.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of social and health services pertaining to the powers, duties, and functions transferred shall be delivered to the custody of the department of children, youth, and families. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of social and health services in carrying out the powers, duties, and functions transferred shall be made available to the department of children, youth, and families. All funds, cred-

its, or other assets held in connection with the powers, duties, and functions transferred shall be assigned to the department of children, youth, and families.

(b) Any appropriations made to the department of social and health services for carrying out the powers, duties, and functions transferred shall, on July 1, 2018, be transferred and credited to the department of children, youth, and families.

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

(3) All employees of the department of social and health services engaged in performing the powers, duties, and functions transferred are transferred to the jurisdiction of the department of children, youth, and families. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of children, youth, and families to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the department of social and health services pertaining to the powers, duties, and functions transferred shall be continued and acted upon by the department of children, youth, and families. All existing contracts and obligations shall remain in full force and shall be performed by the department of children, youth, and families.

(5) The transfer of the powers, duties, functions, and personnel of the department of social and health services shall not affect the validity of any act performed before July 1, 2018.

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

(7)(a) The portions of any bargaining units of employees at the department of social and health services existing on July 1, 2018, that are transferred to the department of children, youth, and families shall be considered separate appropriate units within the department of children, youth, and families unless and until modified by the public employment relations commission pursuant to Title 391 WAC. The exclusive bargaining representatives recognized as representing the portions of the bargaining units of employees at the department of social and health services existing on July 1, 2018, shall continue as the exclusive bargaining representatives of the transferred bargaining units without the necessity of an election.

(b) The public employment relations commission may review the appropriateness of the collective bargaining units that are a result of the transfer from the department of social and health services to the department of children, youth, and families under chapter 6, Laws of 2017 3rd sp. sess. The

employer or the exclusive bargaining representative may petition the public employment relations commission to review the bargaining units in accordance with this section. [2017 3rd sp.s. c 6 § 803.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

43.216.907 Transfer of juvenile justice services provisions from the department of social and health services. (Effective July 1, 2019.) (1) All powers, duties, and functions of the department of social and health services pertaining to juvenile justice services under chapters 13.04, 13.06, 13.16, 13.40, 28A.190, 28A.225, 74.14A, 72.01, 72.05, 72.09, 72.19, 71.34, and 72.72 RCW are transferred to the department of children, youth, and families. All references to the secretary or the department of social and health services in the Revised Code of Washington shall be construed to mean the secretary or the department of children, youth, and families when referring to the functions transferred in this section.

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

(b) Any appropriations made to the department of social and health services for carrying out the powers, duties, and functions transferred shall, on July 1, 2019, be transferred and credited to the department of children, youth, and families.

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

(3) All employees of the department of social and health services engaged in performing the powers, duties, and functions transferred are transferred to the jurisdiction of the department of children, youth, and families. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of children, youth, and families to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the department of social and health services pertaining to the powers, duties, and functions transferred shall be continued and acted upon by the department of children, youth, and families. All existing contracts and obligations shall remain in full force

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and shall be performed by the department of children, youth, and families.

(5) The transfer of the powers, duties, functions, and personnel of the department of social and health services shall not affect the validity of any act performed before July 1, 2019.

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

(7)(a) The portions of any bargaining units of employees at the department of social and health services existing on July 1, 2019, that are transferred to the department of children, youth, and families shall be considered separate appropriate units within the department of children, youth, and families unless and until modified by the public employment relations commission pursuant to Title 391 WAC. The exclusive bargaining representatives recognized as representing the portions of the bargaining units of employees at the department of social and health services existing on July 1, 2019, shall continue as the exclusive bargaining representatives of the transferred bargaining units without the necessity of an election.

(b) The public employment relations commission may review the appropriateness of the collective bargaining units that are a result of the transfer from the department of social and health services to the department of children, youth, and families under chapter 6, Laws of 2017 3rd sp. sess. The employer or the exclusive bargaining representative may petition the public employment relations commission to review the bargaining units in accordance with this section. [2017 3rd sp.s. c 6 § 804.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

43.216.908 Conflict with federal requirements—2017 3rd sp.s. c 6. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [2017 3rd sp.s. c 6 § 823.]

Chapter 43.320 RCW

DEPARTMENT OF FINANCIAL INSTITUTIONS

Sections

43.320.012	through 43.320.016 Decodified.
43.320.017	Collective bargaining agreements.
43.320.110	Financial services regulation fund.
43.320.901	Decodified.

43.320.012 through 43.320.016 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

43.320.017 Collective bargaining agreements. Nothing contained in RCW 43.320.011 may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the expiration date of the current agreement or until the bargaining unit has been modified by action of the Washington personnel resources board as provided by law. [2017 3rd sp.s. c 25 § 3; 1993 c 472 § 13.]

43.320.110 Financial services regulation fund. There is created a local fund known as the "financial services regulation fund" which shall consist of all moneys received by the divisions of the department of financial institutions, except for the division of securities which shall deposit thirteen percent of all moneys received, except as provided in RCW 43.320.115, and which shall be used for the purchase of supplies and necessary equipment; the payment of salaries, wages, and utilities; the establishment of reserves; and other incidental costs required for the proper regulation of individuals and entities subject to regulation by the department. The state treasurer shall be the custodian of the fund. Disbursements from the fund shall be on authorization of the director of financial institutions or the director's designee. In order to maintain an effective expenditure and revenue control, the fund shall be subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditures and payment of obligations from the fund.

During the 2015-2017 fiscal biennium, the legislature may transfer from the financial services regulation fund to the state general fund such amounts as reflect the excess fund balance of the fund. During the 2015-2017 and 2017-2019 fiscal biennia, moneys from the financial services regulation fund may be appropriated for the family prosperity account program at the department of commerce and for the operations of the department of revenue. [2017 3rd sp.s. c 1 § 976; 2015 3rd sp.s. c 4 § 960; 2011 2nd sp.s. c 9 § 909; 2010 1st sp.s. c 37 § 934; 2005 c 518 § 932. Prior: 2003 1st sp.s. c 25 § 921; 2003 c 288 § 1; 2002 c 371 § 912; 2001 2nd sp.s. c 7 § 911; 2001 c 177 § 2; 1995 c 238 § 9; 1993 c 472 § 25; 1981 c 241 § 1. Formerly RCW 43.19.095.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2011 2nd sp.s. c 9: See note following RCW 28B.50.837.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Additional notes found at www.leg.wa.gov

43.320.901 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 43.329 RCW

SKILLED WORKER OUTREACH, RECRUITMENT, AND CAREER AWARENESS GRANT PROGRAM

Sections

- 43.329.010 Definitions. *(Expires July 1, 2022.)*
- 43.329.020 Skilled worker outreach, recruitment, and career awareness grant program. *(Expires July 1, 2022.)*
- 43.329.030 Program administration—Grant applications. *(Expires July 1, 2022.)*

- 43.329.040 Matching grants—Eligibility—Transmittal to grant review committee for consideration. *(Expires July 1, 2022.)*
- 43.329.050 Grant review committee—Criteria for awarding matching grants—Award of matching grants by department. *(Expires July 1, 2022.)*
- 43.329.060 Matching grants—Restrictions. *(Expires July 1, 2022.)*
- 43.329.070 Grant recipient reporting—Reports by grant review committee. *(Expires July 1, 2022.)*
- 43.329.080 Coordination with workforce training and education coordinating board and workforce training customer advisory committee. *(Expires July 1, 2022.)*
- 43.329.090 Skilled worker outreach, recruitment, and career awareness grant program account. *(Expires July 1, 2022.)*
- 43.329.900 Expiration of chapter.

43.329.010 Definitions. *(Expires July 1, 2022.)* The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Department" means the department of commerce.
- (2) "Eligible applicant" means any government entity or any nongovernment entity, association, or organization that is not a private vocational school, that:
 - (a) Offers, or plans to offer, a skilled worker awareness program; and
 - (b) Has partnered with industry to either offer or fund a skilled worker awareness program.
- (3) "Grant program" means the skilled worker outreach, recruitment, and career awareness grant program.
- (4) "Grant review committee" means the skilled worker outreach, recruitment, and career awareness grant program review committee created in RCW 43.329.050.
- (5) "Matching grant" means a grant funded by the state to match funding provided by an eligible applicant to support efforts to increase the state's skilled workforce.
- (6) "Skilled worker awareness program" means a program designed to increase awareness of, and enrollment in, accredited educational, occupational, state-approved preapprenticeship, apprenticeship, and similar training programs that: (a) Train individuals to perform skills needed in the workforce; and (b) award industry or state-recognized certificates, credentials, associate degrees, professional licenses, or similar evidence of achievement but not including bachelor's or higher degrees. [2017 c 225 § 1.]

43.329.020 Skilled worker outreach, recruitment, and career awareness grant program. *(Expires July 1, 2022.)*

(1) Subject to availability of amounts appropriated for this specific purpose, the skilled worker outreach, recruitment, and career awareness grant program is created. The purpose of the grant program is to increase the state's skilled workforce by raising awareness of the state's worker training programs.

(2)(a) Under the grant program, the department must award matching grants to eligible applicants that will engage in outreach and recruiting efforts to increase enrollment in and completion of worker training programs.

(b) Recipients of the grant must provide matching cash funding. The recipient's match must be two dollars for each one dollar of the grant. The recipient's match may not be in the form of in-kind contributions. [2017 c 225 § 2.]

43.329.030 Program administration—Grant applications. *(Expires July 1, 2022.)*

(1) The department shall administer the grant program and establish a process for

accepting grant applications, including application guidelines and deadlines.

(2) By January 1, 2018, and annually no later than January 1st thereafter, the department shall start accepting grant applications. [2017 c 225 § 3.]

43.329.040 Matching grants—Eligibility—Transmittal to grant review committee for consideration. (Expires July 1, 2022.) (1) To be considered for a matching grant, an eligible applicant must include, at a minimum, the following information in its application:

(a) A description of how the matching grant will be used to provide outreach, education, and recruitment for training programs;

(b) A description of the training programs the applicant plans to promote, the particular skills taught by that training program, and the number of years the training program has been in operation;

(c) Past, current, and projected enrollment in the training program the applicant plans to promote and the estimated increases in enrollment, if the training program has been in existence;

(d) If the applicant is promoting an existing training program, a comparison of the number of participants who enroll in the training program and the number of participants who complete the program over a five-year period, if available;

(e) Specific industry needs or gaps in the workforce that the training program will or does address;

(f) A description of intended or existing partnerships with industry members, including those where training program participants will have the opportunity to earn income or credit hours;

(g) Costs or the anticipated costs to implement the skilled worker awareness program;

(h) Resources that the eligible applicant will commit in matching dollars and, if the applicant already has a skilled worker awareness program, existing resources that the applicant has invested in recruiting, outreach, and funding of its skilled worker awareness program; and

(i) Any other information the department requires.

(2) Upon receipt of an application that satisfies the requirements in this section, the department must send the application to the grant review committee for its consideration. [2017 c 225 § 4.]

43.329.050 Grant review committee—Criteria for awarding matching grants—Award of matching grants by department. (Expires July 1, 2022.) (1) The department must establish a grant review committee to review grant applications and make recommendations on who should receive a matching grant and the amount. The grant review committee must consist of eleven members with representatives from the following:

(a) The department of labor and industries;

(b) The employment security department;

(c) The department of enterprise services;

(d) The workforce training and education coordinating board;

(e) The state board for community and technical colleges;

(f) Two representatives from business;

(g) Two representatives from labor; and

(h) Two representatives from the Washington apprenticeship and training council.

(2) The grant review committee shall designate a chair to oversee the committee's meetings.

(3) The grant review committee shall establish criteria for ranking eligible applicants for matching grant awards. The grant review committee shall consider and rank eligible applicants based on which applicants currently are able to or have the best potential to:

(a) Reach a broad diverse audience, including populations with barriers as identified in the state's comprehensive workforce training and education plan, through their recruitment and outreach efforts;

(b) Collaborate with and utilize centers of excellence within the community and technical college system;

(c) Significantly increase enrollment and completion of the training program the applicant plans to promote;

(d) Fill existing needs for skilled workers in the market; and

(e) Demonstrate the following, prioritized in the following order:

(i) That the eligible applicant will provide monetary contributions from its own resources; and

(ii) That the eligible applicant has secured:

(A) An industry partner; or

(B) Monetary contributions from an industry partner, conditional job placement guarantees, or articulation agreements.

(4) The grant review committee shall submit its recommendations to the director of the department, who shall determine to whom and in what amounts to award matching grants. Matching grants must be awarded no later than April 1st each year following the application submittal deadline. [2017 c 225 § 5.]

43.329.060 Matching grants—Restrictions. (Expires July 1, 2022.) Grant recipients may not use matching grants for tuition subsidies or to reduce tuition for any training program. [2017 c 225 § 6.]

43.329.070 Grant recipient reporting—Reports by grant review committee. (Expires July 1, 2022.) (1) Each eligible applicant that receives a matching grant shall submit a quarterly report and an annual report to the grant review committee on the outcomes achieved. The grant recipient shall include in the report at least the following measurable outcomes:

(a) The manner in which the grant recipient has used the matching grant for outreach and recruitment;

(b) The number of participants enrolled in and the number of participants who completed the training program being promoted, both before the matching grant was awarded and since the matching grant was received;

(c) The number of participants who obtained employment in an industry for which the participant was trained under the training program promoted by the recipient, including information about the industry in which the participants are employed;

(d) The number of participants recruited; and

(e) Any other information the grant review committee determines appropriate.

(2) By December 1, 2019, and by each December 1st thereafter, the grant review committee shall submit an annual report to the governor and appropriate committees of the legislature in accordance with the reporting requirements in RCW 43.01.036. The report must include:

(a) The number of matching grants awarded in the prior year, including the amount, recipient, and duration of each matching grant;

(b) The number of individuals who enrolled in and completed training programs promoted by each grant recipient;

(c) The number of individuals who obtained employment in a position that uses the skills for which they were trained through a training program promoted by a grant recipient; and

(d) Other information obtained from grant recipients' reports under subsection (1) of this section. [2017 c 225 § 7.]

43.329.080 Coordination with workforce training and education coordinating board and workforce training customer advisory committee. (Expires July 1, 2022.)

To assist with implementation of the grant program, the department, in coordination with the workforce training and education coordinating board and the workforce training customer advisory committee, shall coordinate skilled worker awareness programs throughout the state. The coordination must include:

(1) Partnering with industry associations, labor-management programs, and businesses to assess and determine their workforce needs; and

(2) Coordinating with training program providers on skill sets being developed and the quality of students being trained. [2017 c 225 § 8.]

43.329.090 Skilled worker outreach, recruitment, and career awareness grant program account. (Expires July 1, 2022.)

The skilled worker outreach, recruitment, and career awareness grant program account is created in the custody of the state treasurer. The department shall deposit in the account all money received for the program. The account shall be self-sustaining and consist of funds appropriated by the legislature for the skilled worker outreach, recruitment, and career awareness grant program and private contributions to the program. Expenditures from the account shall only be used for matching grants provided to grant recipients. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2017 c 225 § 9.]

43.329.900 Expiration of chapter. This chapter expires July 1, 2022. [2017 c 225 § 10.]

Chapter 43.330 RCW

DEPARTMENT OF COMMERCE

(Formerly: Department of community, trade, and economic development)

Sections

43.330.250	Economic development strategic reserve account—Authorized expenditures—Transfer of excess funds to the education construction account.
43.330.470	Washington sexual assault kit program. (Expires June 30, 2022.)
43.330.480	Low-income home rehabilitation revolving loan program—Definitions.
43.330.482	Low-income home rehabilitation revolving loan program.
43.330.486	Low-income home rehabilitation revolving loan program—Contracts with rehabilitation agencies—Reports.
43.330.488	Low-income home rehabilitation revolving loan program—Account.
43.330.735	Washington small business retirement marketplace.
43.330.750	Rules—Rule development process.

43.330.250 Economic development strategic reserve account—Authorized expenditures—Transfer of excess funds to the education construction account. (1) The economic development strategic reserve account is created in the state treasury to be used only for the purposes of this section.

(2) Only the governor, with the recommendation of the director of the department of commerce, may authorize expenditures from the account.

(3) During the 2009-2011 and 2011-2013 fiscal biennia, moneys in the account may also be transferred into the state general fund.

(4) Expenditures from the account may be made to prevent closure of a business or facility, to prevent relocation of a business or facility in the state to a location outside the state, or to recruit a business or facility to the state. Expenditures may be authorized for:

(a) Workforce development;

(b) Public infrastructure needed to support or sustain the operations of the business or facility;

(c) Other lawfully provided assistance including, but not limited to, technical assistance, environmental analysis, relocation assistance, and planning assistance. Funding may be provided for such assistance only when it is in the public interest and may only be provided under a contractual arrangement ensuring that the state will receive appropriate consideration, such as an assurance of job creation or retention; and

(d) The joint center for aerospace technology innovation.

(5) The funds shall not be expended from the account unless:

(a) The circumstances are such that time does not permit the director of the department of commerce or the business or facility to secure funding from other state sources;

(b) The business or facility produces or will produce significant long-term economic benefits to the state, a region of the state, or a particular community in the state;

(c) The business or facility does not require continuing state support;

(d) The expenditure will result in new jobs, job retention, or higher incomes for citizens of the state;

(e) The expenditure will not supplant private investment; and

(f) The expenditure is accompanied by private investment.

(6) No more than three million dollars per year may be expended from the account for the purpose of assisting an individual business or facility pursuant to the authority specified in this section.

(7) If the account balance in the strategic reserve account exceeds fifteen million dollars at any time, the amount in excess of fifteen million dollars shall be transferred to the education construction account.

(8) During the 2015-2017 and 2017-2019 fiscal biennia, the legislature may appropriate moneys from the account to fund programs and grants at the department of commerce. It is the intent of the legislature that this policy will be continued in subsequent fiscal biennia. [2017 3rd sp.s. c 1 § 975; 2015 3rd sp.s. c 4 § 962; 2014 c 112 § 114; 2013 2nd sp.s. c 24 § 1; 2011 1st sp.s. c 50 § 956. Prior: 2009 c 565 § 13; 2009 c 564 § 943; 2008 c 329 § 914; 2005 c 427 § 1.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

43.330.470 Washington sexual assault kit program. (Expires June 30, 2022.) (1) The Washington sexual assault kit program is created within the department for the purpose of accepting private funds to fund forensic analysis of sexual assault kits in the possession of law enforcement agencies but not submitted for analysis as of July 24, 2015, and to fund other related programs aimed at improving the public's response to sexual assault. The director may accept gifts, grants, donations, or moneys from any source for deposit in the Washington sexual assault kit account created under subsection (2) of this section.

(2) The Washington sexual assault kit account is created in the custody of the state treasurer. Funds deposited in the Washington sexual assault kit account may be used for the Washington sexual assault kit program established under this section. The Washington sexual assault kit account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(3) Except when otherwise specified, public funds deposited in the Washington sexual assault kit account must be transferred and used exclusively for the following:

(a) Eighty-five percent of the funds for the Washington state patrol bureau of forensic laboratory services for the purpose of conducting forensic analysis of sexual assault kits in the possession of law enforcement agencies but not submitted for forensic analysis as of July 24, 2015; and

(b) Fifteen percent of the funds for the office of crime victims advocacy in the department for the purpose of funding grants for sexual assault nurse examiner services and training.

(4)(a) Except as otherwise provided in (b) of this subsection, private funds donated to and deposited in the Washington sexual assault kit account must be transferred and used exclusively for the following:

(i) Thirty percent for the Washington association of sheriffs and police chiefs for the purpose of funding the Washington sexual assault kit initiative project created in RCW 36.28A.430;

(ii) Thirty percent for the Washington state patrol bureau of forensic laboratory services for the purpose of conducting forensic analysis of sexual assault kits in the possession of law enforcement agencies but not submitted for forensic analysis as of July 24, 2015, unless the Washington state patrol bureau of forensic laboratory services deems that the funds are not necessary for this purpose, in which case the funds shall be divided equally for the purposes outlined in (a)(i), (iii), and (iv) of this subsection;

(iii) Thirty percent for the criminal justice training commission for the training in RCW 43.101.272, 43.101.274, and 43.101.276;

(iv) Ten percent for the office of crime victims advocacy in the department for the purpose of providing services to victims of sexual assault and training for professionals interacting with and providing services to victims of sexual assault.

(b) With the consent of the department, a grantor of funds may enter into an agreement with the department for a different allocation of funds specified in (a) of this subsection, provided that the funds are distributed for the purpose of the program created in this section. Within thirty days of entering into an agreement under this subsection (4)(b), the department shall notify the sexual assault forensic examination best practices task force and the appropriate committees of the legislature.

(5) This section expires June 30, 2022. [2017 c 290 § 7; 2016 c 173 § 9.]

Finding—Intent—2016 c 173: See note following RCW 43.43.545.

43.330.480 Low-income home rehabilitation revolving loan program—Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Home" means a single-family residential structure.

(2) "Home rehabilitation" means residential repairs and improvements that address health, safety, and durability issues in existing housing in rural areas.

(3) "Homeowner" means a person who owns and resides permanently in the home the person occupies.

(4) "Low-income" means persons or households with income at or below two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

(5) "Rehabilitation agency" means any approved department grantee, tribal nation, or any public service company, municipality, public utility district, mutual or cooperative, or other entity that bears the responsibility for rehabilitating residences under this chapter and has been approved by the department.

(6) "Rural areas" means areas of Washington state defined as nonentitlement areas by the United States department of housing and urban development. [2017 c 285 § 1.]

43.330.482 Low-income home rehabilitation revolving loan program. (1) Subject to availability of amounts appropriated for this specific purpose, the low-income home

rehabilitation revolving loan program is created within the department.

(2) The program must include the following elements:

(a) Eligible homeowners must be low-income and live in rural areas.

(b) Homeowners who are senior citizens, persons with disabilities, families with children five years old and younger, and veterans must receive priority for loans.

(c) The cost of the home rehabilitation must be the lesser of eighty percent of the assessed value of the property post rehabilitation or forty thousand dollars.

(d) The maximum amount that may be loaned under this program may not exceed the cost of the home rehabilitation as provided in (c) of this subsection, and must not result in total loans borrowed against the property equaling more than eighty percent of the assessed value.

(e) The interest rate of the loan must be equal to the previous calendar year's annual average consumer price index compiled by the bureau of labor statistics, United States department of labor.

(f) The department must allow participating homeowners to defer repayment of the loan principal and interest and any fees related to the administration or issuance of the loan. Any amounts deferred pursuant to this section become a lien in favor of the state. The lien is subordinate to liens for general taxes, amounts deferred under chapter 84.37 or 84.38 RCW, or special assessments as defined in RCW 84.38.020. The lien is also subordinate to the first deed of trust or the first mortgage on the real property but has priority over all other privileges, liens, monetary encumbrances, or other security interests affecting the real property, whenever incurred, filed, or recorded. The department must take such necessary action to file and perfect the state's lien. All amounts due under the loan become due and payable upon the sale of the home or upon change in ownership of the home.

(3) All moneys from repayments must be deposited into the low-income home rehabilitation revolving loan program account created in RCW 43.330.488.

(4) The department must adopt rules for implementation of this program. [2017 c 285 § 2.]

43.330.486 Low-income home rehabilitation revolving loan program—Contracts with rehabilitation agencies—Reports. (1) The department must contract with rehabilitation agencies to provide home rehabilitation to participating homeowners. Preference must be given to local agencies delivering programs and services with similar eligibility criteria.

(2) Any rehabilitation agency may charge participating homeowners an administrative fee of no more than seven percent of the home rehabilitation loan amount. The administrative fee must become a component of the total loan amount to be repaid by the participating homeowner.

(3) Any rehabilitation agency receiving funding under this section must report to the department at least quarterly, or in alignment with federal reporting, whichever is the greater frequency, the project costs and the number of homes repaired or rehabilitated. The director must review the accuracy of these reports. [2017 c 285 § 3.]

43.330.488 Low-income home rehabilitation revolving loan program—Account. The low-income home rehabilitation revolving loan program account is created in the custody of the state treasury. All transfers and appropriations by the legislature, repayments of loans, private contributions, and all other sources must be deposited into the account. Expenditures from the account may be used only for the purposes of the low-income home rehabilitation revolving loan program created in RCW 43.330.482. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2017 c 285 § 4.]

43.330.735 Washington small business retirement marketplace. (1) The Washington small business retirement marketplace is created.

(2) Prior to connecting any eligible employer with an approved plan in the marketplace, the director shall design a plan for the operation of the marketplace.

(3) The director shall consult with the Washington state department of retirement systems, the Washington state investment board, and the department of financial institutions in designing and managing the marketplace.

(4) The director shall approve for participation in the marketplace all private sector financial services firms that meet the requirements of *RCW 43.330.732(7).

(5) A range of investment options must be provided to meet the needs of investors with various levels of risk tolerance and various ages. The director must approve a diverse array of private retirement plan options that are available to employers on a voluntary basis, including but not limited to life insurance plans that are designed for retirement purposes, and plans for eligible employer participation such as: (a) A SIMPLE IRA-type plan that provides for employer contributions to participating enrollee accounts; and (b) a payroll deduction individual retirement account type plan or workplace-based individual retirement accounts open to all workers in which the employer does not contribute to the employees' account.

(6)(a) Prior to approving a plan to be offered on the marketplace, the department must receive verification from the department of financial institutions or the office of the insurance commissioner:

(i) That the private sector financial services firm offering the plan meets the requirements of *RCW 43.330.732(7); and

(ii) That the plan meets the requirements of this section excluding subsection (9) of this section which is subject to federal laws and regulations.

(b) If the plan includes either life insurance or annuity products, or both, the office of the insurance commissioner may request that the department of financial institutions conduct the plan review as provided in (a)(ii) of this subsection prior to submitting its verification to the department.

(c) The director may remove approved plans that no longer meet the requirements of this chapter.

(7) The financial services firms participating in the marketplace must offer a minimum of two product options: (a) A target date or other similar fund, with asset allocations and maturities designed to coincide with the expected date of

retirement and (b) a balanced fund. The marketplace must offer myRA.

(8) In order for the marketplace to operate, there must be at least two approved plans on the marketplace; however, nothing in this subsection shall be construed to limit the number of private sector financial services firms with approved plans from participating in the marketplace.

(9) Approved plans must meet federal law or regulation for internal revenue service approved retirement plans.

(10) The approved plans must include the option for enrollees to roll pretax contributions into a different individual retirement account or another eligible retirement plan after ceasing participation in a plan approved by the Washington small business retirement marketplace.

(11) Financial services firms selected by the department to offer approved plans on the marketplace may not charge the participating employer an administrative fee and may not charge enrollees more than one hundred basis points in total annual fees and must provide information about their product's historical investment performance. Financial services firms may charge enrollees a de minimis fee for new and/or low balance accounts in amounts negotiated and agreed upon by the department and financial services firms. The director shall limit plans to those with total fees the director considers reasonable based on all the facts and circumstances.

(12) Participation in the Washington small business retirement marketplace is voluntary for both eligible employers and qualified employees.

(13) Enrollment in any approved plan offered in the marketplace is not an entitlement. [2017 c 69 § 1; 2015 c 296 § 3.]

***Reviser's note:** RCW 43.330.732(7) defines "private sector financial firms" and "financial services firms."

43.330.750 Rules—Rule development process. The director shall adopt rules necessary to allow the marketplace to operate as authorized by this subchapter. As part of the rule development process, the director shall consult with organizations representing eligible employers, qualified employees, private and nonprofit sector retirement plan administrators and providers, organizations representing private sector financial services firms, and any other individuals or entities that the director determines relevant to the development of an effective and efficient method for operating the marketplace. The director or the director's designee may take the actions necessary to ensure chapter 69, Laws of 2017 is implemented on July 23, 2017. [2017 c 69 § 2; 2015 c 296 § 9.]

Chapter 43.365 RCW MOTION PICTURE COMPETITIVENESS PROGRAM

Sections

43.365.010 Definitions.

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

(1) "Approved motion picture competitiveness program" means a nonprofit organization under the internal revenue code, section 501(c)(6), with the sole purpose of revitalizing

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the state's economic, cultural, and educational standing in the national and international market of motion picture production and associated creative industries and assisting and providing services for attracting the film industry and associated creative industries, by recommending and awarding financial assistance for costs associated with motion pictures in the state of Washington.

(2) "Contribution" means cash contributions.

(3) "Costs" means actual expenses of production and postproduction expended in Washington state for the production of motion pictures, including but not limited to payments made for salaries, wages, and health insurance and retirement benefits, the rental costs of machinery and equipment and the purchase of services, food, property, lodging, and permits for work conducted in Washington state.

(4) "Department" means the department of commerce.

(5) "Funding assistance" means cash expenditures from an approved motion picture competitiveness program.

(6) "Motion picture" means a recorded audiovisual production intended for distribution to the public for exhibition in public and/or private settings by means of any and all delivery systems and/or delivery platforms now or hereafter known, including without limitation, screenings in motion picture theaters, broadcasts and cablecast transmissions for viewing on televisions, computer screens, and other audiovisual receivers, viewings on screens by means of digital video disc (DVD) players, video on demand (VOD) services, and digital video recording (DVR) services, direct internet transmission, and viewing on digital computer-based systems which respond to the users' actions (interactive media).

(7) "Person" has the same meaning as provided in RCW 82.04.030. [2017 3rd sp.s. c 37 § 1103; 2012 c 189 § 1. Prior: 2009 c 565 § 46; 2006 c 247 § 2.]

Chapter 43.374 RCW WASHINGTON GLOBAL HEALTH TECHNOLOGIES AND PRODUCT DEVELOPMENT COMPETITIVENESS

Sections

43.374.005 Repealed.

43.374.020 Repealed.

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

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

Chapter 43.382 RCW DEVELOPMENTAL DISABILITIES OMBUDS

Sections

43.382.050 Identifying information—Disclosure.

43.382.050 Identifying information—Disclosure. (1) Identifying information about complainants or witnesses is not subject to any method of legal compulsion and may not be revealed to the legislature or the governor except under the following circumstances: (a) The complainant or witness waives confidentiality; (b) under a legislative subpoena when

there is a legislative investigation for neglect of duty or misconduct by the ombuds or ombuds' office when the identifying information is necessary to the investigation of the ombuds' acts; or (c) under an investigation or inquiry by the governor as to neglect of duty or misconduct by the ombuds or ombuds' office when the identifying information is necessary to the investigation of the ombuds' acts. **Consistently with this section, the ombuds must act to protect sensitive client information.**

(2) For the purposes of this section, "identifying information" includes the complainant's or witness's name, location, telephone number, likeness, social security number or other identification number, or identification of immediate family members. [2016 c 172 § 10.]

Reviser's note: The language in bold print was a part of the underlying Session Law but was inadvertently omitted from the original publication of this section in the Revised Code of Washington. The Code Reviser has restored the language to accurately reflect the law.

Finding—2016 c 172: See note following RCW 43.382.005.

Title 44

STATE GOVERNMENT—LEGISLATIVE

Chapters

- 44.04 General provisions.
- 44.05 Washington state redistricting act.
- 44.28 Joint legislative audit and review committee.

Chapter 44.04 RCW

GENERAL PROVISIONS

Sections

- 44.04.220 Legislative children's oversight committee. (*Effective July 1, 2018, until July 1, 2019.*)
- 44.04.370 Gina Grant Bull memorial legislative page scholarship program.
- 44.04.375 Legislative page scholarship program—Gifts, grants, conveyances, bequests, devises—Expenditures—Joint rules.
- 44.04.380 Gina Grant Bull memorial legislative page scholarship account.

44.04.220 Legislative children's oversight committee. (*Effective July 1, 2018, until July 1, 2019.*) (1) There is created the legislative children's oversight committee for the purpose of monitoring and ensuring compliance with administrative acts, relevant statutes, rules, and policies pertaining to family and children services and the placement, supervision, and treatment of children in the state's care or in state-licensed facilities or residences. The committee shall consist of three senators and three representatives from the legislature. The senate members of the committee shall be appointed by the president of the senate. The house members of the committee shall be appointed by the speaker of the house. Not more than two members from each chamber shall be from the same political party. Members shall be appointed before the close of each regular session of the legislature during an odd-numbered year.

(2) The committee shall have the following powers:

- (a) Selection of its officers and adopt rules for orderly procedure;
- (b) Request investigations by the ombuds of administrative acts;
- (c) Receive reports of the ombuds;

(d)(i) Obtain access to all relevant records in the possession of the ombuds, except as prohibited by law; and (ii) make recommendations to all branches of government;

(e) Request legislation;

(f) Conduct hearings into such matters as it deems necessary.

(3) Upon receipt of records from the ombuds, the committee is subject to the same confidentiality restrictions as the ombuds under RCW 43.06A.050.

(4) From July 1, 2018, through June 30, 2019, the oversight board for children, youth, and families established in RCW 43.216.015 shall assume the duties of the legislative children's oversight committee.

(5) This section expires July 1, 2019. [2017 3rd sp.s. c 6 § 115; 2013 c 23 § 100; 1996 c 131 § 1.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

44.04.370 Gina Grant Bull memorial legislative page scholarship program. The secretary of the senate and the chief clerk of the house of representatives may administer and conduct a legislative page scholarship program to provide resources for Washington students who participate in the page programs of the senate or house of representatives. The scholarship program should provide assistance to students, based on financial need, who qualify for a page program. The program is called the Gina Grant Bull memorial legislative page scholarship program. [2017 c 322 § 1.]

44.04.375 Legislative page scholarship program—Gifts, grants, conveyances, bequests, devises—Expenditures—Joint rules. (1) The secretary of the senate and the chief clerk of the house of representatives may solicit and accept gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise, and sell, lease, exchange, or expend these donations or the proceeds, rents, profits, and income from the donations except as limited by the donor's terms. Any legislative member or legislative employee may solicit the same types of contributions for the secretary of the senate and the chief clerk of the house of representatives.

(2) Moneys received under this section may be used only for establishing and operating the legislative page scholarship program authorized in RCW 44.04.370.

(3) Moneys received under this section must be deposited in the Gina Grant Bull memorial legislative page scholarship account established in RCW 44.04.380.

(4) The secretary of the senate and the chief clerk of the house of representatives must adopt joint rules to govern and protect the receipt and expenditure of the proceeds. [2017 c 322 § 2.]

44.04.380 Gina Grant Bull memorial legislative page scholarship account. The Gina Grant Bull memorial legislative page scholarship account is created in the custody of the state treasurer. All moneys received under RCW 44.04.370 must be deposited in the account. Expenditures

from the account may be made only for the purposes of the legislative page scholarship program in RCW 44.04.370. Only the secretary of the senate or the chief clerk of the house of representatives or their designee may authorize expenditures from the account. An appropriation is not required for expenditures, but the account is subject to allotment procedures under chapter 43.88 RCW. [2017 c 322 § 3.]

Chapter 44.05 RCW

WASHINGTON STATE REDISTRICTING ACT

Sections

44.05.080 Duties.

44.05.080 Duties. In addition to other duties prescribed by law, the commission shall:

(1) Adopt rules pursuant to the Administrative Procedure Act, chapter 34.05 RCW, to carry out the provisions of Article II, section 43 of the state Constitution and of this chapter, which rules shall provide that three voting members of the commission constitute a quorum to do business, and that the votes of three of the voting members are required for any official action of the commission;

(2) Act as the legislature's recipient of the final redistricting data and maps from the United States Bureau of the Census;

(3) Comply with requirements to disclose and preserve public records as specified in chapters 40.14 and 42.56 RCW;

(4) Hold open meetings pursuant to the open public meetings act, chapter 42.30 RCW;

(5) Prepare and disclose its minutes pursuant to RCW 42.30.035;

(6) Be subject to the provisions of RCW 42.17A.700;

(7) Prepare and publish a report with the plan; the report will be made available to the public at the time the plan is published. The report will include but will not be limited to:

(a) The population and percentage deviation from the average district population for every district; (b) an explanation of the criteria used in developing the plan with a justification of any deviation in a district from the average district population; (c) a map of all the districts; and (d) the estimated cost incurred by the counties for adjusting precinct boundaries. [2017 3rd sp.s. c 25 § 33; 2011 c 60 § 42; 2005 c 274 § 303; 1983 c 16 § 8.]

Effective date—2011 c 60: See RCW 42.17A.919.

Chapter 44.28 RCW

JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE

Sections

44.28.816 Tuition-setting authority—Systemic performance audit. *(Expires December 31, 2018.)*

44.28.816 Tuition-setting authority—Systemic performance audit. (Expires December 31, 2018.) (1) During calendar year 2018, the joint committee shall complete a systemic performance audit of the tuition-setting authority in RCW 28B.15.067 granted to the governing boards of the state universities, regional universities, and The Evergreen State College. The audit must include a separate analysis of

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the authority granted in RCW 28B.15.067(5). The purpose of the audit is to evaluate the impact of institutional tuition-setting authority on student access, affordability, and completion.

(2) The audit must include an evaluation of the following outcomes for each four-year institution of higher education:

(a) Changes in undergraduate enrollment, retention, and graduation by race and ethnicity, gender, state and county of origin, age, and socioeconomic status;

(b) The impact on student transferability, particularly from Washington community and technical colleges;

(c) Changes in time and credits to degree;

(d) Changes in the number and availability of online programs and undergraduate enrollments in the programs;

(e) Changes in enrollments in the running start and other dual enrollment programs;

(f) Impacts on funding levels for state student financial aid programs;

(g) Any changes in the percent of students who apply for student financial aid using the free application for federal student aid (FAFSA);

(h) Any changes in the percent of students who apply for available tax credits;

(i) Information on the use of building fee revenue by fiscal or academic year; and

(j) Undergraduate tuition and fee rates compared to undergraduate tuition and fee rates at similar institutions in the global challenge states.

(3) The audit must include recommendations on whether to continue tuition-setting authority beyond the 2018-19 academic year.

(4) In conducting the audit, the auditor shall solicit input from key higher education stakeholders, including but not limited to students and their families, faculty, and staff. To the maximum extent possible, data for the University of Washington and Washington State University shall be disaggregated by campus.

(5) The auditor shall report findings and recommendations to the appropriate committees of the legislature by December 15, 2018.

(6) This section expires December 31, 2018. [2017 c 52 § 13; 2014 c 162 § 3; 2011 1st sp.s. c 10 § 31.]

Findings—Intent—Short title—2011 1st sp.s. c 10: See notes following RCW 28B.15.031.

Title 46

MOTOR VEHICLES

Chapters

46.04 Definitions.

46.08 General provisions.

46.09 Off-road, nonhighway, and wheeled all-terrain vehicles.

46.10 Snowmobiles.

46.12 Certificates of title.

46.16A Registration.

46.17 Vehicle fees.

46.18 Special license plates.

46.19 Special parking privileges for persons with disabilities.

46.20 Drivers' licenses—Identitcards.

46.25 Uniform commercial driver's license act.

46.44	Size, weight, load.
46.52	Accidents—Reports—Abandoned vehicles.
46.55	Towing and impoundment.
46.61	Rules of the road.
46.64	Enforcement.
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46.70	Dealers and manufacturers.
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46.93	Motorsports vehicles—Dealer and manufacturer franchises.

Chapter 46.04 RCW DEFINITIONS

Sections

46.04.193	Fred Hutch license plates.
46.04.199	Horseless carriage license plate.
46.04.6910	Washington state aviation license plates.

46.04.193 Fred Hutch license plates. "Fred Hutch license plates" means special license plates issued under RCW 46.18.200 that display the logo of the Fred Hutchinson cancer research center. [2017 c 25 § 4.]

Effective date—2017 c 25: See note following RCW 46.18.200.

46.04.199 Horseless carriage license plate. "Horseless carriage license plate" is a special license plate that may be assigned to a vehicle that is at least forty years old. [2017 c 147 § 1; 2010 c 161 § 120.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.04.6910 Washington state aviation license plates. "Washington state aviation license plates" means special license plates issued under RCW 46.18.200 that display images of a Stearman biplane and Mount Rainier. [2017 c 11 § 5.]

Finding—Intent—2017 c 11: See note following RCW 46.18.200.

Chapter 46.08 RCW GENERAL PROVISIONS

Sections

46.08.195	Name and address of record for license, permit, identicard, title, and registration applicants—Notice.
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46.08.195 Name and address of record for license, permit, identicard, title, and registration applicants—Notice. (1) The name, residence address, and mailing address (if different) submitted by an applicant for a driver's license or other permit, identicard, certificate of title, or vehicle or vessel registration is the name and address of record for the person.

(2)(a) If an applicant for or the holder of a driver's license, permit, identicard, certificate of title, or vehicle or vessel registration changes his or her name or address, he or she must notify the department of the change in writing on a form provided by the department. The written notification, or other means as designated by rule of the department, is the exclusive means by which the name or address of record maintained by the department concerning the person may be changed.

(b) The form must contain a place for the person to indicate that an address change is not for voting purposes. The department must notify the secretary of state by the means described in RCW 29A.08.350 of all change of address information for natural persons received by means of this form except information on persons indicating that the change is not for voting purposes.

(3) Any notice regarding the refusal, cancellation, suspension, revocation, disqualification, probation, or nonrenewal of the driver's license, commercial driver's license, permit, driving privilege, identicard, certificate of title, or vehicle or vessel registration mailed to the address of record of the applicant or holder is effective notwithstanding the applicant or holder's failure to receive the notice.

(4) The department may not change the name of record of a person who is the holder of a driver's license, other driving permit, or identicard under this section unless the person has again satisfied the department regarding his or her identity in the manner provided under RCW 46.20.035. [2017 c 147 § 2.]

Chapter 46.09 RCW

OFF-ROAD, NONHIGHWAY, AND WHEELED ALL-TERRAIN VEHICLES

Sections

46.09.455	Authorized and prohibited uses for wheeled all-terrain vehicles.
46.09.495	Failure to title or register an off-road vehicle—Penalty, circumstances when.

46.09.455 Authorized and prohibited uses for wheeled all-terrain vehicles. (1) A person may operate a wheeled all-terrain vehicle upon any public roadway of this state, not including nonhighway roads and trails, having a speed limit of thirty-five miles per hour or less subject to the following restrictions and requirements:

(a) A person may not operate a wheeled all-terrain vehicle upon state highways that are listed in chapter 47.17 RCW; however, a person may operate a wheeled all-terrain vehicle upon a segment of a state highway listed in chapter 47.17 RCW if the segment is within the limits of a city or town and the speed limit on the segment is thirty-five miles per hour or less;

(b)(i) A person operating a wheeled all-terrain vehicle may not cross a public roadway, not including nonhighway roads and trails, with a speed limit in excess of thirty-five miles per hour, except as follows: A person operating a wheeled all-terrain vehicle may cross a public roadway with a speed limit of sixty miles per hour or less, but more than thirty-five miles per hour, at an intersection of approximately ninety degrees if the roadway that intersects the public roadway with a speed limit of sixty miles per hour or less, but more than thirty-five miles per hour, is a roadway upon which the operation of wheeled all-terrain vehicles has been approved or is otherwise allowed under this section.

(ii) A county, city, or town may by ordinance prohibit a person operating a wheeled all-terrain vehicle from crossing a public roadway with a speed limit of sixty miles per hour or less, but more than thirty-five miles per hour, at specific

intersections or along the entirety of the route within the jurisdiction.

(iii) The operator of a wheeled all-terrain vehicle may not cross at an uncontrolled intersection of a public highway listed under chapter 47.17 RCW;

(c)(i) A person may not operate a wheeled all-terrain vehicle on a public roadway within the boundaries of a county, not including nonhighway roads and trails, with a population of fifteen thousand or more unless the county by ordinance has approved the operation of wheeled all-terrain vehicles on county roadways, not including nonhighway roads and trails.

(ii) The legislative body of a county with a population of fewer than fifteen thousand may, by ordinance, designate roadways or highways within its boundaries to be unsuitable for use by wheeled all-terrain vehicles.

(iii) Any public roadways, not including nonhighway roads and trails, authorized by a legislative body of a county under (c)(i) of this subsection or designated as unsuitable under (c)(ii) of this subsection must be listed publicly and made accessible from the main page of the county web site.

(iv) This subsection (1)(c) does not affect any roadway that was designated as open or closed as of January 1, 2013;

(d)(i) A person may not operate a wheeled all-terrain vehicle on a public roadway within the boundaries of a city or town, not including nonhighway roads and trails, unless the city or town by ordinance has approved the operation of wheeled all-terrain vehicles on city or town roadways, not including nonhighway roads and trails.

(ii) Any public roadways, not including nonhighway roads and trails, authorized by a legislative body of a city or town under (d)(i) of this subsection must be listed publicly and made accessible from the main page of the city or town web site.

(iii) This subsection (1)(d) does not affect any roadway that was designated as open or closed as of January 1, 2013;

(e) Any person who violates this subsection commits a traffic infraction.

(2) Local authorities may not establish requirements for the registration of wheeled all-terrain vehicles.

(3) A person may operate a wheeled all-terrain vehicle upon any public roadway, trail, nonhighway road, or highway within the state while being used under the authority or direction of an appropriate agency that engages in emergency management, as defined in RCW 46.09.310, or search and rescue, as defined in RCW 38.52.010, or a law enforcement agency, as defined in RCW 16.52.011, within the scope of the agency's official duties.

(4) A wheeled all-terrain vehicle is an off-road vehicle for the purposes of chapter 4.24 RCW. [2017 c 26 § 1; 2013 2nd sp.s. c 23 § 6.]

Finding—Intent—2013 2nd sp.s. c 23: See note following RCW 46.09.442.

Effective date—2013 2nd sp.s. c 23: See note following RCW 46.09.310.

46.09.495 Failure to title or register an off-road vehicle—Penalty, circumstances when. (1) It is a gross misdemeanor, punishable as provided under chapter 9A.20 RCW, for a resident, as identified in RCW 46.16A.140, to knowingly fail to apply for a Washington state certificate of title

for, or to knowingly fail to register, an off-road vehicle within fifteen days of receiving or refusing a notice issued by the department under RCW 46.93.210.

(2) Excise taxes owed and fines assessed must be deposited in the manner provided under RCW 46.16A.030(6). [2017 c 218 § 2.]

Finding—Intent—2017 c 218: "The legislature finds that many residents of Washington enjoy recreational opportunities for off-road vehicle and snowmobile use afforded by the natural beauty of the state and do so in compliance with vehicle titling and registration laws and other laws that govern off-road vehicle and snowmobile use. At the same time, the legislature recognizes that the current law and corresponding enforcement regime may not be robust enough to ensure full compliance with legal registration requirements and a level playing field for all users. It is therefore the intent of the legislature to modify the statutory framework governing penalties for off-road vehicle and snowmobile registration violations and to add requirements to the department of licensing in order to improve registration compliance." [2017 c 218 § 1.]

Effective date—2017 c 218: "This act takes effect August 1, 2017." [2017 c 218 § 6.]

Chapter 46.10 RCW SNOWMOBILES

Sections

46.10.505 Failure to register a snowmobile—Penalty, circumstances when.

46.10.505 Failure to register a snowmobile—Penalty, circumstances when. (1) It is a gross misdemeanor, punishable as provided under chapter 9A.20 RCW, for a resident, as identified in RCW 46.16A.140, to knowingly fail to register a snowmobile within fifteen days of receiving or refusing a notice issued by the department under RCW 46.93.210.

(2) Excise taxes owed and fines assessed must be deposited in the manner provided under RCW 46.16A.030(6). [2017 c 218 § 3.]

Finding—Intent—Effective date—2017 c 218: See notes following RCW 46.09.495.

Chapter 46.12 RCW CERTIFICATES OF TITLE

Sections

46.12.530 Application—Contents—Examination of vehicle.

46.12.530 Application—Contents—Examination of vehicle. (1) The application for a certificate of title of a vehicle must be made by the owner or owner's representative to the department, county auditor or other agent, or subagent appointed by the director on a form furnished or approved by the department and must contain:

(a) A description of the vehicle, including make, model, vehicle identification number, type of body, and the odometer reading at the time of delivery of the vehicle;

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

(c) Other information the department may require.

(2) The department may require additional information and a physical examination of the vehicle or of any class of vehicles, or either.

(3) The application for a certificate of title must be signed by the person applying to be the registered owner and be sworn to by that person in the manner described under RCW 9A.72.085. The department shall keep the application in the original, computer, or photostatic form.

(4) The application for an original certificate of title must be accompanied by:

(a) A draft, money order, certified bank check, or cash for all fees and taxes due for the application for certificate of title; and

(b) The most recent certificate of title or other satisfactory evidence of ownership.

(5) Once issued, a certificate of title is not subject to renewal.

(6) Whenever any person, after applying for or receiving a certificate of title, moves from the address named in the application or in the certificate of title issued to him or her, or changes his or her name of record, the person shall, within ten days thereafter, notify the department of the name or address change as provided in RCW 46.08.195. [2017 c 147 § 3; 2010 c 161 § 302; 2007 c 420 § 1; 2005 c 173 § 1; 2004 c 188 § 1; 2001 c 125 § 1. Prior: 1995 c 274 § 1; 1995 c 256 § 23; 1990 c 238 § 1; 1975 c 25 § 8; 1974 ex.s. c 128 § 1; 1972 ex.s. c 99 § 2; 1967 c 32 § 8; 1961 c 12 § 46.12.030; prior: 1947 c 164 § 1, part; 1937 c 188 § 3, part; Rem. Supp. 1947 § 6312-2, part. Formerly RCW 46.12.030.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Notice of liability insurance requirement: RCW 46.16A.130.

Additional notes found at www.leg.wa.gov

Chapter 46.16A RCW REGISTRATION

Sections

- 46.16A.040 Original registration—Application—Form and contents.
46.16A.190 Replacement registration certificates.

46.16A.040 Original registration—Application—Form and contents. (1) An owner or the owner's authorized representative must apply for an original vehicle registration to the department, county auditor or other agent, or subagent appointed by the director on a form furnished by the department. The application must contain:

(a) A description of the vehicle, including its make, model, vehicle identification number, type of body, and power to be used;

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

(c) The purpose for which the vehicle is to be used;

(d) The licensed gross weight for the vehicle, which is:

(i) The adult seating capacity, including the operator, as provided for in RCW 46.16A.455(1) if the vehicle will be operated as a for hire vehicle or auto stage and has a seating capacity of more than six; or

(ii) The gross weight declared by the applicant as required in RCW 46.16A.455(2) if the vehicle will be operated as a motor truck, tractor, or truck tractor;

(e) The empty scale weight of the vehicle; and

(f) Other information that the department may require.

(2) The registered owner or the registered owner's authorized representative shall sign the application for an original vehicle registration and certify that the statements on the application are true to the best of the applicant's knowledge.

(3) The application for an original vehicle registration must be accompanied by a draft, money order, certified bank check, or cash for all fees and taxes due for the application for an original vehicle registration.

(4) Whenever any person, after applying for or receiving a vehicle registration, moves from the address named in the application or in the registration issued to him or her, or changes his or her name of record, the person shall, within ten days thereafter, notify the department of the name or address change as provided in RCW 46.08.195. [2017 c 147 § 4; 2010 c 161 § 413; 1987 c 244 § 2; 1975 c 25 § 15; 1969 ex.s. c 170 § 2. Prior: 1967 ex.s. c 83 § 59; 1967 c 32 § 16; 1961 c 12 § 46.16.040; prior: 1947 c 164 § 8; 1937 c 188 § 29; Rem. Supp. 1947 § 6312-29; 1921 c 96 § 5; 1919 c 178 § 1; 1919 c 59 § 4; 1915 c 142 § 5; RRS § 6316. Formerly RCW 46.16.040.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Additional notes found at www.leg.wa.gov

46.16A.190 Replacement registration certificates. A registered owner or the registered owner's authorized representative shall promptly apply for a duplicate registration certificate if the person is applying for a replacement license tab or windshield emblem or a registration certificate is lost, stolen, mutilated, or destroyed, or becomes illegible. The application for a duplicate registration certificate must include information required by the department and be accompanied by the fee required in RCW 46.17.320. The duplicate registration certificate must contain the word, "duplicate."

A person recovering a registration certificate for which a duplicate has been issued shall promptly return the recovered registration certificate to the department. [2017 c 147 § 5; 2010 c 161 § 433; 1997 c 241 § 6. Formerly RCW 46.16.265.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Chapter 46.17 RCW VEHICLE FEES

Sections

- 46.17.050 Fees associated with a report of sale.
46.17.060 Fees associated with a transitional ownership record.
46.17.220 Special license plate fees.
46.17.230 Replacement license tab and windshield emblem fee.
46.17.330 Farm vehicle reduced gross weight license fee.

46.17.050 Fees associated with a report of sale. (1) Until June 30, 2017, before accepting a report of sale filed under RCW 46.12.650(2), the county auditor or other agent or subagent appointed by the director shall require the applicant to pay:

(a) The filing fee under RCW 46.17.005(1), the license plate technology fee under RCW 46.17.015, and the license

service fee under RCW 46.17.025 to the county auditor or other agent; and

(b) The service fee under RCW 46.17.040(1)(b) to the subagent.

(2)(a) Beginning July 1, 2017, before accepting a report of sale filed under RCW 46.12.650(2), the department, county auditor or other agent, or subagent appointed by the director shall require the applicant to pay the filing fee under RCW 46.17.005(1), the license plate technology fee under RCW 46.17.015, the license service fee under RCW 46.17.025, and the service fee under RCW 46.17.040(1)(b).

(b) Service fees collected under (a) of this subsection by the department or county auditor or other agent appointed by the director must be credited to the capital vessel replacement account under RCW 47.60.322. [2017 c 147 § 12; 2015 3rd sp.s. c 44 § 211; 2014 c 59 § 3; 2010 c 161 § 505.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Application—2014 c 59: See note following RCW 47.60.322.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.17.060 Fees associated with a transitional ownership record. (1) Until June 30, 2017, before accepting a transitional ownership record filed under RCW 46.12.660, the county auditor or other agent or subagent appointed by the director shall require the applicant to pay:

(a) The filing fee under RCW 46.17.005(1), the license plate technology fee under RCW 46.17.015, and the license service fee under RCW 46.17.025 to the county auditor or other agent; and

(b) The service fee under RCW 46.17.040(1)(b) to the subagent.

(2)(a) Beginning July 1, 2017, before accepting a transitional ownership record filed under RCW 46.12.660, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant to pay the filing fee under RCW 46.17.005(1), the license plate technology fee under RCW 46.17.015, the license service fee under RCW 46.17.025, and the service fee under RCW 46.17.040(1)(b).

(b) Service fees collected under (a) of this subsection by the department or county auditor or other agent appointed by the director must be credited to the capital vessel replacement account under RCW 47.60.322. [2017 c 147 § 13; 2015 3rd sp.s. c 44 § 212; 2014 c 59 § 4; 2010 c 161 § 507.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Application—2014 c 59: See note following RCW 47.60.322.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.17.220 Special license plate fees. (1) In addition to all fees and taxes required to be paid upon application for a vehicle registration in chapter 46.16A RCW, the holder of a special license plate shall pay the appropriate special license plate fee as listed in this section.

[2017 RCW Supp—page 564]

PLATE TYPE	INITIAL FEE	RENEWAL FEE	DISTRIBUTED UNDER
(a) 4-H	\$ 40.00	\$ 30.00	RCW 46.68.420
(b) Amateur radio license	\$ 5.00	N/A	RCW 46.68.070
(c) Armed forces	\$ 40.00	\$ 30.00	RCW 46.68.425
(d) Baseball stadium	\$ 40.00	\$ 30.00	Subsection (2) of this section
(e) Breast cancer awareness	\$ 40.00	\$ 30.00	RCW 46.68.425
(f) Collector vehicle	\$ 35.00	N/A	RCW 46.68.030
(g) Collegiate	\$ 40.00	\$ 30.00	RCW 46.68.430
(h) Endangered wildlife	\$ 40.00	\$ 30.00	RCW 46.68.425
(i) Fred Hutch	\$ 40.00	\$ 30.00	RCW 46.68.420
(j) Gonzaga University alumni association	\$ 40.00	\$ 30.00	RCW 46.68.420
(k) Helping kids speak	\$ 40.00	\$ 30.00	RCW 46.68.420
(l) Horseless carriage	\$ 35.00	N/A	RCW 46.68.030
(m) Keep kids safe	\$ 45.00	\$ 30.00	RCW 46.68.425
(n) Law enforcement memorial	\$ 40.00	\$ 30.00	RCW 46.68.420
(o) Military affiliate radio system	\$ 5.00	N/A	RCW 46.68.070
(p) Music matters	\$ 40.00	\$ 30.00	RCW 46.68.420
(q) Purple Heart	\$ 40.00	\$ 30.00	RCW 46.68.425
(r) Professional firefighters and paramedics	\$ 40.00	\$ 30.00	RCW 46.68.420
(s) Ride share	\$ 25.00	N/A	RCW 46.68.030
(t) Seattle Seahawks	\$ 40.00	\$ 30.00	RCW 46.68.420
(u) Seattle Sounders FC	\$ 40.00	\$ 30.00	RCW 46.68.420
(v) Seattle University	\$ 40.00	\$ 30.00	RCW 46.68.420
(w) Share the road	\$ 40.00	\$ 30.00	RCW 46.68.420
(x) Ski & ride Washington	\$ 40.00	\$ 30.00	RCW 46.68.420
(y) Square dancer	\$ 40.00	N/A	RCW 46.68.070
(z) State flower	\$ 40.00	\$ 30.00	RCW 46.68.420
(aa) Volunteer firefighters	\$ 40.00	\$ 30.00	RCW 46.68.420
(bb) Washington farmers and ranchers	\$ 40.00	\$ 30.00	RCW 46.68.420
(cc) Washington lighthouses	\$ 40.00	\$ 30.00	RCW 46.68.420
(dd) Washington state aviation	\$ 40.00	\$ 30.00	RCW 46.68.420
(ee) Washington state parks	\$ 40.00	\$ 30.00	RCW 46.68.425
(ff) Washington state wrestling	\$ 40.00	\$ 30.00	RCW 46.68.420
(gg) Washington tennis	\$ 40.00	\$ 30.00	RCW 46.68.420
(hh) Washington's fish collection	\$ 40.00	\$ 30.00	RCW 46.68.425
(ii) Washington's national parks	\$ 40.00	\$ 30.00	RCW 46.68.420
(jj) Washington's wildlife collection	\$ 40.00	\$ 30.00	RCW 46.68.425
(kk) We love our pets	\$ 40.00	\$ 30.00	RCW 46.68.420
(ll) Wild on Washington	\$ 40.00	\$ 30.00	RCW 46.68.425

(2) After deducting administration and collection expenses for the sale of baseball stadium license plates, the remaining proceeds must be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund. [2017 c 25 §

2; 2017 c 11 § 3. Prior: 2016 c 36 § 2; 2016 c 31 § 2; 2016 c 30 § 3; 2016 c 16 § 2; 2016 c 15 § 2; prior: 2014 c 77 § 2; 2014 c 6 § 2; 2013 c 286 § 2; 2012 c 65 § 4; prior: 2011 c 229 § 3; 2011 c 225 § 2; 2011 c 171 § 58; 2010 c 161 § 521.]

Reviser's note: This section was amended by 2017 c 11 § 3 and by 2017 c 25 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2017 c 25: See note following RCW 46.18.200.

Finding—Intent—2017 c 11: See note following RCW 46.18.200.

Effective date—2016 c 36: See note following RCW 46.18.200.

Effective date—2016 c 31: See note following RCW 46.18.280.

Effective date—2016 c 30: See note following RCW 46.18.200.

Effective date—2016 c 16: See note following RCW 46.18.200.

Effective date—2016 c 15: See note following RCW 46.18.200.

Effective date—2014 c 77: See note following RCW 46.18.200.

Effective date—2014 c 6: See note following RCW 46.18.200.

Effective date—2013 c 286: See note following RCW 46.18.200.

Effective date—2012 c 65: See note following RCW 46.18.200.

Effective date—2011 c 229: See note following RCW 46.18.200.

Effective date—2011 c 225: See note following RCW 46.18.200.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.17.230 Replacement license tab and windshield emblem fee. Before accepting an application for a replacement license tab or windshield emblem, the department, county auditor or other agent, or subagent appointed by the director shall charge a fifty cent fee for each tab or windshield emblem. The license tab or windshield emblem replacement fee must be deposited in the motor vehicle fund created in RCW 46.68.070. A replacement tab or emblem may be issued under this section only in conjunction with an application for a duplicate registration certificate under RCW 46.16A.190. [2017 c 147 § 6; 2011 c 171 § 59; 2010 c 161 § 519.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.17.330 Farm vehicle reduced gross weight license fee. (1) In lieu of the vehicle license fee required under RCW 46.17.350 and before accepting an application for a vehicle registration for farm vehicles described in RCW 46.16A.425, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant, unless specifically exempt, to pay the following farm vehicle reduced gross weight license fee by weight:

WEIGHT	SCHEDULE A	SCHEDULE B
4,000 pounds	\$24.50	\$24.50
6,000 pounds	\$24.50	\$24.50
8,000 pounds	\$24.50	\$24.50
10,000 pounds	\$40.50	\$40.50
12,000 pounds	\$49.00	\$49.00

WEIGHT	SCHEDULE A	SCHEDULE B
14,000 pounds	\$54.50	\$54.50
16,000 pounds	\$60.50	\$60.50
18,000 pounds	\$86.50	\$86.50
20,000 pounds	\$95.00	\$95.00
22,000 pounds	\$102.00	\$102.00
24,000 pounds	\$109.50	\$109.50
26,000 pounds	\$115.00	\$115.00
28,000 pounds	\$134.00	\$134.00
30,000 pounds	\$153.00	\$153.00
32,000 pounds	\$182.50	\$182.50
34,000 pounds	\$193.50	\$193.50
36,000 pounds	\$209.00	\$209.00
38,000 pounds	\$228.50	\$228.50
40,000 pounds	\$260.00	\$260.00
42,000 pounds	\$270.00	\$315.00
44,000 pounds	\$275.50	\$320.50
46,000 pounds	\$295.50	\$340.50
48,000 pounds	\$307.50	\$352.50
50,000 pounds	\$333.00	\$378.00
52,000 pounds	\$349.50	\$394.50
54,000 pounds	\$376.50	\$421.50
56,000 pounds	\$397.00	\$442.00
58,000 pounds	\$412.50	\$457.50
60,000 pounds	\$439.00	\$484.00
62,000 pounds	\$470.00	\$515.00
64,000 pounds	\$480.00	\$525.00
66,000 pounds	\$533.50	\$578.50
68,000 pounds	\$556.00	\$601.00
70,000 pounds	\$598.00	\$643.00
72,000 pounds	\$639.00	\$684.00
74,000 pounds	\$693.50	\$738.50
76,000 pounds	\$748.50	\$793.50
78,000 pounds	\$816.50	\$861.50
80,000 pounds	\$880.50	\$925.50
82,000 pounds	\$941.00	\$986.00
84,000 pounds	\$1,001.00	\$1,046.00
86,000 pounds	\$1,061.50	\$1,106.50
88,000 pounds	\$1,122.00	\$1,167.00
90,000 pounds	\$1,182.50	\$1,127.50
92,000 pounds	\$1,242.50	\$1,287.50
94,000 pounds	\$1,303.00	\$1,348.00
96,000 pounds	\$1,363.50	\$1,408.50
98,000 pounds	\$1,424.00	\$1,469.00
100,000 pounds	\$1,484.00	\$1,529.00
102,000 pounds	\$1,544.50	\$1,589.50
104,000 pounds	\$1,605.00	\$1,650.00
105,500 pounds	\$1,665.50	\$1,710.50

(2) Schedule A applies to vehicles either used exclusively for hauling logs or that do not tow trailers. Schedule B applies to vehicles that tow trailers and are not covered under Schedule A.

(3) If the resultant gross weight is not listed in the table provided in subsection (1) of this section, it must be increased to the next higher weight.

(4) The farm vehicle reduced gross weight license fees provided in subsection (1) of this section are in addition to the filing fee required under RCW 46.17.005 and any other fee or tax required by law.

(5) The farm vehicle reduced gross weight license fee as provided in subsection (1) of this section must be distributed under RCW 46.68.035. [2017 c 147 § 7; 2010 c 161 § 527.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Chapter 46.18 RCW SPECIAL LICENSE PLATES

Sections

REVIEW, REQUIREMENTS, AND PROCEDURES

46.18.060	Department duties continued.
46.18.200	Department-approved plate types.
46.18.245	Gold star license plates.

REVIEW, REQUIREMENTS, AND PROCEDURES

46.18.060 Department duties continued. (1) The department must review and either approve or reject special license plate applications submitted by sponsoring organizations.

(2) Duties of the department include, but are not limited to, the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the joint transportation committee;

(b) Report annually to the joint transportation committee on the special license plate applications that were considered by the department;

(c) Issue approval and rejection notification letters to sponsoring organizations, the executive committee of the joint transportation committee, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application; and

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The department may submit a recommendation to discontinue a special plate series to the executive committee of the joint transportation committee. [2017 3rd sp.s. c 25 § 40. Prior: 2016 c 36 § 4; 2016 c 16 § 4; 2016 c 15 § 4; prior: 2014 c 77 § 5; 2014 c 6 § 4; prior: 2013 c 306 § 703; 2013 c 286 § 5; 2012 c 65 § 6; prior: 2011 c 367 § 703; 2011 c 229 § 5; 2011 c 225 § 4; 2011 c 171 § 66; prior: 2010 1st sp.s. c 7 § 94; 2010 c 161 § 604; 2009 c 470 § 710; 2008 c 72 § 2; 2007 c 518 § 711; prior: 2005 c 319 § 119; 2005 c 210 § 7; 2003 c 196 § 103. Formerly RCW 46.16.725.]

Effective date—2016 c 36: See note following RCW 46.18.200.

Effective date—2016 c 16: See note following RCW 46.18.200.

Effective date—2016 c 15: See note following RCW 46.18.200.

Effective date—2014 c 77: See note following RCW 46.18.200.

Effective date—2014 c 6: See note following RCW 46.18.200.

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—2013 c 286: See note following RCW 46.18.200.

Effective date—2012 c 65: See note following RCW 46.18.200.

Effective date—2011 c 367 §§ 703, 704, 716, and 719: "Sections 703, 704, 716, and 719 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2011." [2011 c 367 § 1103.]

Effective date—2011 c 229: See note following RCW 46.18.200.

Effective date—2011 c 225: See note following RCW 46.18.200.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Effective date—2009 c 470: See note following RCW 46.68.170.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Additional notes found at www.leg.wa.gov

46.18.200 Department-approved plate types. (1) Special license plate series reviewed and approved by the department:

(a) May be issued in lieu of standard issue or personalized license plates for vehicles required to display one and two license plates unless otherwise specified;

(b) Must be issued under terms and conditions established by the department;

(c) Must not be issued for vehicles registered under chapter 46.87 RCW; and

(d) Must display a symbol or artwork approved by the department.

(2) The department approves and shall issue the following special license plates:

LICENSE PLATE	DESCRIPTION, SYMBOL, OR ARTWORK
4-H	Displays the "4-H" logo.
Armed forces collection	Recognizes the contribution of veterans, active duty military personnel, reservists, and members of the national guard, and includes six separate designs, each containing a symbol representing a different branch of the armed forces to include army, navy, air force, marine corps, coast guard, and national guard.
Breast cancer awareness	Displays a pink ribbon symbolizing breast cancer awareness.
Endangered wildlife	Displays a symbol or artwork symbolizing endangered wildlife in Washington state.
Fred Hutch	Displays the Fred Hutch logo.
Gonzaga University alumni association	Recognizes the Gonzaga University alumni association.
Helping kids speak	Recognizes an organization that supports programs that provide no-cost speech pathology programs to children.
Keep kids safe	Recognizes efforts to prevent child abuse and neglect.

LICENSE PLATE	DESCRIPTION, SYMBOL, OR ART-WORK
Law enforcement memorial	Honors law enforcement officers in Washington killed in the line of duty.
Music matters	Displays the "Music Matters" logo.
Professional firefighters and paramedics	Recognizes professional firefighters and paramedics who are members of the Washington state council of firefighters.
Seattle Seahawks	Displays the "Seattle Seahawks" logo.
Seattle Sounders FC	Displays the "Seattle Sounders FC" logo.
Seattle University	Recognizes Seattle University.
Share the road	Recognizes an organization that promotes bicycle safety and awareness education.
Ski & ride Washington	Recognizes the Washington snowsports industry.
State flower	Recognizes the Washington state flower.
Volunteer firefighters	Recognizes volunteer firefighters.
Washington farmers and ranchers	Recognizes farmers and ranchers in Washington state.
Washington lighthouses	Recognizes an organization that supports selected Washington state lighthouses and provides environmental education programs.
Washington state aviation	Displays a Stearman biplane in the foreground with an image of Mount Rainier in the background.
Washington state parks	Recognizes Washington state parks as premier destinations of uncommon quality that preserve significant natural, cultural, historical, and recreational resources.
Washington state wrestling	Promotes and supports college wrestling in the state of Washington.
Washington tennis	Builds awareness and year-round opportunities for tennis in Washington state. Displays a symbol or artwork recognizing tennis in Washington state.
Washington's national park fund	Builds awareness of Washington's national parks and supports priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks.
Washington's fish collection	Recognizes Washington's fish.
Washington's wildlife collection	Recognizes Washington's wildlife.
We love our pets	Recognizes an organization that assists local member agencies of the federation of animal welfare and control agencies to promote and perform spay/neuter surgery on Washington state pets to reduce pet overpopulation.
Wild on Washington	Symbolizes wildlife viewing in Washington state.

(3) Applicants for initial and renewal professional firefighters and paramedics special license plates must show proof of eligibility by providing a certificate of current membership from the Washington state council of firefighters.

(4) Applicants for initial volunteer firefighters special license plates must (a) have been a volunteer firefighter for at least ten years or be a volunteer firefighter for one or more years and (b) have documentation of service from the district

of the appropriate fire service. If the volunteer firefighter leaves firefighting service before ten years of service have been completed, the volunteer firefighter shall surrender the license plates to the department on the registration renewal date. If the volunteer firefighter stays in service for at least ten years and then leaves, the license plate may be retained by the former volunteer firefighter and as long as the license plate is retained for use the person will continue to pay the future registration renewals. A qualifying volunteer firefighter may have no more than one set of license plates per vehicle, and a maximum of two sets per applicant, for their personal vehicles. If the volunteer firefighter is convicted of a violation of RCW 46.61.502 or a felony, the license plates must be surrendered upon conviction. [2017 c 25 § 1; 2017 c 11 § 2. Prior: 2016 c 36 § 1; 2016 c 30 § 1; 2016 c 16 § 1; 2016 c 15 § 1; prior: 2014 c 77 § 1; 2014 c 6 § 1; 2013 c 286 § 1; 2012 c 65 § 1; prior: 2011 c 229 § 1; 2011 c 225 § 1; 2011 c 171 § 69; 2010 c 161 § 611.]

Reviser's note: This section was amended by 2017 c 11 § 2 and by 2017 c 25 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2017 c 25: "This act takes effect October 1, 2017." [2017 c 25 § 5.]

Finding—Intent—2017 c 11: "The legislature finds that the aviation industry and community airports are an integral part of Washington's economy. Washington state is home to public use airports serving an average of eighteen thousand five hundred pilots and over nine thousand aircraft annually. They support two hundred forty-eight thousand five hundred jobs and more than fifty billion dollars in economic activity. Aviators play a vital role in our state's response to emergencies and natural disasters. Therefore, the legislature intends with this act to create the Washington state aviation license plate to honor and support the aviation community." [2017 c 11 § 1.]

Effective date—2016 c 36: "This act takes effect January 1, 2017." [2016 c 36 § 6.]

Effective date—2016 c 30: "This act takes effect January 1, 2017." [2016 c 30 § 6.]

Effective date—2016 c 16: "This act takes effect January 1, 2017." [2016 c 16 § 6.]

Effective date—2016 c 15: "This act takes effect January 1, 2017." [2016 c 15 § 6.]

Effective date—2014 c 77: "This act takes effect January 1, 2015." [2014 c 77 § 7.]

Effective date—2014 c 6: "This act takes effect January 1, 2015." [2014 c 6 § 6.]

Effective date—2013 c 286: "This act takes effect January 1, 2014." [2013 c 286 § 8.]

Effective date—2012 c 65: "This act takes effect January 1, 2013." [2012 c 65 § 7.]

Effective date—2011 c 229: "This act takes effect January 1, 2012." [2011 c 229 § 6.]

Effective date—2011 c 225: "This act takes effect January 1, 2012." [2011 c 225 § 5.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.18.245 Gold star license plates. (1) A registered owner who is an eligible family member of a member of the United States armed forces who died while in service to his or her country, or as a result of his or her service, may apply to the department for special gold star license plates for use on a motor vehicle. The registered owner must:

- (a) Be a resident of this state;
- (b) Provide proof to the satisfaction of the department that the registered owner is an eligible family member, which includes:
 - (i) A widow;
 - (ii) A widower;
 - (iii) A biological parent;
 - (iv) An adoptive parent;
 - (v) A stepparent;
 - (vi) An adult in loco parentis or foster parent;
 - (vii) A biological child;
 - (viii) An adopted child; or
 - (ix) A sibling;
- (c) Provide certification from the Washington state department of veterans affairs that the registered owner qualifies for the special license plate under this section;
- (d) Be recorded as the registered owner of the motor vehicle on which the gold star license plates will be displayed; and
- (e) Except as provided in subsection (2) of this section, pay all fees and taxes required by law for registering the motor vehicle.

(2)(a) In addition to the license plate fee exemption in subsection (3)(b) of this section, the widow or widower recipient of a gold star license plate under this section is also exempt from annual vehicle registration fees for one personal use motor vehicle.

(b) In lieu of applying for a gold star license plate under this section, an eligible widow or widower under subsection (1)(b) of this section may apply for a standard issue license plate or any qualifying special license plate for one personal use motor vehicle and be exempt from both annual vehicle registration fees and license plate fees for that vehicle.

(3) Gold star license plates must be issued:

- (a) Only for motor vehicles owned by qualifying applicants; and
- (b) Without payment of any license plate fee.
- (4) Gold star license plates must be replaced, free of charge, if the license plates become lost, stolen, damaged, defaced, or destroyed.

(5) Gold star license plates may be transferred from one motor vehicle to another motor vehicle owned by the eligible family member, as described in subsection (1) of this section, upon application to the department, county auditor or other agent, or subagent appointed by the director. [2017 c 24 § 1; 2015 c 208 § 1; 2013 c 137 § 1; 2010 c 161 § 621.]

Effective date—2013 c 137: "This act takes effect August 1, 2013." [2013 c 137 § 2.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Chapter 46.19 RCW

SPECIAL PARKING PRIVILEGES FOR PERSONS WITH DISABILITIES

Sections

- 46.19.010 Criteria for natural persons—Application—Identification cards, placards, and license plates.
- 46.19.020 Eligible organizations—Rules.

46.19.010 Criteria for natural persons—Application—Identification cards, placards, and license plates.

(1) A natural person who has a disability that meets one of the following criteria may apply for special parking privileges:

- (a) Cannot walk two hundred feet without stopping to rest;
- (b) Is severely limited in ability to walk due to arthritic, neurological, or orthopedic condition;
- (c) Has such a severe disability that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;
- (d) Uses portable oxygen;
- (e) Is restricted by lung disease to an extent that forced expiratory respiratory volume, when measured by spirometry, is less than one liter per second or the arterial oxygen tension is less than sixty mm/hg on room air at rest;
- (f) Impairment by cardiovascular disease or cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American heart association;
- (g) Has a disability resulting from an acute sensitivity to automobile emissions that limits or impairs the ability to walk. The personal physician, advanced registered nurse practitioner, or physician assistant of the applicant shall document that the disability is comparable in severity to the others listed in this subsection;
- (h) Has limited mobility and has no vision or whose vision with corrective lenses is so limited that the person requires alternative methods or skills to do efficiently those things that are ordinarily done with sight by persons with normal vision;

(i) Has an eye condition of a progressive nature that may lead to blindness; or

(j) Is restricted by a form of porphyria to the extent that the applicant would significantly benefit from a decrease in exposure to light.

(2) The disability must be determined by either:

- (a) A licensed physician;
- (b) An advanced registered nurse practitioner licensed under chapter 18.79 RCW; or
- (c) A physician assistant licensed under chapter 18.71A or 18.57A RCW.

(3) A health care practitioner listed under subsection (2) of this section who is authorizing a parking permit for purposes of this chapter must provide a signed written authorization: On a prescription pad or paper, as defined in RCW 18.64.500; on office letterhead; or by electronic means, as described by the director in rule.

(4) The application for special parking privileges for persons with disabilities must contain:

- (a) The following statement immediately below the physician's, advanced registered nurse practitioner's, or physician assistant's signature: "A parking permit for a person with disabilities may be issued only for a medical necessity that severely affects mobility or involves acute sensitivity to light (RCW 46.19.010). An applicant or health care practitioner who knowingly provides false information on this application is guilty of a gross misdemeanor. The penalty is up to three hundred sixty-four days in jail and a fine of up to \$5,000 or both. In addition, the health care practitioner may be subject

to sanctions under chapter 18.130 RCW, the Uniform Disciplinary Act"; and

(b) Other information as required by the department.

(5) A natural person who has a disability described in subsection (1) of this section and is expected to improve within twelve months may be issued a temporary placard for a period not to exceed twelve months. If the disability exists after twelve months, a new temporary placard must be issued upon receipt of a new application with certification from the person's physician as prescribed in subsections (3) and (4) of this section. Special license plates for persons with disabilities may not be issued to a person with a temporary disability.

(6) A natural person who qualifies for special parking privileges under this section must receive an identification card showing the name and date of birth of the person to whom the parking privilege has been issued and the serial number of the placard.

(7) A natural person who qualifies for permanent special parking privileges under this section may receive one of the following:

(a) Up to two parking placards;

(b) One set of special license plates for persons with disabilities if the person with the disability is the registered owner of the vehicle on which the license plates will be displayed;

(c) One parking placard and one set of special license plates for persons with disabilities if the person with the disability is the registered owner of the vehicle on which the license plates will be displayed; or

(d) One special parking year tab for persons with disabilities and one parking placard.

(8) Parking placards and identification cards described in this section must be issued free of charge.

(9) The parking placard and identification card must be immediately returned to the department upon the placard holder's death. [2017 c 112 § 1; 2014 c 124 § 2; 2011 c 96 § 32; 2010 c 161 § 701.]

Finding—Intent—2014 c 124: "(1) The legislature finds that there is a history of abuse of special parking privileges for persons with disabilities that requires changes to maintain public safety and good order.

(2) It is the intent of the legislature to: (a) Decrease the amount of unlawful use of special parking privileges for persons with disabilities; (b) not create additional burdens for those in need of special parking privileges for persons with disabilities; (c) provide local jurisdictions with the authority to improve their administration of on-street parking; (d) encourage the department of licensing to implement the recommendations of the disabled parking work group in regards to placard and application changes; and (e) encourage the department of licensing to consider parking information system upgrades related to special parking privileges for persons with disabilities in its pursuit of technology modernization." [2014 c 124 § 1.]

Effective date—2014 c 124: "This act takes effect July 1, 2015." [2014 c 124 § 10.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.19.020 Eligible organizations—Rules. (1) The following organizations may apply for special parking privileges:

(a) Public transportation authorities;

(b) Nursing homes licensed under chapter 18.51 RCW;

(c) Assisted living facilities licensed under chapter 18.20 RCW;

(d) Senior citizen centers;

(e) Accessible van rental companies registered with the department;

(f) Private nonprofit corporations, as defined in RCW 24.03.005;

(g) Cabulance companies that regularly transport persons with disabilities who have been determined eligible for special parking privileges under this section and who are registered with the department under chapter 46.72 RCW; and

(h) Companies that dispatch taxicab vehicles under chapter 81.72 RCW or vehicles for hire under chapter 46.72 RCW, for such vehicles that are equipped with wheelchair accessible lifts or ramps for the transport of persons with disabilities and that are regularly dispatched and used in the transport of such persons. However, qualifying vehicles under this subsection (1)(h) may utilize special parking privileges only while in service. For the purposes of this subsection (1)(h), "in service" means while in the process of picking up, transporting, or discharging a passenger.

(2) An organization that qualifies for special parking privileges may receive, upon application, special license plates or parking placards, or both, for persons with disabilities as defined by the department.

(3) An organization that qualifies for special parking privileges under subsection (1) of this section and receives parking placards or special license plates under subsection (2) of this section is responsible for ensuring that the parking placards and special license plates are not used improperly and is responsible for all fines and penalties for improper use.

(4) The department shall adopt rules to determine organization eligibility. [2017 c 151 § 1; 2015 c 228 § 37; 2014 c 124 § 3; 2012 c 10 § 42; 2010 c 161 § 702.]

Effective date—2015 c 228: See note following RCW 46.87.010.

Finding—Intent—Effective date—2014 c 124: See notes following RCW 46.19.010.

Application—2012 c 10: See note following RCW 18.20.010.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Chapter 46.20 RCW

DRIVERS' LICENSES—IDENTICARDS

Sections

46.20.055	Instruction permit. (<i>Effective August 1, 2018.</i>)
46.20.100	Persons under eighteen. (<i>Effective August 1, 2018.</i>)
46.20.117	Identicards.
46.20.192	Compliance with federal REAL ID Act of 2005 requirements—Driver's license and identicard markings—Rules.
46.20.1921	Compliance with federal REAL ID Act of 2005 requirements—Design feature restrictions.
46.20.202	Enhanced drivers' licenses and identicards for Canadian border crossing—Border-crossing initiative—Fee amount, distribution.
46.20.205	Change of address or name.
46.20.385	Ignition interlock driver's license—Application—Eligibility—Cancellation—Costs—Rules.
46.20.720	Ignition interlock device restriction—For whom—Duration—Removal requirements—Credit—Employer exemption—Fee.
46.20.745	Ignition interlock device revolving account program—Pilot program.

46.20.055 Instruction permit. (Effective August 1, 2018.) (1) **Driver's instruction permit.** The department may issue a driver's instruction permit with or without a photograph to an applicant who has successfully passed all parts of the examination other than the driving test, provided the information required by RCW 46.20.091, paid an application fee of twenty-five dollars, and meets the following requirements:

- (a) Is at least fifteen and one-half years of age; or
- (b) Is at least fifteen years of age and:
 - (i) Has submitted a proper application; and
 - (ii) Is enrolled in a driver training education course offered as part of a traffic safety education program authorized by the office of the superintendent of public instruction and certified under chapter 28A.220 RCW or offered by a driver training school licensed and inspected by the department of licensing under chapter 46.82 RCW, that includes practice driving.

(2) **Waiver of written examination for instruction permit.** The department may waive the written examination, if, at the time of application, an applicant is enrolled in a driver training education course as defined in RCW 46.82.280 or 28A.220.020.

The department may require proof of registration in such a course as it deems necessary.

(3) **Effect of instruction permit.** A person holding a driver's instruction permit may drive a motor vehicle, other than a motorcycle, upon the public highways if:

- (a) The person has immediate possession of the permit;
- (b) The person is not using a wireless communications device, unless the person is using the device to report illegal activity, summon medical or other emergency help, or prevent injury to a person or property; and
- (c) A driver training education course instructor who meets the qualifications of chapter 46.82 or 28A.220 RCW, or a licensed driver with at least five years of driving experience, occupies the seat beside the driver.

(4) **Term of instruction permit.** A driver's instruction permit is valid for one year from the date of issue.

(a) The department may issue one additional one-year permit.

(b) The department may issue a third driver's permit if it finds after an investigation that the permittee is diligently seeking to improve driving proficiency.

(c) A person applying for an additional instruction permit must submit the application to the department in person and pay an application fee of twenty-five dollars for each issuance. [2017 c 197 § 6; 2012 c 80 § 5; 2010 c 223 § 1; 2006 c 219 § 14; 2005 c 314 § 303; 2004 c 249 § 3. Prior: 2002 c 352 § 10; 2002 c 195 § 2; 1999 c 274 § 13; 1999 c 6 § 11; 1990 c 250 § 34; 1986 c 17 § 1; 1985 c 234 § 1; 1981 c 260 § 10; prior: 1979 c 63 § 1; 1979 c 61 § 3; 1969 ex.s. c 218 § 8; 1965 ex.s. c 121 § 7.]

Findings—Intent—Effective date—2017 c 197: See notes following RCW 28A.220.020.

Effective date—2012 c 80 §§ 5-13: "Sections 5 through 13 of this act take effect October 1, 2012." [2012 c 80 § 14.]

Intent—1999 c 6: See note following RCW 46.04.168.

Additional notes found at www.leg.wa.gov

46.20.100 Persons under eighteen. (Effective August 1, 2018.) (1) **Application.** The application of a person under the age of eighteen years for a driver's license or a motorcycle endorsement must be signed by a parent or guardian with custody of the minor. If the person under the age of eighteen has no father, mother, or guardian, then the application must be signed by the minor's employer.

(2) **Traffic safety education requirement.** For a person under the age of eighteen years to obtain a driver's license, he or she must meet the traffic safety education requirements of this subsection.

(a) To meet the traffic safety education requirement for a driver's license, the applicant must satisfactorily complete a driver training education course as defined in RCW 28A.220.020 for a course offered by a school district or approved private school, or as defined by the department of licensing for a course offered by a driver training school licensed under chapter 46.82 RCW. The course offered by a school district or an approved private school must be part of a traffic safety education program authorized by the office of the superintendent of public instruction and certified under chapter 28A.220 RCW. The course offered by a driver training school must meet the standards established by the department of licensing under chapter 46.82 RCW. The driver training education course may be provided by:

(i) A secondary school within a school district or approved private school that establishes and maintains an approved and certified traffic safety education program under chapter 28A.220 RCW; or

(ii) A driver training school licensed under chapter 46.82 RCW that is annually approved by the department of licensing.

(b) To meet the traffic safety education requirement for a motorcycle endorsement, the applicant must successfully complete a motorcycle safety education course that meets the standards established by the department of licensing.

(c) The department may waive the driver training education course requirement for a driver's license if the applicant demonstrates to the department's satisfaction that:

(i) He or she was unable to take or complete a driver training education course;

(ii) A need exists for the applicant to operate a motor vehicle; and

(iii) He or she has the ability to operate a motor vehicle in such a manner as not to jeopardize the safety of persons or property.

The department may adopt rules to implement this subsection (2)(c) in concert with the supervisor of the traffic safety education section of the office of the superintendent of public instruction.

(d) The department may waive the driver training education course requirement if the applicant was licensed to drive a motor vehicle or motorcycle outside this state and provides proof that he or she has had education equivalent to that required under this subsection. [2017 c 197 § 7; 2010 1st sp.s. c 7 § 18; 2002 c 195 § 1; 1999 c 274 § 14; 1999 c 6 § 16; 1990 c 250 § 36; 1985 c 234 § 2; 1979 c 158 § 146; 1973 1st ex.s. c 154 § 87; 1972 ex.s. c 71 § 1; 1969 ex.s. c 218 § 10; 1967 c 167 § 1; 1965 ex.s. c 170 § 43; 1961 c 12 § 46.20.100. Prior: 1937 c 188 § 51; RRS § 6312-51; 1921 c 108 § 6, part; RRS § 6368, part.]

Findings—Intent—Effective date—2017 c 197: See notes following RCW 28A.220.020.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Intent—1999 c 6: See note following RCW 46.04.168.

Additional notes found at www.leg.wa.gov

46.20.117 Identicards. (1) **Issuance.** The department shall issue an identicard, containing a picture, if the applicant:

(a) Does not hold a valid Washington driver's license;

(b) Proves his or her identity as required by RCW 46.20.035; and

(c) Pays the required fee. Except as provided in subsection (5) of this section, the fee is fifty-four dollars, unless an applicant is: (i) A recipient of continuing public assistance grants under Title 74 RCW, who is referred in writing by the secretary of social and health services; or (ii) under the age of eighteen and does not have a permanent residence address as determined by the department by rule. For those persons, the fee must be the actual cost of production of the identicard.

(2)(a) **Design and term.** The identicard must:

(i) Be distinctly designed so that it will not be confused with the official driver's license; and

(ii) Except as provided in subsection (5) of this section, expire on the sixth anniversary of the applicant's birthdate after issuance.

(b) The identicard may include the person's status as a veteran, consistent with RCW 46.20.161(2).

(3) **Renewal.** An application for identicard renewal may be submitted by means of:

(a) Personal appearance before the department; or

(b) Mail or electronic commerce, if permitted by rule of the department and if the applicant did not renew his or her identicard by mail or by electronic commerce when it last expired.

An identicard may not be renewed by mail or by electronic commerce unless the renewal issued by the department includes a photograph of the identicard holder.

(4) **Cancellation.** The department may cancel an identicard if the holder of the identicard used the card or allowed others to use the card in violation of RCW 46.20.0921.

(5) **Alternative issuance/renewal/extension.** The department may issue or renew an identicard for a period other than six years, or may extend by mail or electronic commerce an identicard that has already been issued, in order to evenly distribute, as nearly as possible, the yearly renewal rate of identicard holders. The fee for an identicard issued or renewed for a period other than six years, or that has been extended by mail or electronic commerce, is nine dollars for each year that the identicard is issued, renewed, or extended. The department may adopt any rules as are necessary to carry out this subsection. [2017 c 122 § 2; (2017 c 122 § 1 expired August 30, 2017); 2014 c 185 § 2; 2012 c 80 § 6; 2005 c 314 § 305; 2004 c 249 § 5; 2002 c 352 § 12; 1999 c 274 § 15; 1999 c 6 § 18; 1993 c 452 § 3; 1986 c 15 § 1; 1985 ex.s. c 1 § 3; 1985 c 212 § 1; 1981 c 92 § 2; 1971 ex.s. c 65 § 1; 1969 ex.s. c 155 § 4.]

Effective date—2017 c 122 § 2: "Section 2 of this act takes effect August 30, 2017." [2017 c 122 § 4.]

Expiration date—2017 c 122 § 1: "Section 1 of this act expires August 30, 2017." [2017 c 122 § 3.]

Effective date—2014 c 185: See note following RCW 46.20.161.

Effective date—2012 c 80 §§ 5-13: See note following RCW 46.20.055.

Intent—1999 c 6: See note following RCW 46.04.168.

Purpose—1971 ex.s. c 65: "The efficient and effective operation and administration of state government affects the health, safety, and welfare of the people of this state and it is the intent and purpose of this act to promote the health, safety, and welfare of the people by improving the operation and administration of state government." [1971 ex.s. c 65 § 2.]

Effective date—Purpose—1969 ex.s. c 155: See notes following RCW 46.20.118.

Additional notes found at www.leg.wa.gov

46.20.192 Compliance with federal REAL ID Act of 2005 requirements—Driver's license and identicard markings—Rules. (1) Beginning July 1, 2018, except for enhanced drivers' licenses and identicards issued under RCW 46.20.202, the department must mark a driver's license or identicard issued under this chapter in accordance with the requirements of 6 C.F.R. Sec. 37.71 as it existed on July 23, 2017, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section.

(2) The department must adopt rules necessary to implement this section. [2017 c 310 § 1.]

46.20.1921 Compliance with federal REAL ID Act of 2005 requirements—Design feature restrictions. (1) A driver's license or identicard issued with the design features required in RCW 46.20.192 may not be used as evidence of or as a basis to infer an individual's citizenship or immigration status for any purpose.

(2) The presence of the design features required in RCW 46.20.192 on a person's driver's license or identicard may not be used as a basis for the criminal investigation, arrest, or detention of that person in circumstances where a person with a driver's license or identicard without these design features would not be criminally investigated, arrested, or detained. [2017 c 310 § 2.]

46.20.202 Enhanced drivers' licenses and identicards for Canadian border crossing—Border-crossing initiative—Fee amount, distribution. (1) The department may enter into a memorandum of understanding with any federal agency for the purposes of facilitating the crossing of the border between the state of Washington and the Canadian province of British Columbia.

(2) The department may enter into an agreement with the Canadian province of British Columbia for the purposes of implementing a border-crossing initiative.

(3)(a) The department may issue an enhanced driver's license or identicard for the purposes of crossing the border between the state of Washington and the Canadian province of British Columbia to an applicant who provides the department with proof of: United States citizenship, identity, and state residency. The department shall continue to offer a standard driver's license and identicard. If the department chooses to issue an enhanced driver's license, the department must allow each applicant to choose between a standard

driver's license or identicard, or an enhanced driver's license or identicard.

(b) The department shall implement a one-to-many biometric matching system for the enhanced driver's license or identicard. An applicant for an enhanced driver's license or identicard shall submit a biometric identifier as designated by the department. The biometric identifier must be used solely for the purpose of verifying the identity of the holders and for any purpose set out in RCW 46.20.037. Applicants are required to sign a declaration acknowledging their understanding of the one-to-many biometric match.

(c) The enhanced driver's license or identicard must include reasonable security measures to protect the privacy of Washington state residents, including reasonable safeguards to protect against unauthorized disclosure of data about Washington state residents. If the enhanced driver's license or identicard includes a radio frequency identification chip, or similar technology, the department shall ensure that the technology is encrypted or otherwise secure from unauthorized data access.

(d) The requirements of this subsection are in addition to the requirements otherwise imposed on applicants for a driver's license or identicard. The department shall adopt such rules as necessary to meet the requirements of this subsection. From time to time the department shall review technological innovations related to the security of identity cards and amend the rules related to enhanced driver's licenses and identicards as the director deems consistent with this section and appropriate to protect the privacy of Washington state residents.

(e) Notwithstanding RCW 46.20.118, the department may make images associated with enhanced drivers' licenses or identicards from the negative file available to United States customs and border agents for the purposes of verifying identity.

(4) Beginning on July 23, 2017, the fee for an enhanced driver's license or enhanced identicard is twenty-four dollars, which is in addition to the fees for any regular driver's license or identicard. If the enhanced driver's license or enhanced identicard is issued, renewed, or extended for a period other than six years, the fee for each class is four dollars for each year that the enhanced driver's license or enhanced identicard is issued, renewed, or extended.

(5) The enhanced driver's license and enhanced identicard fee under this section must be deposited into the highway safety fund unless prior to July 1, 2023, the actions described in (a) or (b) of this subsection occur, in which case the portion of the revenue that is the result of the fee increased in section 209, chapter 44, Laws of 2015 3rd sp. sess. must be distributed to the connecting Washington account created under RCW 46.68.395.

(a) Any state agency files a notice of rule making under chapter 34.05 RCW for a rule regarding a fuel standard based upon or defined by the carbon intensity of fuel, including a low carbon fuel standard or clean fuel standard.

(b) Any state agency otherwise enacts, adopts, orders, or in any way implements a fuel standard based upon or defined by the carbon intensity of fuel, including a low carbon fuel standard or clean fuel standard.

(c) Nothing in this subsection acknowledges, establishes, or creates legal authority for the department of ecology or any

other state agency to enact, adopt, order, or in any way implement a fuel standard based upon or defined by the carbon intensity of fuel, including a low carbon fuel standard or clean fuel standard. [2017 c 310 § 3; 2016 c 32 § 2; 2015 3rd sp.s. c 44 § 209; 2007 c 7 § 1.]

Intent—2016 c 32: "During the third special legislative session of 2015, the legislature passed Second Engrossed Substitute Senate Bill No. 5987 (chapter 44, Laws of 2015 3rd sp. sess.), a significant transportation revenue bill intended to provide needed transportation funding throughout the state. However, since the enactment of that legislation, certain drafting errors were discovered within the bill resulting in some provisions being enacted contrary to legislative intent. Therefore, it is the intent of the legislature to simply correct manifest drafting errors in order to conform certain provisions with the original legislative intent of Second Engrossed Substitute Senate Bill No. 5987. It is not the intent of the legislature to alter the intended substantive policy enacted in Second Engrossed Substitute Senate Bill No. 5987, but rather to make technical changes that correct certain drafting errors." [2016 c 32 § 1.]

Retroactive application—2016 c 32: "This act is remedial in nature and applies retroactively to July 15, 2015." [2016 c 32 § 4.]

Effective date—2016 c 32: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 2016]." [2016 c 32 § 5.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Effective date—2007 c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 23, 2007]." [2007 c 7 § 4.]

46.20.205 Change of address or name. Whenever any person, after applying for or receiving a driver's license or identicard, moves from the address named in the application or in the license or identicard issued to him or her, or changes his or her name of record, the person shall, within ten days thereafter, notify the department of the name or address change as provided in RCW 46.08.195. [2017 c 147 § 8; 2015 c 53 § 72; 1999 c 6 § 24; 1998 c 41 § 13; 1996 c 30 § 4; 1994 c 57 § 52; 1989 c 337 § 6; 1969 ex.s. c 170 § 13; 1965 ex.s. c 121 § 18.]

Intent—1999 c 6: See note following RCW 46.04.168.

Intent—Construction—Effective date—1998 c 41: See notes following RCW 46.20.265.

Additional notes found at www.leg.wa.gov

46.20.385 Ignition interlock driver's license—Application—Eligibility—Cancellation—Costs—Rules. (1)(a) Any person licensed under this chapter or who has a valid driver's license from another state, who is convicted of: (i) A violation of RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute or ordinance, or (ii) a violation of RCW 46.61.520(1)(a) or an equivalent local or out-of-state statute or ordinance, or (iii) a conviction for a violation of RCW 46.61.520(1) (b) or (c) if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520(1)(a), or (iv) RCW 46.61.522(1)(b) or an equivalent local or out-of-state statute or ordinance, or (v) RCW 46.61.522(1) (a) or (c) if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.522(1)(b) committed while under the influence of intoxicating liquor or any drug, or (vi) who has had or will have his or her license suspended, revoked, or denied under RCW 46.20.3101, or who is otherwise permitted under sub-

section (8) of this section, may submit to the department an application for an ignition interlock driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is eligible to receive the license, may issue an ignition interlock driver's license.

(b) A person may apply for an ignition interlock driver's license anytime, including immediately after receiving the notices under RCW 46.20.308 or after his or her license is suspended, revoked, or denied.

(c) An applicant under this subsection shall provide proof to the satisfaction of the department that a functioning ignition interlock device has been installed on all vehicles operated by the person.

(i) The department shall require the person to maintain the device on all vehicles operated by the person and shall restrict the person to operating only vehicles equipped with the device, for the remainder of the period of suspension, revocation, or denial, unless otherwise permitted under RCW 46.20.720(6).

(ii) Subject to any periodic renewal requirements established by the department under this section and subject to any applicable compliance requirements under this chapter or other law, an ignition interlock driver's license granted upon a suspension or revocation under RCW 46.61.5055 or 46.20.3101 extends through the remaining portion of any concurrent or consecutive suspension or revocation that may be imposed as the result of administrative action and criminal conviction arising out of the same incident.

(2) An applicant for an ignition interlock driver's license who qualifies under subsection (1) of this section is eligible to receive a license only if the applicant files satisfactory proof of financial responsibility under chapter 46.29 RCW.

(3) Upon receipt of evidence that a holder of an ignition interlock driver's license granted under this subsection no longer has a functioning ignition interlock device installed on all vehicles operated by the driver, the director shall give written notice by first-class mail to the driver that the ignition interlock driver's license shall be canceled. If at any time before the cancellation goes into effect the driver submits evidence that a functioning ignition interlock device has been installed on all vehicles operated by the driver, the cancellation shall be stayed. If the cancellation becomes effective, the driver may obtain, at no additional charge, a new ignition interlock driver's license upon submittal of evidence that a functioning ignition interlock device has been installed on all vehicles operated by the driver.

(4) A person aggrieved by the decision of the department on the application for an ignition interlock driver's license may request a hearing as provided by rule of the department.

(5) The director shall cancel an ignition interlock driver's license after receiving notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, no longer meets the eligibility requirements, or has been convicted of or found to have committed a separate offense or any other act or omission that under this chapter would warrant suspension or revocation of a regular driver's license. The department must give notice of the cancellation as provided under RCW 46.20.245. A person whose ignition interlock driver's license has been canceled under this section may reapply for a new ignition interlock driver's license if he

or she is otherwise qualified under this section and pays the fee required under RCW 46.20.380.

(6)(a) Unless costs are waived by the ignition interlock company or the person is indigent under RCW 10.101.010, the applicant shall pay the cost of installing, removing, and leasing the ignition interlock device and shall pay an additional fee of twenty dollars per month. Payments shall be made directly to the ignition interlock company. The company shall remit the additional fee to the department, except that the company may retain twenty-five cents per month of the additional fee to cover the expenses associated with administering the fee.

(b) The department shall deposit the proceeds of the twenty dollar fee into the ignition interlock device revolving account. Expenditures from the account may be used only to administer and operate the ignition interlock device revolving account program. The department shall adopt rules to provide monetary assistance according to greatest need and when funds are available.

(7) The department shall adopt rules to implement ignition interlock licensing. The department shall consult with the administrative office of the courts, the state patrol, the Washington association of sheriffs and police chiefs, ignition interlock companies, and any other organization or entity the department deems appropriate.

(8)(a) Any person licensed under this chapter who is convicted of a violation of RCW 46.61.500 when the charge was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, may submit to the department an application for an ignition interlock driver's license under this section.

(b) A person who does not have any driver's license under this chapter, but who would otherwise be eligible under this section to apply for an ignition interlock license, may submit to the department an application for an ignition interlock license. The department may require the person to take any driver's licensing examination under this chapter and may require the person to also apply and qualify for a temporary restricted driver's license under RCW 46.20.391. [2017 c 336 § 4; 2016 c 203 § 13; 2015 2nd sp.s. c 3 § 3; 2013 2nd sp.s. c 35 § 20; 2012 c 183 § 8; 2011 c 293 § 1; 2010 c 269 § 1; 2008 c 282 § 9.]

Finding—2017 c 336: See note following RCW 9.96.060.

Finding—Intent—2015 2nd sp.s. c 3: See note following RCW 10.21.055.

Effective date—2012 c 183: See note following RCW 9.94A.475.

Effective date—2011 c 293 §§ 1-9: "Sections 1 through 9 of this act take effect September 1, 2011." [2011 c 293 § 16.]

Effective date—2010 c 269: "This act takes effect January 1, 2011." [2010 c 269 § 12.]

46.20.720 Ignition interlock device restriction—For whom—Duration—Removal requirements—Credit—Employer exemption—Fee. (1) **Ignition interlock restriction.** The department shall require that a person may drive only a motor vehicle equipped with a functioning ignition interlock device:

(a) **Pretrial release.** Upon receipt of notice from a court that an ignition interlock device restriction has been imposed under RCW 10.21.055;

(b) **Ignition interlock driver's license.** As required for issuance of an ignition interlock driver's license under RCW 46.20.385;

(c) **Deferred prosecution.** Upon receipt of notice from a court that the person is participating in a deferred prosecution program under RCW 10.05.020 for a violation of:

(i) RCW 46.61.502 or 46.61.504 or an equivalent local ordinance; or

(ii) RCW 46.61.5249 or 46.61.500 or an equivalent local ordinance if the person would be required under RCW 46.61.5249(4) or 46.61.500(3) (a) or (b) to install an ignition interlock device on all vehicles operated by the person in the event of a conviction;

(d) **Post conviction.** After any applicable period of suspension, revocation, or denial of driving privileges:

(i) Due to a conviction of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute or ordinance; or

(ii) Due to a conviction of a violation of RCW 46.61.5249 or 46.61.500 or an equivalent local ordinance if the person is required under RCW 46.61.5249(4) or 46.61.500(3) (a) or (b) to install an ignition interlock device on all vehicles operated by the person; or

(e) **Court order.** Upon receipt of an order by a court having jurisdiction that a person charged or convicted of any offense involving the use, consumption, or possession of alcohol while operating a motor vehicle may drive only a motor vehicle equipped with a functioning ignition interlock. The court shall establish a specific calibration setting at which the ignition interlock will prevent the vehicle from being started. The court shall also establish the period of time for which ignition interlock use will be required.

(2) **Calibration.** Unless otherwise specified by the court for a restriction imposed under subsection (1)(e) of this section, the ignition interlock device shall be calibrated to prevent the motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.025 or more.

(3) **Duration of restriction.** A restriction imposed under:

(a) Subsection (1)(a) of this section shall remain in effect until:

(i) The court has authorized the removal of the device under RCW 10.21.055; or

(ii) The department has imposed a restriction under subsection (1)(b), (c), or (d) of this section arising out of the same incident.

(b) Subsection (1)(b) of this section remains in effect during the validity of any ignition interlock driver's license that has been issued to the person.

(c) Subsection (1)(c)(i) or (d)(i) of this section shall be for no less than:

(i) For a person who has not previously been restricted under this subsection, a period of one year;

(ii) For a person who has previously been restricted under (c)(i) of this subsection, a period of five years;

(iii) For a person who has previously been restricted under (c)(ii) of this subsection, a period of ten years.

The restriction of a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and who committed the offense while a passenger

under the age of sixteen was in the vehicle shall be extended for an additional six-month period as required by RCW 46.61.5055(6)(a).

(d) Subsection (1)(c)(ii) or (d)(ii) of this section shall be for a period of no less than six months.

(e) Subsection (1)(e) of this section shall remain in effect for the period of time specified by the court.

The period of restriction under (c) and (d) of this subsection based on incidents occurring on or after June 9, 2016, must be tolled for any period in which the person does not have an ignition interlock device installed on a vehicle owned or operated by the person unless the person receives a determination from the department that the person is unable to operate an ignition interlock device due to a physical disability. The department's determination that a person is unable to operate an ignition interlock device must be reasonable and be based upon good and substantial evidence. This determination is subject to review by a court of competent jurisdiction. The department may charge a person seeking a medical exemption under this subsection a reasonable fee for the assessment.

(4) **Requirements for removal.** A restriction imposed under subsection (1)(c) or (d) of this section shall remain in effect until the department receives a declaration from the person's ignition interlock device vendor, in a form provided or approved by the department, certifying that there have been none of the following incidents in the one hundred eighty consecutive days prior to the date of release:

(a) Any attempt to start the vehicle with a breath alcohol concentration of 0.04 or more unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than 0.04 and the digital image confirms the same person provided both samples;

(b) Failure to take any random test unless a review of the digital image confirms that the vehicle was not occupied by the driver at the time of the missed test;

(c) Failure to pass any random retest with a breath alcohol concentration of 0.025 or lower unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than 0.025, and the digital image confirms the same person provided both samples; or

(d) Failure of the person to appear at the ignition interlock device vendor when required for maintenance, repair, calibration, monitoring, inspection, or replacement of the device.

(5) **Day-for-day credit.** (a) The time period during which a person has an ignition interlock device installed in order to meet the requirements of subsection (1)(b) of this section shall apply on a day-for-day basis toward satisfying the period of time the ignition interlock device restriction is imposed under subsection (1)(c) or (d) of this section arising out of the same incident.

(b) The department must also give the person a day-for-day credit for any time period, beginning from the date of the incident, during which the person kept an ignition interlock device installed on all vehicles the person operates, other than those subject to the employer exemption under subsection (6) of this section.

(c) If the day-for-day credit granted under this subsection equals or exceeds the period of time the ignition interlock device restriction is imposed under subsection (1)(c) or (d) of

this section arising out of the same incident, and the person has already met the requirements for removal of the device under subsection (4) of this section, the department may waive the requirement that a device be installed or that the person again meet the requirements for removal.

(6) **Employer exemption.** (a) Except as provided in (b) of this subsection, the installation of an ignition interlock device is not necessary on vehicles owned, leased, or rented by a person's employer and on those vehicles whose care and/or maintenance is the temporary responsibility of the employer, and driven at the direction of a person's employer as a requirement of employment during working hours. The person must provide the department with a declaration pursuant to RCW 9A.72.085 from his or her employer stating that the person's employment requires the person to operate a vehicle owned by the employer or other persons during working hours.

(b) The employer exemption does not apply when the employer's vehicle is assigned exclusively to the restricted driver and used solely for commuting to and from employment.

(7) **Ignition interlock device revolving account.** In addition to any other costs associated with the use of an ignition interlock device imposed on the person restricted under this section, the person shall pay an additional fee of twenty dollars per month. Payments must be made directly to the ignition interlock company. The company shall remit the additional fee to the department to be deposited into the ignition interlock device revolving account, except that the company may retain twenty-five cents per month of the additional fee to cover the expenses associated with administering the fee. The department may waive the monthly fee if the person is indigent under RCW 10.101.010.

(8) **Foreign jurisdiction.** For a person restricted under this section who is residing outside of the state of Washington, the department may accept verification of installation of an ignition interlock device by an ignition interlock company authorized to do business in the jurisdiction in which the person resides, provided the device meets any applicable requirements of that jurisdiction. The department may waive the monthly fee required by subsection (7) of this section if collection of the fee would be impractical in the case of a person residing in another jurisdiction. [2017 c 336 § 5; 2016 c 203 § 14; 2013 2nd sp.s. c 35 § 19; 2012 c 183 § 9; 2011 c 293 § 6; 2010 c 269 § 3; 2008 c 282 § 12; 2004 c 95 § 11; 2003 c 366 § 1; 2001 c 247 § 1; 1999 c 331 § 3; 1998 c 210 § 2; 1997 c 229 § 8; 1994 c 275 § 22; 1987 c 247 § 2.]

Finding—2017 c 336: See note following RCW 9.96.060.

Effective date—2012 c 183: See note following RCW 9.94A.475.

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

Effective date—2010 c 269: See note following RCW 46.20.385.

Effective date—2008 c 282: See note following RCW 46.20.308.

Finding—Intent—1998 c 210: "The legislature finds that driving is a privilege and that the state may restrict that privilege in the interests of public safety. One such reasonable restriction is requiring certain individuals, if they choose to drive, to drive only vehicles equipped with ignition interlock devices. The legislature further finds that the costs of these devices are minimal and are affordable. It is the intent of the legislature that these devices be paid for by the drivers using them and that neither the state nor entities of local government provide any public funding for this purpose." [1998 c 210 § 7.]

Additional notes found at www.leg.wa.gov

46.20.745 Ignition interlock device revolving account program—Pilot program. (1) The ignition interlock device revolving account program is created within the department to assist in covering the monetary costs of installing, removing, and leasing an ignition interlock device, and applicable licensing, for indigent persons who are required under RCW 46.20.385, 46.20.720, and 46.61.5055 to install an ignition interlock device in all vehicles owned or operated by the person. For purposes of this subsection, "indigent" has the same meaning as in RCW 10.101.010, as determined by the department. During the 2017-2019 fiscal biennium, the ignition interlock device revolving account program also includes ignition interlock enforcement work conducted by the Washington state patrol.

(2) A pilot program is created within the ignition interlock device revolving account program for the purpose of monitoring compliance by persons required to use ignition interlock devices and by ignition interlock companies and vendors.

(3) The department, the state patrol, and the Washington traffic safety commission shall coordinate to establish a compliance pilot program that will target at least one county from eastern Washington and one county from western Washington, as determined by the department, state patrol, and Washington traffic safety commission.

(4) At a minimum, the compliance pilot program shall:

(a) Review the number of ignition interlock devices that are required to be installed in the targeted county and the number of ignition interlock devices actually installed;

(b) Work to identify those persons who are not complying with ignition interlock requirements or are repeatedly violating ignition interlock requirements; and

(c) Identify ways to track compliance and reduce non-compliance.

(5) As part of monitoring compliance, the Washington traffic safety commission shall also track recidivism for violations of RCW 46.61.502 and 46.61.504 by persons required to have an ignition interlock driver's license under RCW 46.20.385 and 46.20.720. [2017 c 313 § 704; 2013 c 306 § 712; 2012 c 183 § 10; 2008 c 282 § 10.]

Effective date—2017 c 313: See note following RCW 43.19.642.

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—2012 c 183: See note following RCW 9.94A.475.

Chapter 46.25 RCW

UNIFORM COMMERCIAL DRIVER'S LICENSE ACT

Sections

46.25.010	Definitions.
46.25.054	Nondomiciled commercial driver's license and commercial learner's permit—Issuance, requirements. (<i>Effective until June 1, 2018.</i>)
46.25.054	Nondomiciled commercial driver's license and commercial learner's permit—Issuance, requirements. (<i>Effective June 1, 2018.</i>)
46.25.070	Application—Change of address, name—Residency—Hazardous materials endorsement.
46.25.090	Disqualification—Grounds for, period of—Records.

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

(1) "Alcohol" means any substance containing any form of alcohol, including but not limited to ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means:

(a) The number of grams of alcohol per one hundred milliliters of blood; or

(b) The number of grams of alcohol per two hundred ten liters of breath.

(3) "Commercial driver's license" (CDL) means a license issued to an individual under chapter 46.20 RCW that has been endorsed in accordance with the requirements of this chapter to authorize the individual to drive a class of commercial motor vehicle.

(4) The "commercial driver's license information system" (CDLIS) is the information system established pursuant to 49 U.S.C. Sec. 31309 to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial learner's permit" (CLP) means a permit issued under RCW 46.25.052 for the purposes of behind-the-wheel training.

(6) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of any towed unit or units with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds or more), whichever is greater; or

(b) Has a gross vehicle weight rating or gross vehicle weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater; or

(c) Is designed to transport sixteen or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of hazardous materials as defined in this section; or

(e) Is a school bus regardless of weight or size.

(7) "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, entry into a deferred prosecution program under chapter 10.05 RCW, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(8) "Disqualification" means a prohibition against driving a commercial motor vehicle.

(9) "Drive" means to drive, operate, or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and 46.25.120, "drive" includes operation or physical control of a motor vehicle anywhere in the state.

(10) "Drugs" are those substances as defined by RCW 69.04.009, including, but not limited to, those substances defined by 49 C.F.R. Sec. 40.3.

(11) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns

or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

(12) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as the maximum loaded weight of a single vehicle. The GVWR of a combination or articulated vehicle, commonly referred to as the "gross combined weight rating" or GCWR, is the GVWR of the power unit plus the GVWR of the towed unit or units. If the GVWR of any unit cannot be determined, the actual gross weight will be used. If a vehicle with a GVWR of less than 11,794 kilograms (26,001 pounds or less) has been structurally modified to carry a heavier load, then the actual gross weight capacity of the modified vehicle, as determined by RCW 46.44.041 and 46.44.042, will be used as the GVWR.

(13) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. Sec. 5103 and is required to be placarded under subpart F of 49 C.F.R. Part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. Part 73.

(14) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(15)(a) "Nondomiciled CLP or CDL" means a permit or license, respectively, issued under RCW 46.25.054 to a person who meets one of the following criteria:

(i) Is domiciled in a foreign country as provided in 49 C.F.R. Sec. 383.23(b)(1) as it existed on October 1, 2017, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section; or

(ii) Is domiciled in another state as provided in 49 C.F.R. Sec. 383.23(b)(2) as it existed on October 1, 2017, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section.

(b) The definition in this subsection (15) applies exclusively to the use of the term in this chapter and is not to be applied in any other chapter of the Revised Code of Washington.

(16) "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out-of-service pursuant to 49 C.F.R. Secs. 386.72, 392.5, 395.13, 396.9, or compatible laws, or the North American uniform out-of-service criteria.

(17) "Positive alcohol confirmation test" means an alcohol confirmation test that:

(a) Has been conducted by a breath alcohol technician under 49 C.F.R. Part 40; and

(b) Indicates an alcohol concentration of 0.04 or more.

A report that a person has refused an alcohol test, under circumstances that constitute the refusal of an alcohol test under 49 C.F.R. Part 40, will be considered equivalent to a report of a positive alcohol confirmation test for the purposes of this chapter.

(18) "School bus" means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and

from school-sponsored events. School bus does not include a bus used as a common carrier.

(19) "Serious traffic violation" means:

(a) Excessive speeding, defined as fifteen miles per hour or more in excess of the posted limit;

(b) Reckless driving, as defined under state or local law;

(c) Driving while using a personal electronic device, defined as a violation of RCW 46.61.672, which includes in the activities it prohibits driving while holding a personal electronic device in either or both hands and using a hand or finger for texting, or an equivalent administrative rule or local law, ordinance, rule, or resolution;

(d) A violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person;

(e) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(f) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession; however, any individual who provides proof to the court by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, is not guilty of a "serious traffic violation";

(g) Driving a commercial motor vehicle without the proper class of commercial driver's license endorsement or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported; and

(h) Any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, that the department determines by rule to be serious.

(20) "State" means a state of the United States and the District of Columbia.

(21) "Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, training, and continuing education requirements of 49 C.F.R. Sec. 40.281.

(22) "Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than one hundred nineteen gallons and an aggregate rated capacity of one thousand gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of one thousand gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.

(23) "Type of driving" means one of the following:

(a) "Nonexcepted interstate," which means the CDL or CLP holder or applicant operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 C.F.R. Part 391 as it existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(b) "Excepted interstate," which means the CDL or CLP holder or applicant operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 C.F.R. Secs. 390.3(f), 391.2, 391.68, or 398.3, as they existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, from all or parts of the qualification requirements of 49 C.F.R. Part 391 as it existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is therefore not required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on July 8, 2014, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(c) "Nonexcepted intrastate," which means the CDL or CLP holder or applicant operates only in intrastate commerce and is therefore subject to state driver qualification requirements; or

(d) "Excepted intrastate," which means the CDL or CLP holder or applicant operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the state driver qualification requirements.

(24) "United States" means the fifty states and the District of Columbia.

(25) "Verified positive drug test" means a drug test result or validity testing result from a laboratory certified under the authority of the federal department of health and human services that:

(a) Indicates a drug concentration at or above the cutoff concentration established under 49 C.F.R. Sec. 40.87; and

(b) Has undergone review and final determination by a medical review officer.

A report that a person has refused a drug test, under circumstances that constitute the refusal of a federal department of transportation drug test under 49 C.F.R. Part 40, will be considered equivalent to a report of a verified positive drug test for the purposes of this chapter. [2017 c 334 § 4; 2017 c 194 § 1; 2013 c 224 § 3; 2013 c 224 § 2; 2011 c 227 § 1; 2009 c 181 § 2. Prior: 2006 c 327 § 2; 2006 c 50 § 1; 2005 c 325 § 2; 2004 c 187 § 2; 1996 c 30 § 1; 1989 c 178 § 3.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2017 c 194 § 1 and by 2017 c 334 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2017 c 194: See note following RCW 46.25.054.

Effective date—2013 c 224: See note following RCW 46.01.130.

Effective date—2011 c 227 §§ 1-3: See note following RCW 46.25.075.

Intent—2005 c 325: "It is the intent of the legislature to promote the safety of drivers and passengers on Washington roads and public transportation systems. To this end, Washington has established a reporting requirement for employers of commercial drivers who test positive for unlawful substances. The legislature recognizes that transit operators and their employers are an asset to the public transportation system and continuously strive to provide a safe and efficient mode of travel. In light of this, the legislature further intends that the inclusion of transit employers in the reporting requirements serve only to enhance the current efforts of these dedicated employers and employees as they continue to provide a safe public transportation system to the citizens of Washington." [2005 c 325 § 1.]

Additional notes found at www.leg.wa.gov

46.25.054 Nondomiciled commercial driver's license and commercial learner's permit—Issuance, requirements. (Effective until June 1, 2018.) (1) The department may issue a nondomiciled CLP or CDL to a person who meets one of the following criteria:

(a) Is domiciled in a foreign country as provided in 49 C.F.R. Sec. 383.23(b)(1) as it existed on October 1, 2017, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section; or

(b) Is domiciled in another state as provided in 49 C.F.R. Sec. 383.23(b)(2) as it existed on October 1, 2017, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section.

(2) A person applying for a nondomiciled CLP or CDL must:

(a) Surrender any nonresident or nondomiciled CLP or CDL issued by another state;

(b) Be in possession of a valid driver's license issued by this state or by his or her jurisdiction of domicile;

(c) Meet the requirements of 49 C.F.R. Sec. 383.71(f) as it existed on October 1, 2017, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section; and

(d) Be otherwise eligible and meet the applicable requirements for the issuance of a CLP or CDL under this chapter, including the payment of all appropriate fees.

(3) Before issuing a nondomiciled CLP or CDL, the department must establish the practical capability of disqualifying the person under the conditions applicable to a CLP or CDL issued to a resident of this state.

(4) A nondomiciled CLP or CDL issued under this section:

(a) Must be marked "non-domiciled" on the face of the document;

(b) Must include the information, be issued with the appropriate classifications, endorsements, and restrictions, and, except as may be limited under subsection (5) of this section, expire and be subject to renewal in the same manner as required for a CLP or CDL issued under this chapter;

(c) Permits operation of a commercial motor vehicle to the same extent as a CLP or CDL issued under this section; and

(d) Is valid only when accompanied by a valid driver's license issued by this state or by the person's jurisdiction of domicile.

(5) A nondomiciled CLP or CDL issued to an individual who has temporary lawful status or valid employment authorization in the United States:

(a) Is valid only when accompanied by an unexpired employment authorization document issued by the United States citizenship and immigration services or an unexpired foreign passport accompanied by an approved I-94 form documenting the applicant's most recent admittance into the United States;

(b) Must expire no later than the first anniversary of the individual's birthdate that occurs after the expiration of the individual's employment authorization document or authorized stay in the United States, or if there is no expiration date for the employment authorization or authorized stay, one year from the first anniversary of the individual's birthdate that occurs after issuance; and

(c) May be renewed if the individual presents valid documentary evidence that the employment authorization document or temporary lawful status in the United States is still in effect or has been extended.

(6) A person who has been issued a nondomiciled CLP or CDL:

(a) Is subject to all applicable requirements for and disqualifications from operating a commercial motor vehicle as provided under this chapter and is subject to the withdrawal of driving privileges as provided by this title; and

(b) Must notify the department of the issuance of any disqualifications or license suspensions or revocations, whether in the United States or in the person's jurisdiction of domicile. [2017 c 194 § 3.]

Effective date—2017 c 194: "Except for section 4 of this act, this act takes effect October 1, 2017." [2017 c 194 § 5.]

46.25.054 Nondomiciled commercial driver's license and commercial learner's permit—Issuance, requirements. (Effective June 1, 2018.) (1) The department may issue a nondomiciled CLP or CDL to a person who meets one of the following criteria:

(a) Is domiciled in a foreign country as provided in 49 C.F.R. Sec. 383.23(b)(1) as it existed on October 1, 2017, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section; or

(b) Is domiciled in another state as provided in 49 C.F.R. Sec. 383.23(b)(2) as it existed on October 1, 2017, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section.

(2) A person applying for a nondomiciled CLP or CDL must:

(a) Surrender any nonresident or nondomiciled CLP or CDL issued by another state;

(b) Be in possession of a valid driver's license issued by this state or by his or her jurisdiction of domicile;

(c) Meet the requirements of 49 C.F.R. Sec. 383.71(f) as it existed on October 1, 2017, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section; and

(d) Be otherwise eligible and meet the applicable requirements for the issuance of a CLP or CDL under this chapter, including the payment of all appropriate fees.

(3) Before issuing a nondomiciled CLP or CDL, the department must establish the practical capability of disqualifying the person under the conditions applicable to a CLP or CDL issued to a resident of this state.

(4) A nondomiciled CLP or CDL issued under this section:

(a) Must be marked "non-domiciled" on the face of the document;

(b) Must include the information, be issued with the appropriate classifications, endorsements, and restrictions, and, except as may be limited under subsection (5) of this section, expire and be subject to renewal in the same manner as required for a CLP or CDL issued under this chapter;

(c) Permits operation of a commercial motor vehicle to the same extent as a CLP or CDL issued under this section; and

(d) Is valid only when accompanied by a valid driver's license issued by this state or by the person's jurisdiction of domicile.

(5) A nondomiciled CLP or CDL issued to an individual who has temporary lawful status or valid employment authorization in the United States:

(a) Is valid only when accompanied by an unexpired employment authorization document issued by the United States citizenship and immigration services or an unexpired foreign passport accompanied by an approved I-94 form documenting the applicant's most recent admittance into the United States;

(b) Must expire no later than the expiration of the individual's employment authorization document or authorized stay in the United States, or if there is no expiration date for the employment authorization or authorized stay, one year from the date of issuance; and

(c) May be renewed if the individual presents valid documentary evidence that the employment authorization document or temporary lawful status in the United States is still in effect or has been extended.

(6) A person who has been issued a nondomiciled CLP or CDL:

(a) Is subject to all applicable requirements for and disqualifications from operating a commercial motor vehicle as provided under this chapter and is subject to the withdrawal of driving privileges as provided by this title; and

(b) Must notify the department of the issuance of any disqualifications or license suspensions or revocations, whether in the United States or in the person's jurisdiction of domicile. [2017 c 194 § 4; 2017 c 194 § 3.]

Effective date—2017 c 194 § 4: "Section 4 of this act takes effect June 1, 2018." [2017 c 194 § 6.]

46.25.070 Application—Change of address, name—Residency—Hazardous materials endorsement. (1) The application for a commercial driver's license or commercial learner's permit must include the following:

(a) The full name and current mailing and residential address of the person;

(b) A physical description of the person, including sex, height, weight, and eye color;

(c) Date of birth;

(d) Except in the case of an applicant for a nondomiciled CLP or CDL who is domiciled in a foreign country and who has not been issued a social security number, the applicant's social security number;

(e) The person's signature;

(f) Certifications including those required by 49 C.F.R. Sec. 383.71;

(g) The names of all states where the applicant has previously been licensed to drive any type of motor vehicle during the previous ten years;

(h) Any other information required by the department; and

(i) A consent to release driving record information to parties identified in chapter 46.52 RCW and this chapter.

(2) An applicant for a commercial driver's license or commercial learner's permit, and every licensee seeking to renew his or her license, must meet the requirements of 49 C.F.R. Sec. 383.71 as it existed on July 8, 2014, or such sub-

sequent date as may be provided by the department by rule, consistent with the purposes of this section.

(3) An applicant for a hazardous materials endorsement must submit an application and comply with federal transportation security administration requirements as specified in 49 C.F.R. Part 1572.

(4) When a licensee changes his or her name, mailing address, or residence address, the person shall notify the department as provided in RCW 46.20.205.

(5) No person who has been a resident of this state for thirty days may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction. [2017 c 194 § 2; 2013 c 224 § 7; 2004 c 187 § 4; 2003 c 195 § 2; 1991 c 73 § 2; 1989 c 178 § 9.]

Effective date—2017 c 194: See note following RCW 46.25.054.

Effective date—2013 c 224: See note following RCW 46.01.130.

Findings—2003 c 195: "The legislature finds that current economic conditions impose severe hardships on many commercial vehicle drivers. The legislature finds that commercial drivers who may not currently be working may not be able to afford the expense of a required physical in order to maintain their commercial driver's license. The legislature finds that Washington's commercial driver's license statutes should be harmonized with federal requirements, which require proof of a physical capacity to drive a commercial vehicle, along with a valid commercial driver's license, but do not link the two requirements. The legislature finds that allowing commercial drivers to delay getting a physical until they are actually driving a commercial vehicle will prevent the imposition of unnecessary expense and hardship on Washington's commercial vehicle drivers." [2003 c 195 § 1.]

46.25.090 Disqualification—Grounds for, period of—Records. (1) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if a report has been received by the department pursuant to RCW 46.20.308 or 46.25.120, or if the person has been convicted of a first violation, within this or any other jurisdiction, of:

(a) Driving a motor vehicle under the influence of alcohol or any drug;

(b) Driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more or any measurable amount of THC concentration, or driving a noncommercial motor vehicle while the alcohol concentration in the person's system is 0.08 or more, or is 0.02 or more if the person is under age twenty-one, or with a THC concentration of 5.00 nanograms per milliliter of whole blood or more, or a THC concentration above 0.00 if the person is under the age of twenty-one, as determined by any testing methods approved by law in this state or any other state or jurisdiction;

(c) Leaving the scene of an accident involving a motor vehicle driven by the person;

(d) Using a motor vehicle in the commission of a felony;

(e) Refusing to submit to a test or tests to determine the driver's alcohol concentration or the presence of any drug while driving a motor vehicle;

(f) Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver's license is revoked, suspended, or canceled, or the driver is disqualified from operating a commercial motor vehicle;

(g) Causing a fatality through the negligent operation of a commercial motor vehicle, including but not limited to the crimes of vehicular homicide and negligent homicide.

If any of the violations set forth in this subsection occurred while transporting hazardous material, the person is disqualified for a period of not less than three years.

(2) A person is disqualified for life if it has been determined that the person has committed or has been convicted of two or more violations of any of the offenses specified in subsection (1) of this section, or any combination of those offenses, arising from two or more separate incidents.

(3) The department may adopt rules, in accordance with federal regulations, establishing guidelines, including conditions, under which a disqualification for life under subsection (2) of this section may be reduced to a period of not less than ten years.

(4) A person is disqualified from driving a commercial motor vehicle for life who uses a motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by chapter 69.50 RCW, or possession with intent to manufacture, distribute, or dispense a controlled substance, as defined by chapter 69.50 RCW.

(5)(a) A person is disqualified from driving a commercial motor vehicle for a period of:

(i) Not less than sixty days if:

(A) Convicted of or found to have committed a second serious traffic violation while driving a commercial motor vehicle; or

(B) Convicted of reckless driving, where there has been a prior serious traffic violation; or

(ii) Not less than one hundred twenty days if:

(A) Convicted of or found to have committed a third or subsequent serious traffic violation while driving a commercial motor vehicle; or

(B) Convicted of reckless driving, where there has been two or more prior serious traffic violations.

(b) The disqualification period under (a)(ii) of this subsection must be in addition to any other previous period of disqualification.

(c) For purposes of determining prior serious traffic violations under this subsection, each conviction of or finding that a driver has committed a serious traffic violation while driving a commercial motor vehicle or noncommercial motor vehicle, arising from a separate incident occurring within a three-year period, must be counted.

(6) A person is disqualified from driving a commercial motor vehicle for a period of:

(a) Not less than one hundred eighty days nor more than one year if convicted of or found to have committed a first violation of an out-of-service order while driving a commercial vehicle;

(b) Not less than two years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed two violations of out-of-service orders while driving a commercial motor vehicle in separate incidents;

(c) Not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed three or more violations of out-of-service orders while driving commercial motor vehicles in separate incidents;

(d) Not less than one hundred eighty days nor more than two years if the person is convicted of or is found to have

committed a first violation of an out-of-service order while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver. A person is disqualified for a period of not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver.

(7) A person is disqualified from driving a commercial motor vehicle if a report has been received by the department under RCW 46.25.125 that the person has received a verified positive drug test or positive alcohol confirmation test as part of the testing program conducted under 49 C.F.R. 40. A disqualification under this subsection remains in effect until the person undergoes a drug and alcohol assessment by a substance abuse professional meeting the requirements of 49 C.F.R. 40, and the person presents evidence of satisfactory participation in or successful completion of a drug or alcohol treatment and/or education program as recommended by the substance abuse professional, and until the person has met the requirements of RCW 46.25.100. The substance abuse professional shall forward a diagnostic evaluation and treatment recommendation to the department of licensing for use in determining the person's eligibility for driving a commercial motor vehicle. Persons who are disqualified under this subsection more than twice in a five-year period are disqualified for life.

(8)(a) A person is disqualified from driving a commercial motor vehicle for the period of time specified in (b) of this subsection if he or she is convicted of or is found to have committed one of the following six offenses at a railroad-highway grade crossing while operating a commercial motor vehicle in violation of a federal, state, or local law or regulation:

(i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train or other on-track equipment;

(ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;

(iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(v) For all drivers, failing to obey a traffic control device or the directions of an enforcement officer at the crossing;

(vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(b) A person is disqualified from driving a commercial motor vehicle for a period of:

(i) Not less than sixty days if the driver is convicted of or is found to have committed a first violation of a railroad-highway grade crossing violation;

(ii) Not less than one hundred twenty days if the driver is convicted of or is found to have committed a second railroad-highway grade crossing violation in separate incidents within a three-year period;

(iii) Not less than one year if the driver is convicted of or is found to have committed a third or subsequent railroad-

highway grade crossing violation in separate incidents within a three-year period.

(9) A person is disqualified from driving a commercial motor vehicle for not more than one year if a report has been received by the department from the federal motor carrier safety administration that the person's driving has been determined to constitute an imminent hazard as defined by 49 C.F.R. 383.5. A person who is simultaneously disqualified from driving a commercial motor vehicle under this subsection and under other provisions of this chapter, or under 49 C.F.R. 383.52, shall serve those disqualification periods concurrently.

(10) Within ten days after suspending, revoking, or canceling a commercial driver's license or disqualifying a driver from operating a commercial motor vehicle, the department shall update its records to reflect that action. [2017 c 87 § 5; 2013 2nd sp.s. c 35 § 10; 2011 c 227 § 4; 2006 c 327 § 4; 2005 c 325 § 5; 2004 c 187 § 7. Prior: 2002 c 272 § 3; 2002 c 193 § 1; 1996 c 30 § 3; 1989 c 178 § 11.]

Intent—2005 c 325: See note following RCW 46.25.010.

Additional notes found at www.leg.wa.gov

Chapter 46.44 RCW SIZE, WEIGHT, LOAD

Sections

46.44.030	Maximum lengths.
46.44.034	Maximum lengths—Front and rear protrusions.

46.44.030 Maximum lengths. It is unlawful for any person to operate upon the public highways of this state any vehicle having an overall length, with or without load, in excess of forty feet. This restriction does not apply to (1) a municipal transit vehicle, (2) auto stage, private carrier bus, school bus, or motor home with an overall length not to exceed forty-six feet, (3) an articulated auto stage with an overall length not to exceed sixty-one feet, excluding a bike rack up to four feet in length, or (4) an auto recycling carrier up to forty-two feet in length manufactured prior to 2005.

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

It is unlawful for any person to operate on the highways of this state any combination consisting of a truck and trailer, or log truck and stinger-steered pole trailer, with an overall length, with or without load, in excess of seventy-five feet. "Stinger-steered," as used in this section, means the coupling device is located behind the tread of the tires of the last axle of the towing vehicle.

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

Excluded from the calculation of length are certain devices that provide added safety, energy conservation, or are otherwise necessary, and are not designed or used to carry cargo. The length-exclusive devices must be identified in rules adopted by the department of transportation under RCW 46.44.101. [2017 c 76 § 2; 2012 c 79 § 1; 2005 c 189 § 2; 2000 c 102 § 1; 1995 c 26 § 1; 1994 c 59 § 2; 1993 c 301 § 1; 1991 c 113 § 1; 1990 c 28 § 1; 1985 c 351 § 1; 1984 c 104 § 1; 1983 c 278 § 2; 1979 ex.s. c 113 § 4; 1977 ex.s. c 64 § 1; 1975-'76 2nd ex.s. c 53 § 1; 1974 ex.s. c 76 § 2; 1971 ex.s. c 248 § 2; 1967 ex.s. c 145 § 61; 1963 ex.s. c 3 § 52; 1961 ex.s. c 21 § 36; 1961 c 12 § 46.44.030. Prior: 1959 c 319 § 25; 1957 c 273 § 14; 1951 c 269 § 22; prior: 1949 c 221 § 1, part; 1947 c 200 § 5, part; 1941 c 116 § 1, part; 1937 c 189 § 49, part; Rem. Supp. 1949 § 6360-49, part.]

Additional notes found at www.leg.wa.gov

46.44.034 Maximum lengths—Front and rear protrusions. (1) The load, or any portion of any vehicle, operated alone upon the public highway of this state, or the load, or any portion of the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the front wheels of such vehicle, or the front bumper, if equipped with front bumper. This subsection does not apply to (a) front-loading garbage truck or recycling truck while on route and actually engaged in the collection of solid waste or recyclables at speeds of twenty miles per hour or less or (b) public transit vehicle equipped with a bike rack up to four feet in length.

(2) No vehicle shall be operated upon the public highways with any part of the permanent structure or load extending in excess of fifteen feet beyond the center of the last axle of such vehicle. This subsection does not apply to "specialized equipment" designated under 49 U.S.C. Sec. 2311 that is operated on the interstate highway system, those designated portions of the federal-aid primary system, and routes constituting reasonable access from such highways to terminals and facilities for food, fuel, repairs, and rest. [2017 c 76 § 1; 1997 c 191 § 1; 1991 c 143 § 1; 1961 c 12 § 46.44.034. Prior: 1957 c 273 § 15; 1951 c 269 § 24; prior: 1949 c 221 § 1, part; 1947 c 200 § 5, part; 1941 c 116 § 1, part; 1937 c 189 § 49, part; Rem. Supp. 1949 § 6360-49, part.]

Chapter 46.52 RCW ACCIDENTS—REPORTS—ABANDONED VEHICLES

Sections

46.52.120	Case record of convictions and infractions.
46.52.130	Abstract of driving record—Access—Fee—Violations.

46.52.120 Case record of convictions and infractions. (1) The director shall keep a case record on every motor vehicle driver licensed under the laws of this state, together with information on each driver, showing all the convictions and findings of traffic infractions certified by the courts, together with an index cross-reference record of each accident reported relating to such individual with a brief statement of the cause of the accident and whether or not the accident resulted in any fatality.

(2) The records shall be for the confidential use of the director, the chief of the Washington state patrol, the director of the Washington traffic safety commission, and for such police officers or other cognizant public officials as may be designated by law. Such case records shall not be admitted into evidence in any court, except where relevant to the prosecution or defense of a criminal charge, or in case appeal is taken from the order of the director, suspending, revoking, canceling, or refusing a vehicle driver's license.

(3) The director shall tabulate and analyze vehicle driver's case records and suspend, revoke, cancel, or refuse a vehicle driver's license to a person when it is deemed from facts contained in the case record of such person that it is for the best interest of public safety that such person be denied the privilege of operating a motor vehicle. The director shall also suspend a person's driver's license if the person fails to attend or complete a driver improvement interview or fails to abide by conditions of probation under RCW 46.20.335. Whenever the director orders the vehicle driver's license of any such person suspended, revoked, or canceled, or refuses the issuance of a vehicle driver's license, such suspension, revocation, cancellation, or refusal is final and effective unless appeal from the decision of the director is taken as provided by law. [2017 c 147 § 9; 2016 c 197 § 4. Prior: 1998 c 218 § 1; 1998 c 165 § 10; 1993 c 501 § 12; 1992 c 32 § 3; 1989 c 178 § 23; 1988 c 38 § 2; 1984 c 99 § 1; 1982 c 52 § 1; 1979 ex.s. c 136 § 83; 1977 ex.s. c 356 § 1; 1967 c 32 § 62; 1961 c 12 § 46.52.120; prior: 1937 c 189 § 144; RRS § 6360-144.]

Additional notes found at www.leg.wa.gov

46.52.130 Abstract of driving record—Access—Fee—Violations. Upon a proper request, the department may furnish an abstract of a person's driving record as permitted under this section.

(1) **Contents of abstract of driving record.** An abstract of a person's driving record, whenever possible, must include:

- (a) An enumeration of motor vehicle accidents in which the person was driving, including:
 - (i) The total number of vehicles involved;
 - (ii) Whether the vehicles were legally parked or moving;
 - (iii) Whether the vehicles were occupied at the time of the accident; and
 - (iv) Whether the accident resulted in a fatality;
- (b) Any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law;
- (c) The status of the person's driving privilege in this state; and
- (d) Any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.

(2) **Release of abstract of driving record.** An abstract of a person's driving record may be furnished to the following persons or entities:

- (a) **Named individuals.** (i) An abstract of the full driving record maintained by the department may be furnished to the individual named in the abstract.
- (ii) Nothing in this section prevents a court from providing a copy of the driver's abstract to the individual named in

the abstract or that named individual's attorney, provided that the named individual has a pending or open infraction or criminal case in that court. A pending case includes criminal cases that have not reached a disposition by plea, stipulation, trial, or amended charge. An open infraction or criminal case includes cases on probation, payment agreement or subject to, or in collections. Courts may charge a reasonable fee for the production and copying of the abstract for the individual.

(b) **Employers or prospective employers.** (i)(A) An abstract of the full driving record maintained by the department may be furnished to an employer or prospective employer or an agent acting on behalf of an employer or prospective employer of the named individual for purposes related to driving by the individual as a condition of employment or otherwise at the direction of the employer.

(B) Release of an abstract of the driving record of an employee or prospective employee requires a statement signed by: (I) The employee or prospective employee that authorizes the release of the record; and (II) the employer attesting that the information is necessary for employment purposes related to driving by the individual as a condition of employment or otherwise at the direction of the employer. If the employer or prospective employer authorizes an agent to obtain this information on their behalf, this must be noted in the statement. The statement must also note that any information contained in the abstract related to an adjudication that is subject to a court order sealing the juvenile record of an employee or prospective employee may not be used by the employer or prospective employer, or an agent authorized to obtain this information on their behalf, unless required by federal regulation or law. The employer or prospective employer must afford the employee or prospective employee an opportunity to demonstrate that an adjudication contained in the abstract is subject to a court order sealing the juvenile record.

(C) Upon request of the person named in the abstract provided under this subsection, and upon that same person furnishing copies of court records ruling that the person was not at fault in a motor vehicle accident, the department must indicate on any abstract provided under this subsection that the person was not at fault in the motor vehicle accident.

(D) No employer or prospective employer, nor any agent of an employer or prospective employer, may use information contained in the abstract related to an adjudication that is subject to a court order sealing the juvenile record of an employee or prospective employee for any purpose unless required by federal regulation or law. The employee or prospective employee must furnish a copy of the court order sealing the juvenile record to the employer or prospective employer, or the agent of the employer or prospective employer, as may be required to ensure the application of this subsection.

(ii) In addition to the methods described in (b)(i) of this subsection, the director may enter into a contractual agreement with an employer or its agent for the purpose of reviewing the driving records of existing employees for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that will not result in a net revenue loss to the state. Any information provided under this subsection must

be treated in the same manner and is subject to the same restrictions as driving record abstracts.

(c) **Volunteer organizations.** (i) An abstract of the full driving record maintained by the department may be furnished to a volunteer organization or an agent for a volunteer organization for which the named individual has submitted an application for a position that would require driving by the individual at the direction of the volunteer organization.

(ii) Release of an abstract of the driving record of a prospective volunteer requires a statement signed by: (A) The prospective volunteer that authorizes the release of the record; and (B) the volunteer organization attesting that the information is necessary for purposes related to driving by the individual at the direction of the volunteer organization. If the volunteer organization authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

(d) **Transit authorities.** An abstract of the full driving record maintained by the department may be furnished to an employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs.

(e) **Insurance carriers.** (i) An abstract of the driving record maintained by the department covering the period of not more than the last three years may be furnished to an insurance company or its agent:

(A) That has motor vehicle or life insurance in effect covering the named individual;

(B) To which the named individual has applied; or

(C) That has insurance in effect covering the employer or a prospective employer of the named individual.

(ii) The abstract provided to the insurance company must:

(A) Not contain any information related to actions committed by law enforcement officers or firefighters, as both terms are defined in RCW 41.26.030, or by Washington state patrol officers, while driving official vehicles in the performance of their occupational duty, or by registered tow truck operators as defined in RCW 46.55.010 in the performance of their occupational duties while at the scene of a roadside impound or recovery so long as they are not issued a citation. This does not apply to any situation where the vehicle was used in the commission of a misdemeanor or felony;

(B) Include convictions under RCW 46.61.5249 and 46.61.525, except that the abstract must report the convictions only as negligent driving without reference to whether they are for first or second degree negligent driving; and

(C) Exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.090, the abstract must show the deferred prosecution as well as the removal.

(iii) Any policy of insurance may not be canceled, non-renewed, denied, or have the rate increased on the basis of information regarding an accident included in the abstract of a driving record, unless the policyholder was determined to be at fault.

(iv) Any insurance company or its agent, for underwriting purposes relating to the operation of commercial motor vehicles, may not use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment. Any insurance com-

pany or its agent, for underwriting purposes relating to the operation of noncommercial motor vehicles, may not use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

(v) The director may enter into a contractual agreement with an insurance company or its agent for the limited purpose of reviewing the driving records of existing policyholders for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that will not result in a net revenue loss to the state. Any information provided under this subsection must be treated in the same manner and is subject to the same restrictions as driving record abstracts.

(f) **Alcohol/drug assessment or treatment agencies.** An abstract of the driving record maintained by the department covering the period of not more than the last five years may be furnished to an alcohol/drug assessment or treatment agency approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment, for purposes of assisting employees in making a determination as to what level of treatment, if any, is appropriate, except that the abstract must:

(i) Also include records of alcohol-related offenses, as defined in RCW 46.01.260(2), covering a period of not more than the last ten years; and

(ii) Indicate whether an alcohol-related offense was originally charged as a violation of either RCW 46.61.502 or 46.61.504.

(g) **Attorneys—City attorneys, county prosecuting attorneys, and named individual's attorney of record.** An abstract of the full driving record maintained by the department, including whether a recorded violation is an alcohol-related offense, as defined in RCW 46.01.260(2), that was originally charged as a violation of either RCW 46.61.502 or 46.61.504, may be furnished to city attorneys, county prosecuting attorneys, or the named individual's attorney of record. City attorneys, county prosecuting attorneys, or the named individual's attorney of record may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment.

(h) **State colleges, universities, or agencies, or units of local government.** An abstract of the full driving record maintained by the department may be furnished to (i) state colleges, universities, or agencies for employment and risk management purposes or (ii) units of local government authorized to self-insure under RCW 48.62.031 for employment and risk management purposes.

(i) **Superintendent of public instruction.** An abstract of the full driving record maintained by the department may be furnished to the superintendent of public instruction for review of public school bus driver records. The superintendent or superintendent's designee may discuss information on the driving record with an authorized representative of the employing school district for employment and risk management purposes.

(3) **Release to third parties prohibited.** Any person or entity receiving an abstract of a person's driving record under subsection (2)(b) through (i) of this section shall use the

abstract exclusively for his, her, or its own purposes or as otherwise expressly permitted under this section, and shall not divulge any information contained in the abstract to a third party.

(4) **Fee.** The director shall collect a thirteen dollar fee for each abstract of a person's driving record furnished by the department. Fifty percent of the fee must be deposited in the highway safety fund, and fifty percent of the fee must be deposited according to RCW 46.68.038.

(5) **Violation.** (a) Any negligent violation of this section is a gross misdemeanor.

(b) Any intentional violation of this section is a class C felony.

(6) Effective July 1, 2019, the contents of a driving abstract pursuant to this section shall not include any information related to sealed juvenile records unless that information is required by federal law or regulation. [2017 c 43 § 2; 2015 2nd sp.s. c 3 § 12; 2015 c 265 § 4. Prior: 2012 c 74 § 6; 2012 c 73 § 1; 2010 c 253 § 1; 2009 c 276 § 1; 2008 c 253 § 1; 2007 c 424 § 3; 2004 c 49 § 1; 2003 c 367 § 1; prior: 2002 c 352 § 20; 2002 c 221 § 1; 2001 c 309 § 1; 1998 c 165 § 11; 1997 c 66 § 12; prior: 1996 c 307 § 4; 1996 c 183 § 2; 1994 c 275 § 16; 1991 c 243 § 1; 1989 c 178 § 24; prior: 1987 1st ex.s. c 9 § 2; 1987 c 397 § 2; 1987 c 181 § 1; 1986 c 74 § 1; 1985 ex.s. c 1 § 11; 1979 ex.s. c 136 § 84; 1977 ex.s. c 356 § 2; 1977 ex.s. c 140 § 1; 1973 1st ex.s. c 37 § 1; 1969 ex.s. c 40 § 3; 1967 c 174 § 2; 1967 c 32 § 63; 1963 c 169 § 65; 1961 ex.s. c 21 § 27.]

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

Finding—Intent—2015 2nd sp.s. c 3: See note following RCW 10.21.055.

Finding—Intent—2015 c 265: See note following RCW 13.50.010.

Effective date—2012 c 74 §§ 1-12: See note following RCW 46.17.100.

Effective date—2010 c 253: "This act takes effect October 31, 2010." [2010 c 253 § 3.]

Effective date—2008 c 253: "This act takes effect August 1, 2008." [2008 c 253 § 2.]

Effective date—2007 c 424: See note following RCW 46.20.293.

Intent—1987 c 397: See note following RCW 46.61.410.

Abstract of driving record to be furnished: RCW 46.29.050.

Use of highway safety fund to defray cost of furnishing and maintaining driving records: RCW 46.68.060.

Additional notes found at www.leg.wa.gov

Chapter 46.55 RCW

TOWING AND IMPOUNDMENT

Sections

46.55.063	Fees, schedules, contracts, invoices.
46.55.110	Notice to legal and registered owners.
46.55.120	Redemption of vehicles—Sale of unredeemed property—Improper impoundment.
46.55.125	Redemption of motorcycle or moped as bailment while owner hospitalized due to accident—Requirements—Declaration form.
46.55.130	Notice requirements—Public auction—Accumulation of storage charges.
46.55.150	Vehicle transaction file.
46.55.160	Availability of records, equipment, and facilities for audit and inspection.

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

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

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

(4) Fees that are charged for the storage of a vehicle, or for other items of personal property registered or titled with the department, must be calculated on a twenty-four hour basis and must be charged to the nearest half day from the time when the operator has unloaded the vehicle and completed the necessary paperwork at the secure storage area. The total amount of time to unload the towed vehicle, complete required paperwork, and reasonably prepare the tow truck to return to service may be charged as part of the tow truck service in fifteen-minute increments not to exceed a total of sixty minutes after the return of the tow truck to the secure storage area. If a portion of any fifteen-minute increment exceeds a total of eight minutes, the total minutes must be rounded up to the next highest fifteen-minute period of total time except in the last fifteen minutes of the total sixty minutes. However, items of personal property registered or titled with the department that are wholly contained within an impounded vehicle are not subject to additional storage fees; they are, however, subject to satisfying the underlying lien for towing and storage of the vehicle in which they are contained.

(5) All billing invoices that are provided to the redeemer of the vehicle, or other items of personal property registered or titled with the department, must be itemized so that the individual fees are clearly discernible. [2017 c 94 § 1; 1995 c 360 § 3; 1989 c 111 § 7.]

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

a hearing to contest the validity of the impoundment pursuant to RCW 46.55.120.

(2) In addition, if a suspended license impound has been ordered, the notice must state the length of the impound, the requirement of the posting of a security deposit to ensure payment of the costs of removal, towing, and storage, notification that if the security deposit is not posted the vehicle will immediately be processed and sold at auction as an abandoned vehicle, and the requirements set out in RCW 46.55.120(1)(c) regarding the payment of the costs of removal, towing, and storage as well as providing proof of satisfaction of any penalties, fines, or forfeitures before redemption. The notice must also state that the registered owner is ineligible to purchase the vehicle at the abandoned vehicle auction, if held.

(3) In the case of an abandoned vehicle, or other item of personal property registered or titled with the department, within twenty-four hours after receiving information on the legal and registered owners from the department through the abandoned vehicle report, the tow truck operator shall send by first-class mail a notice of custody and sale to the legal and registered owners and of the penalties for the traffic infraction littering—abandoned vehicle. The tow truck operator shall obtain a certificate of mailing from the United States postal service when notice is mailed.

(4) If the date on which a notice required by subsection (3) of this section is to be mailed falls upon a Saturday, Sunday, or a postal holiday, the notice may be mailed on the next day that is neither a Saturday, Sunday, nor a postal holiday.

(5) No notices need be sent to the legal or registered owners of an impounded vehicle or other item of personal property registered or titled with the department, if the vehicle or personal property has been redeemed. [2017 c 43 § 1; 2002 c 279 § 11; 1999 c 398 § 6; 1998 c 203 § 3; 1995 c 360 § 6; 1989 c 111 § 10; 1987 c 311 § 9; 1985 c 377 § 11.]

Finding—1998 c 203: See note following RCW 46.55.105.

46.55.120 Redemption of vehicles—Sale of unredeemed property—Improper impoundment. (1)(a) Vehicles or other items of personal property registered or titled with the department that are impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, 46.55.113, or 9A.88.140 may be redeemed only by the following persons or entities:

(i) The legal owner;
 (ii) The registered owner;
 (iii) A person authorized in writing by the registered owner;

(iv) The vehicle's insurer or a vendor working on behalf of the vehicle's insurer;

(v) A third-party insurer that has a duty to repair or replace the vehicle, has obtained consent from the registered owner or the owner's agent to move the vehicle, and has documented that consent in the insurer's claim file, or a vendor working on behalf of a third-party insurer that has received such consent; provided, however, that at all times the registered owner must be granted access to and may reclaim possession of the vehicle. For the purposes of this subsection, "owner's agent" means the legal owner of the vehicle, a driver in possession of the vehicle with the registered owner's permission, or an adult member of the registered owner's family;

(vi) A person who is determined and verified by the operator to have the permission of the registered owner of the vehicle or other item of personal property registered or titled with the department;

(vii) A person who has purchased a vehicle or item of personal property registered or titled with the department from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor; or

(viii) If (a)(i) through (vii) of this subsection do not apply, a person, who is known to the registered or legal owner of a motorcycle or moped, as each are defined in chapter 46.04 RCW, that was towed from the scene of an accident, may redeem the motorcycle or moped as a bailment in accordance with RCW 46.55.125 while the registered or legal owner is admitted as a patient in a hospital due to the accident.

(b) In addition, a vehicle impounded because the operator is in violation of RCW 46.20.342(1)(c) shall not be released until a person eligible to redeem it under (a) of this subsection satisfies the requirements of (f) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency. If the department's records show that the operator has been convicted of a violation of RCW 46.20.342 or a similar local ordinance within the past five years, the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. A vehicle impounded because the operator is arrested for a violation of RCW 46.20.342 may be released only pursuant to a written order from the agency that ordered the vehicle impounded or from the court having jurisdiction. An agency shall issue a written order to release pursuant to a provision of an applicable state agency rule or local ordinance authorizing release on the basis of the following:

(i) Economic or personal hardship to the spouse of the operator, taking into consideration public safety factors, including the operator's criminal history and driving record; or

(ii) The owner of the vehicle was not the driver, the owner did not know that the driver's license was suspended or revoked, and the owner has not received a prior release under this subsection or RCW 46.55.113(3).

In order to avoid discriminatory application, other than for the reasons for release set forth in (b)(i) and (ii) of this subsection, an agency shall, under a provision of an applicable state agency rule or local ordinance, deny release in all other circumstances without discretion.

If a vehicle is impounded because the operator is in violation of RCW 46.20.342(1) (a) or (b), the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. However, if the department's records show that the operator has been convicted of a violation of RCW 46.20.342(1) (a) or (b) or a similar local ordinance within the past five years, the vehicle may be held at the written direction of the agency ordering the vehicle impounded for up to sixty days, and for up to ninety days if the operator has two or more such prior offenses. If a vehicle is impounded because the operator is arrested for a violation of RCW 46.20.342, the vehicle may not be released until a person eligible to redeem it under (a) of this subsection satisfies the requirements of (f) of this subsection, including pay-

ing all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency.

(c) If the vehicle is directed to be held for a suspended license impound, a person who desires to redeem the vehicle at the end of the period of impound shall within five days of the impound at the request of the tow truck operator pay a security deposit to the tow truck operator of not more than one-half of the applicable impound storage rate for each day of the proposed suspended license impound. The tow truck operator shall credit this amount against the final bill for removal, towing, and storage upon redemption. The tow truck operator may accept other sufficient security in lieu of the security deposit. If the person desiring to redeem the vehicle does not pay the security deposit or provide other security acceptable to the tow truck operator, the tow truck operator may process and sell at auction the vehicle as an abandoned vehicle within the normal time limits set out in RCW 46.55.130(1). The security deposit required by this section may be paid and must be accepted at any time up to twenty-four hours before the beginning of the auction to sell the vehicle as abandoned. The registered owner is not eligible to purchase the vehicle at the auction, and the tow truck operator shall sell the vehicle to the highest bidder who is not the registered owner.

(d) Notwithstanding (c) of this subsection, a rental car business may immediately redeem a rental vehicle it owns by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound.

(e) Notwithstanding (c) of this subsection, a motor vehicle dealer or lender with a perfected security interest in the vehicle may redeem or lawfully repossess a vehicle immediately by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound. A motor vehicle dealer or lender with a perfected security interest in the vehicle may not knowingly and intentionally engage in collusion with a registered owner to repossess and then return or resell a vehicle to the registered owner in an attempt to avoid a suspended license impound. However, this provision does not preclude a vehicle dealer or a lender with a perfected security interest in the vehicle from repossessing the vehicle and then selling, leasing, or otherwise disposing of it in accordance with chapter 62A.9A RCW, including providing redemption rights to the debtor under RCW 62A.9A-623. If the debtor is the registered owner of the vehicle, the debtor's right to redeem the vehicle under chapter 62A.9A RCW is conditioned upon the debtor obtaining and providing proof from the impounding authority or court having jurisdiction that any fines, penalties, and forfeitures owed by the registered owner, as a result of the suspended license impound, have been paid, and proof of the payment must be tendered to the vehicle dealer or lender at the time the debtor tenders all other obligations required to redeem the vehicle. Vehicle dealers or lenders are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound.

(f) The vehicle or other item of personal property registered or titled with the department shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs

of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such vehicle, with credit being given for the amount of any security deposit paid under (c) of this subsection. In addition, if a vehicle is impounded because the operator was arrested for a violation of RCW 46.20.342 or 46.20.345 and was being operated by the registered owner when it was impounded under local ordinance or agency rule, it must not be released to any person until the registered owner establishes with the agency that ordered the vehicle impounded or the court having jurisdiction that any penalties, fines, or forfeitures owed by him or her have been satisfied. Registered tow truck operators are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards issued by financial institutions, or personal checks drawn on Washington state branches of financial institutions if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. If the towing firm cannot determine through the customer's bank or a check verification service that the presented check would be paid by the bank or guaranteed by the service, the towing firm may refuse to accept the check. Any person who stops payment on a personal check or credit card, or does not make restitution within ten days from the date a check becomes insufficient due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

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

(b) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district or municipal court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and storage charges. The district court has jurisdiction to determine the issues involving all impoundments including those authorized by the state or its agents. The municipal court has jurisdiction to determine the issues involving impoundments authorized by agents of the municipality. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the appropriate court within ten days of the date the opportunity was provided for in (a) of this subsection and more than five days before the date of the auction. At the time of the filing of the hearing request, the petitioner shall pay to the court clerk a filing fee in the same amount required for the filing of a suit in district court. If the hearing request is not received by the court within the ten-day period, the right to a hearing is

waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the court shall proceed to hear and determine the validity of the impoundment.

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

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper. The court may consider a written report made under oath by the officer who authorized the impoundment in lieu of the officer's personal appearance at the hearing.

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

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

(e) If the impoundment is determined to be in violation of this chapter, then the registered and legal owners of the vehicle or other item of personal property registered or titled with the department shall bear no impoundment, towing, or storage fees, and any security shall be returned or discharged as appropriate, and the person or agency who authorized the impoundment shall be liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment in favor of the registered tow truck operator against the person or agency authorizing the impound for the impoundment, towing, and storage fees paid. In addition, the court shall enter judgment in favor of the registered and legal owners of the vehicle, or other item of personal property registered or titled with the department, for the amount of the filing fee required by law for the impound hearing petition as well as reasonable damages for loss of the use of the vehicle during the time the same was impounded against the person or agency authorizing the impound. However, if an impoundment arising from an alleged violation of RCW 46.20.342 or 46.20.345 is determined to be in violation of this chapter, then the law enforcement officer directing the impoundment and the government employing the officer are not liable for damages if the officer relied in good faith and without gross negligence on the records of the department in ascertaining that the operator of the vehicle had a suspended or revoked driver's license. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mail-

ing the notice. Notice of the entry of the judgment shall read essentially as follows:

TO:
 YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the Court located at in the sum of \$., in an action entitled, Case No. YOU ARE FURTHER NOTIFIED that attorneys fees and costs will be awarded against you under RCW . . . if the judgment is not paid within 15 days of the date of this notice. DATED this day of, (year) . . .

Signature

Typed name and address
 of party mailing notice

(4) Any impounded abandoned vehicle or item of personal property registered or titled with the department that is not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(3) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle or item of personal property registered or titled with the department may be redeemed at any time before the start of the auction upon payment of the applicable towing and storage fees. [2017 c 152 § 1; 2013 c 150 § 1; 2009 c 387 § 3; 2004 c 250 § 1; 2003 c 177 § 2; 2000 c 193 § 1. Prior: 1999 c 398 § 7; 1999 c 327 § 5; 1998 c 203 § 5; 1996 c 89 § 2; 1995 c 360 § 7; 1993 c 121 § 3; 1989 c 111 § 11; 1987 c 311 § 12; 1985 c 377 § 12.]

Short title—2017 c 152: See note following RCW 46.55.125.

Findings—Intent—1999 c 327: See note following RCW 9A.88.130.

Finding—1998 c 203: See note following RCW 46.55.105.

46.55.125 Redemption of motorcycle or moped as bailment while owner hospitalized due to accident—Requirements—Declaration form. (1) Any person, who is known to the registered or legal owner of a motorcycle or moped that was towed from the scene of an accident, may redeem the motorcycle or moped as a bailment on behalf of the registered or legal owner who is admitted as a patient in a hospital due to the accident subject to the following requirements:

(a) The eligible person must pay the costs of towing, storage, or other services rendered during the course of towing, removal, or storing of the motorcycle or moped.

(b) The eligible person must provide a valid government-issued photo identification, such as a current driver's license or state-issued identification card, military identification, or passport.

(c) The eligible person must sign a declaration on a form furnished by the department that provides:

(i) The person's name, telephone number, and physical address;

(ii) The relationship between the person and the registered or legal owner;

(iii) The name and location of the hospital where the registered or legal owner is admitted;

(iv) The address of the physical location where the motorcycle or moped will be stored for the registered or legal owner at no additional cost to the owner;

(v) A statement that the person agrees to protect the motorcycle or moped and return it to the registered or legal owner in the same form it was received when removed from the registered tow truck operator's premises; and

(vi) A statement that the person knowingly agrees to become the bailee for the motorcycle or moped.

(d) The declaration form under (c) of this subsection must be signed under penalty of perjury.

(2) The registered tow truck operator may refuse an offer to redeem under this section for good cause, which includes, but is not limited to, competing applications for redemption from persons identified under RCW 46.55.120(1)(a) or the person applying to be the bailee has been convicted of a crime of dishonesty or theft. This section does not require a registered tow truck operator to investigate or otherwise determine the criminal history or the honesty of the bailee.

(3) Any registered tow truck operator acting in good faith in compliance with this section that releases a motorcycle or moped to bailment in accordance with the requirements of this section is immune from civil liability arising out of the bailment unless the tow truck operator's act or omission constitutes gross negligence or willful or wanton misconduct.

(4) In addition to any remedies provided by common law for bailments, a person who becomes the bailee of a motorcycle or moped under this section and fails to return the motorcycle or moped to the registered or legal owner may be charged with possession of a stolen vehicle under RCW 9A.56.068.

(5) The department must create a declaration form to be completed by individuals that identifies the required information in subsection (1)(b) and (c) of this section. The department must post the form on its web site, and the form must be able to be downloaded from the department's web site. [2017 c 152 § 4.]

Short title—2017 c 152: "This act may be known and cited as the Denise Chew scooter recovery act." [2017 c 152 § 5.]

46.55.130 Notice requirements—Public auction—Accumulation of storage charges. (1) If, after the expiration of fifteen days from the date of mailing of notice of custody and sale required in RCW 46.55.110(3) to the registered and legal owners, the vehicle remains unclaimed and has not been listed as a stolen vehicle, a suspended license impound has been directed but no commercially reasonable tender has been paid under RCW 46.55.120, or a person eligible to redeem under RCW 46.55.120(1)(a)(viii) has not come forth providing information that the registered or legal owner of a motorcycle or moped is an admitted patient in a hospital, the registered tow truck operator having custody of the vehicle shall conduct a sale of the vehicle at public auction after having first published a notice of the date, place, and time of the auction, and a method to contact the tow truck operator conducting the auction such as a telephone number, email address, or web site, in a newspaper of general circulation in the county in which the vehicle is located not less than three days and no more than ten days before the date of the auction. For the purposes of this section, a newspaper of general circulation may be a commercial, widely circulated, free, classified advertisement circular not affiliated with the registered tow truck operator and the notice may be listed in a classification delineating "auctions" or similar language designed to

attract potential bidders to the auction. The notice shall contain a notification that a public viewing period will be available before the auction and the length of the viewing period. The auction shall be held during daylight hours of a normal business day. The viewing period must be one hour if twenty-five or fewer vehicles are to be auctioned, two hours if more than twenty-five and fewer than fifty vehicles are to be auctioned, and three hours if fifty or more vehicles are to be auctioned. If the registered tow truck operator is notified that the registered or legal owner of the moped or motorcycle is an admitted patient in the hospital as evidenced by a declaration on a form authorized by the department, the registered tow truck operator may delay the auction of the moped or motorcycle for a reasonable time in a good faith effort to provide additional time for the redemption of the vehicle.

(2) The following procedures are required in any public auction of such abandoned vehicles:

(a) The auction shall be held in such a manner that all persons present are given an equal time and opportunity to bid;

(b) All bidders must be present at the time of auction unless they have submitted to the registered tow truck operator, who may or may not choose to use the preauction bid method, a written bid on a specific vehicle. Written bids may be submitted up to five days before the auction and shall clearly state which vehicle is being bid upon, the amount of the bid, and who is submitting the bid;

(c) The open bid process, including all written bids, shall be used so that everyone knows the dollar value that must be exceeded;

(d) The highest two bids received shall be recorded in written form and shall include the name, address, and telephone number of each such bidder;

(e) In case the high bidder defaults, the next bidder has the right to purchase the vehicle for the amount of his or her bid;

(f) The successful bidder shall apply for title within fifteen days;

(g) The registered tow truck operator shall post a copy of the auction procedure at the bidding site. If the bidding site is different from the licensed office location, the operator shall post a clearly visible sign at the office location that describes in detail where the auction will be held. At the bidding site a copy of the newspaper advertisement that lists the vehicles for sale shall be posted;

(h) All surplus moneys derived from the auction after satisfaction of the registered tow truck operator's lien shall be remitted within thirty days to the department for deposit in the state motor vehicle fund. A report identifying the vehicles resulting in any surplus shall accompany the remitted funds. If the director subsequently receives a valid claim from the registered vehicle owner of record as determined by the department within one year from the date of the auction, the surplus moneys shall be remitted to such owner;

(i) If an operator receives no bid, or if the operator is the successful bidder at auction, the operator shall, within forty-five days, sell the vehicle to a licensed vehicle wrecker, hulk hauler, or scrap processor by use of the abandoned vehicle report-affidavit of sale, or the operator shall apply for title to the vehicle.

(3) A tow truck operator may refuse to accept a bid at an abandoned vehicle auction under this section for any reason in the operator's posted operating procedures and for any of the following reasons: (a) The bidder is currently indebted to the operator; (b) the operator has knowledge that the bidder has previously abandoned vehicles purchased at auction; or (c) the bidder has purchased, at auction, more than four vehicles in the last calendar year without obtaining title to any or all of the vehicles. In no case may an operator hold a vehicle for longer than ninety days without holding an auction on the vehicle, except for vehicles that are under a police or judicial hold.

(4)(a) The accumulation of storage charges applied to the lien at auction under RCW 46.55.140 may not exceed fifteen additional days from the date of receipt of the information by the operator from the department as provided by RCW 46.55.110(3) plus the storage charges accumulated prior to the receipt of the information. However, vehicles redeemed pursuant to RCW 46.55.120 prior to their sale at auction are subject to payment of all accumulated storage charges from the time of impoundment up to the time of redemption.

(b) The failure of the registered tow truck operator to comply with the time limits provided in this chapter limits the accumulation of storage charges to five days except where delay is unavoidable. Providing incorrect or incomplete identifying information to the department in the abandoned vehicle report shall be considered a failure to comply with these time limits if correct information is available. However, storage charges begin to accrue again on the date the correct and complete information is provided to the department by the registered tow truck operator. [2017 c 152 § 2; 2011 c 65 § 1; 2006 c 28 § 1; 2002 c 279 § 12; 2000 c 193 § 2; 1998 c 203 § 6; 1989 c 111 § 12; 1987 c 311 § 13; 1985 c 377 § 13.]

Short title—2017 c 152: See note following RCW 46.55.125.

Finding—1998 c 203: See note following RCW 46.55.105.

46.55.150 Vehicle transaction file. (1) The registered tow truck operator shall keep a transaction file on each vehicle, which shall be kept for a minimum of three years. The transaction file shall contain as a minimum those of the following items that are required at the time the vehicle is redeemed or becomes abandoned and is sold at a public auction:

(a) A signed impoundment authorization as required by RCW 46.55.080;

(b) A record of the twenty-four hour written impound notice to a law enforcement agency;

(c) A copy of the impoundment notification to registered and legal owners, sent within twenty-four hours of impoundment, that advises the owners of the address of the impounding firm, a twenty-four hour telephone number, and the name of the person or agency under whose authority the vehicle was impounded;

(d) A copy of the abandoned vehicle report that was sent to and returned by the department;

(e) A copy and proof of mailing of the notice of custody and sale sent by the registered tow truck operator to the owners advising them they have fifteen days to redeem the vehicle before it is sold at public auction;

(f) A copy of the published notice of public auction;

(g) A copy of the affidavit of sale showing the sales date, purchaser, amount of the lien, and sale price;

(h) A record of the two highest bid offers on the vehicle, with the names, addresses, and telephone numbers of the two bidders;

(i) A copy of the notice of opportunity for hearing given to those who redeem vehicles;

(j) An itemized invoice of charges against the vehicle; and

(k) Documentation of a bailment in accordance with RCW 46.55.125, if applicable.

(2)(a) The transaction file kept under subsection (1) of this section may be created and stored electronically. If the tow truck operator elects to store records electronically, the method of electronic records storage shall utilize software developed for that business purpose. This method of storage may include the use of cloud storage or another acceptable method that makes storage, retrieval, and access to the records reliable and available during normal business hours for audit or inspection by the department of licensing, the Washington state patrol, or any law enforcement agency with jurisdiction.

(b) Any electronic record created for each tow transaction must be maintained in an electronic folder labeled with the date the towing service was performed. The electronic folders must be maintained in chronological order. [2017 c 152 § 3; 2017 c 50 § 1; 1989 c 111 § 14; 1987 c 311 § 15; 1985 c 377 § 15.]

Reviser's note: This section was amended by 2017 c 50 § 1 and by 2017 c 152 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Short title—2017 c 152: See note following RCW 46.55.125.

46.55.160 Availability of records, equipment, and facilities for audit and inspection. Records, including any electronic records, equipment, and facilities of a registered tow truck operator shall be available during normal business hours for audit or inspection by the department of licensing, the Washington state patrol, or any law enforcement agency having jurisdiction. [2017 c 50 § 2; 1985 c 377 § 16.]

Chapter 46.61 RCW RULES OF THE ROAD

Sections

46.61.340	Approaching railroad grade crossings.
46.61.350	Approaching railroad grade crossings—Specific vehicles—Exceptions—Definition.
46.61.355	Moving heavy equipment at railroad grade crossings—Notice of intended crossing.
46.61.502	Driving under the influence.
46.61.504	Physical control of vehicle under the influence.
46.61.5054	Alcohol violators—Additional fee—Distribution.
46.61.5055	Alcohol and drug violators—Penalty schedule.
46.61.506	Persons under influence of intoxicating liquor or drug—Evidence—Tests—Information concerning tests.
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46.61.517	Refusal of tests—Admissibility as evidence.
46.61.667	Repealed.
46.61.668	Repealed.
46.61.672	Using a personal electronic device while driving.
46.61.673	Dangerously distracted driving.
46.61.990	Decodified.

46.61.340 Approaching railroad grade crossings. (1)

Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad, and shall not proceed until the crossing can be made safely. The foregoing requirements shall apply when:

(a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train or other on-track equipment;

(b) A crossing gate is lowered or when a human flagger gives or continues to give a signal of the approach or passage of a railroad train or other on-track equipment;

(c) An approaching railroad train or other on-track equipment is plainly visible and is in hazardous proximity to such crossing.

(2) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed. [2017 c 87 § 1; 2000 c 239 § 6; 1965 ex.s. c 155 § 46.]

Additional notes found at www.leg.wa.gov

46.61.350 Approaching railroad grade crossings—Specific vehicles—Exceptions—Definition. (1)(a) The driver of any of the following vehicles must stop before the stop line, if present, and otherwise within fifty feet but not less than fifteen feet from the nearest rail at a railroad grade crossing unless exempt under subsection (3) of this section:

(i) A school bus or private carrier bus carrying any school child or other passenger;

(ii) A commercial motor vehicle transporting passengers;

(iii) A cargo tank, whether loaded or empty, used for transporting any hazardous material as defined in the hazardous materials regulations of the United States department of transportation in 49 C.F.R. Parts 107 through 180 as it existed on June 10, 2010, or such subsequent date as may be provided by the state patrol by rule, consistent with the purposes of this section. For the purposes of this section, a cargo tank is any commercial motor vehicle designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis;

(iv) A cargo tank, whether loaded or empty, transporting a commodity under exemption in accordance with 49 C.F.R. Part 107, Subpart B as it existed on June 10, 2010, or such subsequent date as may be provided by the state patrol by rule, consistent with the purposes of this section;

(v) A cargo tank transporting a commodity that at the time of loading has a temperature above its flashpoint as determined by the United States department of transportation in 49 C.F.R. Sec. 173.120 as it existed on June 10, 2010, or such subsequent date as may be provided by the state patrol by rule, consistent with the purposes of this section; or

(vi) A commercial motor vehicle that is required to be marked or placarded with any one of the following classifications by the United States department of transportation in 49 C.F.R. Part 172 as it existed on June 10, 2010, or such subsequent date as may be provided by the state patrol by rule, consistent with the purposes of this section:

(A) Division 1.1, Division 1.2, Division 1.3, or Division 1.4;

(B) Division 2.1, Division 2.2, Division 2.2 oxygen, Division 2.3 poison gas, or Division 2.3 chlorine;

(C) Division 4.1 or Division 4.3;

(D) Division 5.1 or Division 5.2;

(E) Division 6.1 poison;

(F) Class 3 combustible liquid or Class 3 flammable;

(G) Class 7;

(H) Class 8.

(b) While stopped, the driver must listen and look in both directions along the track for any approaching train or other on-track equipment and for signals indicating the approach of a train or other on-track equipment. The driver may not proceed until he or she can do so safely.

(2) After stopping at a railroad grade crossing and upon proceeding when it is safe to do so, the driver must cross only in a gear that permits the vehicle to traverse the crossing without changing gears. The driver may not shift gears while crossing the track or tracks.

(3) This section does not apply at any railroad grade crossing where:

(a) Traffic is controlled by a police officer or flagger.

(b) A functioning traffic control signal is transmitting a green light.

(c) The tracks are used exclusively for a streetcar or industrial switching purposes.

(d) The utilities and transportation commission has approved the installation of an "exempt" sign in accordance with the procedures and standards under RCW 81.53.060.

(e) The crossing is abandoned and is marked with a sign indicating it is out-of-service.

(f) The utilities and transportation commission has identified a crossing where stopping is not required under RCW 81.53.060.

(4) For the purpose of this section, "commercial motor vehicle" means: Any vehicle with a manufacturer's seating capacity for eight or more passengers, including the driver, that transports passengers for hire; any private carrier bus; any vehicle used to transport property that has a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight of 4,536 kg (10,001 pounds) or more; and any vehicle used in the transportation of hazardous materials as defined in RCW 46.25.010. [2017 c 87 § 2; 2014 c 154 § 3; 2011 c 151 § 6. Prior: 2010 c 15 § 1; 2010 c 8 § 9069; 1977 c 78 § 1; 1975 c 62 § 31; 1970 ex.s. c 100 § 7; 1965 ex.s. c 155 § 48.]

Additional notes found at www.leg.wa.gov

46.61.355 Moving heavy equipment at railroad grade crossings—Notice of intended crossing. (1) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of ten or less miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than nine inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(2) Notice of any such intended crossing shall be given to the station agent of such railroad located nearest the intended crossing sufficiently in advance to allow such rail-

road a reasonable time to prescribe proper protection for such crossing.

(3) Before making any such crossing, the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen feet nor more than fifty feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train or other on-track equipment and for signals indicating the approach of a train or other on-track equipment, and shall not proceed until the crossing can be made safely.

(4) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagger or otherwise of the immediate approach of a railroad train or car or other on-track equipment. If a flagger is provided by the railroad, movement over the crossing shall be under the flagger's direction. [2017 c 87 § 3; 2000 c 239 § 7; 1975 c 62 § 32; 1965 ex.s. c 155 § 49.]

Additional notes found at www.leg.wa.gov

46.61.502 Driving under the influence. (1) A person is guilty of driving while under the influence of intoxicating liquor, marijuana, or any drug if the person drives a vehicle within this state:

(a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) The person has, within two hours after driving, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) While the person is under the influence of or affected by intoxicating liquor, marijuana, or any drug; or

(d) While the person is under the combined influence of or affected by intoxicating liquor, marijuana, and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state shall not constitute a defense against a charge of violating this section.

(3)(a) It is an affirmative defense to a violation of subsection (1)(a) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(b) It is an affirmative defense to a violation of subsection (1)(b) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of marijuana after the time of driving and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4)(a) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(c) or (d) of this section.

(b) Analyses of blood samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had a THC concentration of 5.00 or more in violation of subsection (1)(b) of this section, and in any case in which the analysis shows a THC concentration above 0.00 may be used as evidence that a person was under the influence of or affected by marijuana in violation of subsection (1)(c) or (d) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class B felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if:

(a) The person has three or more prior offenses within ten years as defined in RCW 46.61.5055; or

(b) The person has ever previously been convicted of:

(i) Vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a);

(ii) Vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b);

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of this subsection (6) or RCW 46.61.504(6). [2017 c 335 § 1; 2016 c 87 § 1; 2013 c 3 § 33 (Initiative Measure No. 502, approved November 6, 2012); 2011 c 293 § 2; 2008 c 282 § 20; 2006 c 73 § 1; 1998 c 213 § 3; 1994 c 275 § 2; 1993 c 328 § 1; 1987 c 373 § 2; 1986 c 153 § 2; 1979 ex.s. c 176 § 1.]

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

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

Legislative finding, purpose—1987 c 373: "The legislature finds the existing statutes that establish the criteria for determining when a person is guilty of driving a motor vehicle under the influence of intoxicating liquor or drugs are constitutional and do not require any additional criteria to ensure their legality. The purpose of this act is to provide an additional method of defining the crime of driving while intoxicated. This act is not an acknowledgment that the existing breath alcohol standard is legally improper or invalid." [1987 c 373 § 1.]

Business operation of vessel or vehicle while intoxicated: RCW 9.91.020.

Criminal history and driving record: RCW 46.61.513.

Operating aircraft recklessly or under influence of intoxicants or drugs: RCW 47.68.220.

Use of vessel in reckless manner or while under influence of alcohol or drugs prohibited: RCW 79A.60.040.

Additional notes found at www.leg.wa.gov

46.61.504 Physical control of vehicle under the influence. (1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicat-

ing liquor or any drug if the person has actual physical control of a vehicle within this state:

(a) And the person has, within two hours after being in actual physical control of the vehicle, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) The person has, within two hours after being in actual physical control of a vehicle, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(d) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state does not constitute a defense against any charge of violating this section. No person may be convicted under this section and it is an affirmative defense to any action pursuant to RCW 46.20.308 to suspend, revoke, or deny the privilege to drive if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

(3)(a) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after being in such control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(b) It is an affirmative defense to a violation of subsection (1)(b) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of marijuana after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or more within two hours after being in control of the vehicle. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4)(a) Analyses of blood or breath samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in such control, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(c) or (d) of this section.

(b) Analyses of blood samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in control of the vehicle, a person had a THC concentration of 5.00 or more in violation of subsection

(1)(b) of this section, and in any case in which the analysis shows a THC concentration above 0.00 may be used as evidence that a person was under the influence of or affected by marijuana in violation of subsection (1)(c) or (d) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if:

(a) The person has three or more prior offenses within ten years as defined in RCW 46.61.5055; or

(b) The person has ever previously been convicted of:

(i) Vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a);

(ii) Vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b);

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of this subsection (6) or RCW 46.61.502(6). [2017 c 335 § 2; 2015 2nd sp.s. c 3 § 24; 2013 c 3 § 35 (Initiative Measure No. 502, approved November 6, 2012); 2011 c 293 § 3; 2008 c 282 § 21; 2006 c 73 § 2; 1998 c 213 § 5; 1994 c 275 § 3; 1993 c 328 § 2; 1987 c 373 § 3; 1986 c 153 § 3; 1979 ex.s. c 176 § 2.]

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

Finding—Intent—2015 2nd sp.s. c 3: See note following RCW 10.21.055.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

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

Criminal history and driving record: RCW 46.61.513.

Additional notes found at www.leg.wa.gov

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

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

(2) The fee assessed under subsection (1) of this section shall be collected by the clerk of the court and, subject to subsection (5) of this section, one hundred seventy-five dollars of the fee must be distributed as follows:

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

(b) The remainder of the fee shall be forwarded to the state treasurer who shall, through June 30, 1997, deposit:

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

(3) Twenty-five dollars of the fee assessed under subsection (1) of this section must be distributed to the highway safety fund to be used solely for funding Washington traffic safety commission grants to reduce statewide collisions caused by persons driving under the influence of alcohol or drugs. Grants awarded under this subsection may be for projects that encourage collaboration with other community, governmental, and private organizations, and that utilize innovative approaches based on best practices or proven strategies supported by research or rigorous evaluation. Grants recipients may include, for example:

(a) DUI courts;

(b) Jurisdictions implementing the victim impact panel registries under RCW 46.61.5152 and 10.01.230; and

(c) Pilot programs in King and Spokane counties that are designed for persons with two or more prior offenses in seven years and include evidence-based assessment, enhanced intensive outpatient substance use disorder treatment, monitoring, and, when needed, priority entry into voluntary or involuntary detoxification services or residential substance use disorder treatment, if state funding is provided specifically for this purpose.

(4) Fifty dollars of the fee assessed under subsection (1) of this section must be distributed to the highway safety fund to be used solely for funding Washington traffic safety commission grants to organizations within counties targeted for programs to reduce driving under the influence of alcohol or drugs. A minimum of three hundred thousand dollars of these grant funds shall support pilot programs in King and Spokane counties that are designed for persons with two or more prior offenses in seven years, as described in subsection (3)(c) of this section.

(5) If the court has suspended payment of part of the fee pursuant to subsection (1)(b) of this section, amounts collected shall be distributed proportionately.

(6) This section applies to any offense committed on or after July 1, 1993, and only to adult offenders. [2017 c 336 § 13; 2015 c 265 § 32; 2011 c 293 § 12. Prior: 1995 c 398 § 15; 1995 c 332 § 13; 1994 c 275 § 7.]

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

** (2) RCW 3.46.120 was repealed by 2008 c 227 § 12, effective July 1, 2008.

Finding—2017 c 336: See note following RCW 9.96.060.

Finding—Intent—2015 c 265: See note following RCW 13.50.010.

Additional notes found at www.leg.wa.gov

46.61.5055 Alcohol and drug violators—Penalty schedule. (1) **No prior offenses in seven years.** Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

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

(i) By imprisonment for not less than one day nor more than three hundred sixty-four days. Twenty-four consecutive hours of the imprisonment may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring or a ninety-day period of 24/7 sobriety program monitoring. The court may consider the offender's pretrial 24/7 sobriety program monitoring as fulfilling a portion of posttrial sentencing. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device or other separate alcohol monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

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

(i) By imprisonment for not less than two days nor more than three hundred sixty-four days. Forty-eight consecutive hours of the imprisonment may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring or a one hundred twenty day period of 24/7 sobriety program monitoring. The court may consider the offender's pretrial 24/7 sobriety program testing as fulfilling a portion of posttrial sentencing. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine

the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer or other separate alcohol monitoring device, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

(2) **One prior offense in seven years.** Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within seven years shall be punished as follows:

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

(i) By imprisonment for not less than thirty days nor more than three hundred sixty-four days and sixty days of electronic home monitoring. In lieu of the mandatory term of imprisonment and electronic home monitoring under this subsection (2)(a)(i), the court may order a minimum of four days in jail and either one hundred eighty days of electronic home monitoring or a one hundred twenty-day period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390. The court may consider the offender's pretrial 24/7 sobriety program monitoring as fulfilling a portion of posttrial sentencing. The court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

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

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

(i) By imprisonment for not less than forty-five days nor more than three hundred sixty-four days and ninety days of electronic home monitoring. In lieu of the mandatory mini-

imum term of imprisonment and electronic home monitoring under this subsection (2)(b)(i), the court may order a minimum of six days in jail and either six months of electronic home monitoring or a one hundred twenty-day period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390. The court may consider the offender's pretrial 24/7 sobriety program monitoring as fulfilling a portion of posttrial sentencing. The court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Forty-five days of imprisonment and ninety days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

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

(3) **Two prior offenses in seven years.** Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two prior offenses within seven years shall be punished as follows:

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

(i) By imprisonment for not less than ninety days nor more than three hundred sixty-four days, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred twenty days of electronic home monitoring. In lieu of the mandatory minimum term of one hundred twenty days of electronic home monitoring, the court may order at least an additional eight days in jail. The court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the

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

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

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

(i) By imprisonment for not less than one hundred twenty days nor more than three hundred sixty-four days, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty days of electronic home monitoring. In lieu of the mandatory minimum term of one hundred fifty days of electronic home monitoring, the court may order at least an additional ten days in jail. The offender shall pay for the cost of the electronic monitoring. The court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

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

(4) **Three or more prior offenses in ten years.** A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall be punished under chapter 9.94A RCW if:

(a) The person has three or more prior offenses within ten years; or

(b) The person has ever previously been convicted of:

(i) A violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(ii) A violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

(5) **Monitoring.** (a) **Ignition interlock device.** The court shall require any person convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to comply with the rules and requirements of the department regarding the installation and use of a functioning

ignition interlock device installed on all motor vehicles operated by the person.

(b) **Monitoring devices.** If the court orders that a person refrain from consuming any alcohol, the court may order the person to submit to alcohol monitoring through an alcohol detection breathalyzer device, transdermal sensor device, or other technology designed to detect alcohol in a person's system. The person shall pay for the cost of the monitoring, unless the court specifies that the cost of monitoring will be paid with funds that are available from an alternative source identified by the court. The county or municipality where the penalty is being imposed shall determine the cost.

(c) **24/7 sobriety program monitoring.** In any county or city where a 24/7 sobriety program is available and verified by the Washington association of sheriffs and police chiefs, the court shall:

(i) Order the person to install and use a functioning ignition interlock or other device in lieu of such period of 24/7 sobriety program monitoring;

(ii) Order the person to a period of 24/7 sobriety program monitoring pursuant to subsections (1) through (3) of this section; or

(iii) Order the person to install and use a functioning ignition interlock or other device in addition to a period of 24/7 sobriety program monitoring pursuant to subsections (1) through (3) of this section.

(6) **Penalty for having a minor passenger in vehicle.** If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:

(a) Order the use of an ignition interlock or other device for an additional six months;

(b) In any case in which the person has no prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional twenty-four hours of imprisonment and a fine of not less than one thousand dollars and not more than five thousand dollars. One thousand dollars of the fine may not be suspended unless the court finds the offender to be indigent;

(c) In any case in which the person has one prior offense within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional five days of imprisonment and a fine of not less than two thousand dollars and not more than five thousand dollars. One thousand dollars of the fine may not be suspended unless the court finds the offender to be indigent;

(d) In any case in which the person has two prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional ten days of imprisonment and a fine of not less than three thousand dollars and not more than ten thousand dollars. One thousand dollars of the fine may not be suspended unless the court finds the offender to be indigent.

(7) **Other items courts must consider while setting penalties.** In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property;

(b) Whether at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers;

(c) Whether the driver was driving in the opposite direction of the normal flow of traffic on a multiple lane highway, as defined by RCW 46.04.350, with a posted speed limit of forty-five miles per hour or greater; and

(d) Whether a child passenger under the age of sixteen was an occupant in the driver's vehicle.

(8) **Treatment and information school.** An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(9) **Driver's license privileges of the defendant.** The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(a) **Penalty for alcohol concentration less than 0.15.** If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be suspended or denied by the department for ninety days or until the person is evaluated by an alcoholism agency or probation department pursuant to RCW 46.20.311 and the person completes or is enrolled in a ninety-day period of 24/7 sobriety program monitoring. In no circumstances shall the license suspension be for fewer than two days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years or until the person is evaluated by an alcoholism agency or probation department pursuant to RCW 46.20.311 and the person completes or is enrolled in a six-month period of 24/7 sobriety program monitoring. In no circumstances shall the license suspension be for less than one year; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for three years;

(b) **Penalty for alcohol concentration at least 0.15.** If the person's alcohol concentration was at least 0.15:

(i) Where there has been no prior offense within seven years, be revoked or denied by the department for one year or until the person is evaluated by an alcoholism agency or probation department pursuant to RCW 46.20.311 and the person completes or is enrolled in a one hundred twenty day period of 24/7 sobriety program monitoring. In no circumstances shall the license revocation be for fewer than four days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for nine hundred days; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years; or

(c) **Penalty for refusing to take test.** If by reason of the person's refusal to take a test offered under RCW 46.20.308, there is no test result indicating the person's alcohol concentration:

(i) Where there have been no prior offenses within seven years, be revoked or denied by the department for two years;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for three years; or

(iii) Where there have been two or more previous offenses within seven years, be revoked or denied by the department for four years.

The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this subsection for a suspension, revocation, or denial imposed under RCW 46.20.3101 arising out of the same incident.

Upon receipt of a notice from the court under RCW 36.28A.390 that a participant has been removed from a 24/7 sobriety program, the department must resume any suspension, revocation, or denial that had been terminated early under this subsection due to participation in the program, granting credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under RCW 46.20.3101 or this section arising out of the same incident.

Upon its own motion or upon motion by a person, a court may find, on the record, that notice to the department under RCW 46.20.270 has been delayed for three years or more as a result of a clerical or court error. If so, the court may order that the person's license, permit, or nonresident privilege shall not be revoked, suspended, or denied for that offense. The court shall send notice of the finding and order to the department and to the person. Upon receipt of the notice from the court, the department shall not revoke, suspend, or deny the license, permit, or nonresident privilege of the person for that offense.

For purposes of this subsection (9), the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

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

(11) **Conditions of probation.** (a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes up to three hundred sixty-four days in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive; (ii) not driving a motor vehicle within this state without proof of liability insurance or other financial responsibility for the future pursuant to RCW 46.30.020; (iii) not driving or being in physical control of a motor vehicle within this state while having an alcohol concentration of 0.08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher, within two hours after driving; (iv) not refusing to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drug; and (v) not driving a motor vehicle in this state without a functioning ignition interlock device as required by the department under RCW 46.20.720. The court may impose condi-

tions of probation that include nonrepetition, installation of an ignition interlock device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

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

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

(12) **Waiver of electronic home monitoring.** A court may waive the electronic home monitoring requirements of this chapter when:

(a) The offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system. However, if a court determines that an alcohol monitoring device utilizing wireless reporting technology is reasonably available, the court may require the person to obtain such a device during the period of required electronic home monitoring;

(b) The offender does not reside in the state of Washington; or

(c) The court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty.

Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, use of an ignition interlock device, the 24/7 sobriety program monitoring, additional jail time, work crew, or work camp.

Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-four days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-four days.

(13) **Extraordinary medical placement.** An offender serving a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(1)(c).

(14) **Definitions.** For purposes of this section and RCW 46.61.502 and 46.61.504:

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

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

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

(iii) A conviction for a violation of RCW 46.25.110 or an equivalent local ordinance;

(iv) A conviction for a violation of RCW 79A.60.040(2) or an equivalent local ordinance;

(v) A conviction for a violation of RCW 79A.60.040(1) or an equivalent local ordinance committed in a reckless manner if the conviction is the result of a charge that was originally filed as a violation of RCW 79A.60.040(2) or an equivalent local ordinance;

(vi) A conviction for a violation of RCW 47.68.220 or an equivalent local ordinance committed while under the influence of intoxicating liquor or any drug;

(vii) A conviction for a violation of RCW 47.68.220 or an equivalent local ordinance committed in a careless or reckless manner if the conviction is the result of a charge that was originally filed as a violation of RCW 47.68.220 or an equivalent local ordinance while under the influence of intoxicating liquor or any drug;

(viii) A conviction for a violation of RCW 46.09.470(2) or an equivalent local ordinance;

(ix) A conviction for a violation of RCW 46.10.490(2) or an equivalent local ordinance;

(x) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug, or a conviction for a violation of RCW 46.61.520 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(xi) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug, or a conviction for a violation of RCW 46.61.522 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(xii) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(xiii) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (x), (xi), or (xii) of this subsection if committed in this state;

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

(xv) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(xvi) A deferred prosecution granted in another state for a violation of driving or having physical control of a vehicle while under the influence of intoxicating liquor or any drug if the out-of-state deferred prosecution is equivalent to the deferred prosecution under chapter 10.05 RCW, including a requirement that the defendant participate in a chemical dependency treatment program; or

(xvii) A deferred sentence imposed in a prosecution for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent local ordinance, if the charge under which the deferred sentence was imposed was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or a violation of RCW 46.61.520 or 46.61.522;

If a deferred prosecution is revoked based on a subsequent conviction for an offense listed in this subsection (14)(a), the subsequent conviction shall not be treated as a prior offense of the revoked deferred prosecution for the purposes of sentencing;

(b) "Treatment" means substance use disorder treatment approved by the department of social and health services;

(c) "Within seven years" means that the arrest for a prior offense occurred within seven years before or after the arrest for the current offense; and

(d) "Within ten years" means that the arrest for a prior offense occurred within ten years before or after the arrest for the current offense.

(15) All fines imposed by this section apply to adult offenders only. [2017 c 336 § 6; 2017 c 335 § 3. Prior: 2016 sp.s. c 29 § 530; 2016 c 203 § 17; 2015 2nd sp.s. c 3 § 9; 2015 c 265 § 33; 2014 c 100 § 1; 2013 2nd sp.s. c 35 § 13; prior: 2012 c 183 § 12; 2012 c 42 § 2; 2012 c 28 § 1; prior: 2011 c 293 § 7; 2011 c 96 § 35; 2010 c 269 § 4; 2008 c 282 § 14; 2007 c 474 § 1; 2006 c 73 § 3; 2004 c 95 § 13; 2003 c 103 § 1. Prior: 1999 c 324 § 5; 1999 c 274 § 6; 1999 c 5 § 1; prior: 1998 c 215 § 1; 1998 c 214 § 1; 1998 c 211 § 1; 1998 c 210 § 4; 1998 c 207 § 1; 1998 c 206 § 1; prior: 1997 c 229 § 11; 1997 c 66 § 14; 1996 c 307 § 3; 1995 1st sp.s. c 17 § 2; 1995 c 332 § 5.]

Reviser's note: This section was amended by 2017 c 335 § 3 and by 2017 c 336 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—2017 c 336: See note following RCW 9.96.060.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Finding—Intent—2015 2nd sp.s. c 3: See note following RCW 10.21.055.

Finding—Intent—2015 c 265: See note following RCW 13.50.010.

Effective date—2012 c 183: See note following RCW 9.94A.475.

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Effective date—2010 c 269: See note following RCW 46.20.385.

Effective date—2008 c 282: See note following RCW 46.20.308.

Effective date—2007 c 474: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 474 § 2.]

Short title—Finding—Intent—Effective date—1998 c 210: See notes following RCW 46.20.720.

Additional notes found at www.leg.wa.gov

46.61.506 Persons under influence of intoxicating liquor or drug—Evidence—Tests—Information concerning tests. (1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.08 or the person's THC concentration is less than 5.00, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

(2)(a) The breath analysis of the person's alcohol concentration shall be based upon grams of alcohol per two hundred ten liters of breath.

(b) The blood analysis of the person's THC concentration shall be based upon nanograms per milliliter of whole blood.

(c) The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

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

(4)(a) A breath test performed by any instrument approved by the state toxicologist shall be admissible at trial or in an administrative proceeding if the prosecution or department produces prima facie evidence of the following:

(i) The person who performed the test was authorized to perform such test by the state toxicologist;

(ii) The person being tested did not vomit or have anything to eat, drink, or smoke for at least fifteen minutes prior to administration of the test;

(iii) The person being tested did not have any foreign substances, not to include dental work or piercings, fixed or removable, in his or her mouth at the beginning of the fifteen-minute observation period;

(iv) Prior to the start of the test, the temperature of any liquid simulator solution utilized as an external standard, as measured by a thermometer approved of by the state toxicologist was thirty-four degrees centigrade plus or minus 0.3 degrees centigrade;

(v) The internal standard test resulted in the message "verified";

(vi) The two breath samples agree to within plus or minus ten percent of their mean to be determined by the method approved by the state toxicologist;

(vii) The result of the test of the liquid simulator solution external standard or dry gas external standard result did lie between .072 to .088 inclusive; and

(viii) All blank tests gave results of .000.

(b) For purposes of this section, "prima facie evidence" is evidence of sufficient circumstances that would support a

logical and reasonable inference of the facts sought to be proved. In assessing whether there is sufficient evidence of the foundational facts, the court or administrative tribunal is to assume the truth of the prosecution's or department's evidence and all reasonable inferences from it in a light most favorable to the prosecution or department.

(c) Nothing in this section shall be deemed to prevent the subject of the test from challenging the reliability or accuracy of the test, the reliability or functioning of the instrument, or any maintenance procedures. Such challenges, however, shall not preclude the admissibility of the test once the prosecution or department has made a prima facie showing of the requirements contained in (a) of this subsection. Instead, such challenges may be considered by the trier of fact in determining what weight to give to the test result.

(5) When a blood test is administered under the provisions of RCW 46.20.308, the withdrawal of blood for the purpose of determining its alcohol or drug content may be performed only by a physician licensed under chapter 18.71 RCW; an osteopathic physician licensed under chapter 18.57 RCW; a registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed under chapter 18.79 RCW; a physician assistant licensed under chapter 18.71A RCW; an osteopathic physician assistant licensed under chapter 18.57A RCW; an advanced emergency medical technician or paramedic certified under chapter 18.71 RCW; or a medical assistant-certified or medical assistant-phlebotomist certified under chapter 18.360 RCW, a person holding another credential under Title 18 RCW whose scope of practice includes performing venous blood draws, or a forensic phlebotomist certified under chapter 18.360 RCW. When the blood test is performed outside the state of Washington, the withdrawal of blood for the purpose of determining its alcohol or drug content may be performed by any person who is authorized by the out-of-state jurisdiction to perform venous blood draws. Proof of qualification to draw blood may be established through the department of health's provider credential search. This limitation shall not apply to the taking of breath specimens.

(6) When a venous blood sample is performed by a forensic phlebotomist certified under chapter 18.360 RCW, it must be done under the following conditions:

(a) If taken at the scene, it must be performed in an ambulance or aid service vehicle licensed by the department of health under chapter 18.73 RCW.

(b) The collection of blood samples must not interfere with the provision of essential medical care.

(c) The blood sample must be collected using sterile equipment and the skin area of puncture must be thoroughly cleansed and disinfected.

(d) The person whose blood is collected must be seated, reclined, or lying down when the blood is collected.

(7) The person tested may have a licensed or certified health care provider listed in subsection (5) of this section, or a qualified technician, chemist, or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The test will be admissible if the person establishes the general acceptability of the testing technique or method. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the

test or tests taken at the direction of a law enforcement officer.

(8) Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or her or his or her attorney. [2017 c 336 § 7; 2016 c 203 § 8; 2015 2nd sp.s. c 3 § 22; 2013 c 3 § 37 (Initiative Measure No. 502, approved November 6, 2012); 2010 c 53 § 1; 2004 c 68 § 4; 1998 c 213 § 6; 1995 c 332 § 18; 1994 c 275 § 26; 1987 c 373 § 4; 1986 c 153 § 4; 1979 ex.s. c 176 § 5; 1975 1st ex.s. c 287 § 1; 1969 c 1 § 3 (Initiative Measure No. 242, approved November 5, 1968).]

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

Finding—2017 c 336: See note following RCW 9.96.060.

Finding—Intent—2015 2nd sp.s. c 3: See note following RCW 10.21.055.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

Finding—Intent—2004 c 68: See note following RCW 46.20.308.

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

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

Additional notes found at www.leg.wa.gov

46.61.508 Liability of medical personnel withdrawing blood. No physician licensed under chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57 RCW; registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed under chapter 18.79 RCW; physician assistant licensed under chapter 18.71A RCW; osteopathic physician assistant licensed under chapter 18.57A RCW; advanced emergency medical technician or paramedic certified under chapter 18.71 RCW; or medical assistant-certified or medical assistant-phlebotomist certified under chapter 18.360 RCW, person holding another credential under Title 18 RCW whose scope of practice includes performing venous blood draws, or forensic phlebotomist certified under chapter 18.360 RCW, or hospital, or duly licensed clinical laboratory employing or utilizing services of such licensed or certified health care provider, shall incur any civil or criminal liability as a result of the act of withdrawing blood from any person when directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant, a waiver of the search warrant requirement, exigent circumstances, or any other authority of law: PROVIDED, That nothing in this section shall relieve such licensed or certified health care provider, hospital or duly licensed clinical laboratory, or forensic phlebotomist from civil liability arising from the use of improper procedures or failing to exercise the required standard of care. [2017 c 336 § 8; 2015 2nd sp.s. c 3 § 23; 1977 ex.s. c 143 § 1.]

Finding—2017 c 336: See note following RCW 9.96.060.

Finding—Intent—2015 2nd sp.s. c 3: See note following RCW 10.21.055.

46.61.517 Refusal of tests—Admissibility as evidence. The refusal of a person to submit to a test of the alcohol or drug concentration in the person's breath under RCW 46.20.308 is admissible into evidence at a subsequent criminal

nal trial. The refusal of a person to submit to a test of the person's blood is admissible into evidence at a subsequent criminal trial when a search warrant, or an exception to the search warrant, authorized the seizure. [2017 c 336 § 10; 2001 c 142 § 1; 1987 c 373 § 5; 1986 c 64 § 2; 1985 c 352 § 21; 1983 c 165 § 27.]

Finding—2017 c 336: See note following RCW 9.96.060.

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

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

Additional notes found at www.leg.wa.gov

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

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

46.61.672 Using a personal electronic device while driving. (1) A person who uses a personal electronic device while driving a motor vehicle on a public highway is guilty of a traffic infraction and must pay a fine as provided in RCW 46.63.110(3).

(2) Subsection (1) of this section does not apply to:

(a) A driver who is using a personal electronic device to contact emergency services;

(b) The use of a system by a transit system employee for time-sensitive relay communication between the transit system employee and the transit system's dispatch services;

(c) An individual employed as a commercial motor vehicle driver who uses a personal electronic device within the scope of such individual's employment if such use is permitted under 49 U.S.C. Sec. 31136 as it existed on July 23, 2017; and

(d) A person operating an authorized emergency vehicle.

(3) The state preempts the field of regulating the use of personal electronic devices in motor vehicles while driving, and this section supersedes any local laws, ordinances, orders, rules, or regulations enacted by any political subdivision or municipality to regulate the use of a personal electronic device by the operator of a motor vehicle.

(4) A second or subsequent offense under this section is subject to two times the penalty amount under RCW 46.63.110.

(5) For purposes of this section:

(a) "Driving" means to operate a motor vehicle on a public highway, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. "Driving" does not include when the vehicle has pulled over to the side of, or off of, an active roadway and has stopped in a location where it can safely remain stationary.

(b) "Personal electronic device" means any portable electronic device that is capable of wireless communication or electronic data retrieval and is not manufactured primarily for hands-free use in a motor vehicle. "Personal electronic device" includes, but is not limited to, a cell phone, tablet, laptop, two-way messaging device, or electronic game. "Personal electronic device" does not include two-way radio, citizens band radio, or amateur radio equipment.

(c) "Use" or "uses" means:

(i) Holding a personal electronic device in either hand or both hands;

(ii) Using your hand or finger to compose, send, read, view, access, browse, transmit, save, or retrieve email, text messages, instant messages, photographs, or other electronic data; however, this does not preclude the minimal use of a finger to activate, deactivate, or initiate a function of the device;

(iii) Watching video on a personal electronic device. [2017 c 334 § 1.]

46.61.673 Dangerously distracted driving. (1)(a) It is a traffic infraction to drive dangerously distracted. Any driver who commits this infraction must be assessed a base penalty of thirty dollars.

(b) Enforcement of the infraction of driving dangerously distracted may be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of a separate traffic infraction or an equivalent local ordinance.

(c) For the purposes of this section, "dangerously distracted" means a person who engages in any activity not related to the actual operation of a motor vehicle in a manner that interferes with the safe operation of such motor vehicle on any highway.

(2) The additional monetary penalty imposed under this section must be deposited into the distracted driving prevention account created in subsection (3) of this section.

(3) The distracted driving prevention account is created in the state treasury. All receipts from the base penalty in subsection (1) of this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to support programs dedicated to reducing distracted driving and improving driver education on distracted driving. [2017 c 334 § 3.]

46.61.990 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 46.64 RCW ENFORCEMENT

Sections

46.64.025 Failure to appear—Notice to department.

46.64.025 Failure to appear—Notice to department. Whenever any person served with, or provided notice of, a traffic infraction or a traffic-related criminal complaint willfully fails to appear at a requested hearing for a moving violation, or fails to comply with the terms of a notice of infraction for a moving violation or a traffic-related criminal complaint, the court with jurisdiction over the traffic infraction or traffic-related criminal complaint shall promptly give notice of such fact to the department of licensing. Whenever thereafter the case in which the defendant failed to appear or comply is adjudicated, the court hearing the case shall promptly file with the department a certificate showing that the case has been adjudicated. For the purposes of this section, "moving violation" is defined by rule pursuant to RCW

46.20.2891. [2017 c 336 § 11; 2016 c 203 § 4; 2012 c 82 § 5; 2006 c 270 § 4; 1999 c 86 § 7; 1979 c 158 § 175; 1967 c 32 § 71; 1965 ex.s. c 121 § 23.]

Finding—2017 c 336: See note following RCW 9.96.060.

Effective date—Contingency—2012 c 82: See note following RCW 46.63.110.

Purpose—Construction—1965 ex.s. c 121: See note following RCW 46.20.021.

Chapter 46.68 RCW DISPOSITION OF REVENUE

Sections

46.68.030	Disposition of vehicle registration and license fees.
46.68.035	Disposition of combined vehicle license fees.
46.68.060	Highway safety fund.
46.68.113	Preservation rating information—Review.
46.68.280	Transportation 2003 account (nickel account).
46.68.290	Transportation partnership account—Definitions—Performance audits.
46.68.325	Rural mobility grant program account.
46.68.420	Special license plate fees by account—Disposition.

46.68.030 Disposition of vehicle registration and license fees. (1) The director shall forward all fees for vehicle registrations under chapters 46.16A and 46.17 RCW, unless otherwise specified by law, to the state treasurer with a proper identifying detailed report. The state treasurer shall credit these moneys to the motor vehicle fund created in RCW 46.68.070.

(2) Proceeds from vehicle license fees and renewal vehicle license fees must be deposited by the state treasurer as follows:

(a) \$23.60 of each initial or renewal vehicle license fee must be deposited in the state patrol highway account in the motor vehicle fund, hereby created. Vehicle license fees, renewal vehicle license fees, and all other funds in the state patrol highway account must be for the sole use of the Washington state patrol for highway activities of the Washington state patrol, subject to proper appropriations and reappropriations.

(b) \$2.02 of each initial vehicle license fee and \$0.93 of each renewal vehicle license fee must be deposited each biennium in the Puget Sound ferry operations account.

(c) Any remaining amounts of vehicle license fees and renewal vehicle license fees that are not distributed otherwise under this section must be deposited in the motor vehicle fund.

(3) During the 2015-2017 fiscal biennium, the legislature may transfer from the state patrol highway account to the connecting Washington account such amounts as reflect the excess fund balance of the state patrol highway account.

(4) During the 2017-2019 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys in the state patrol highway account to the connecting Washington account. [2017 c 313 § 706; 2016 c 28 § 2; 2015 3rd sp.s. c 43 § 601; 2011 c 171 § 85; 2010 c 161 § 803; 2002 c 352 § 22; 1990 c 42 § 109; 1985 c 380 § 20. Prior: 1983 c 15 § 23; 1983 c 3 § 122; 1981 c 342 § 9; 1973 c 103 § 3; 1971 ex.s. c 231 § 11; 1971 ex.s. c 91 § 1; 1969 ex.s. c 281 § 25; 1969 c 99 § 8; 1965 c 25 § 2; 1961 ex.s. c 7 § 17; 1961 c 12 § 46.68.030; prior: 1957 c 105 § 2; 1955 c 259 § 4; 1947 c 164 § 15; 1937 c 188 § 40; Rem. Supp. 1947 § 6312-40.]

Effective date—2017 c 313 § 706: "Section 706 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2017." [2017 c 313 § 1304.]

Effective date—2016 c 28 § 2: "Section 2 of this act takes effect July 1, 2017." [2016 c 28 § 8.]

Intent—2016 c 28: See note following RCW 43.43.380.

Effective date—2015 3rd sp.s. c 43: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 15, 2015]." [2015 3rd sp.s. c 43 § 608.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Purpose—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 46.68.090.

Refund of mobile home identification tag fees: "The department of motor vehicles shall refund all moneys collected in 1973 for mobile home identification tags. Such refunds shall be made to those persons who have purchased such tags. The department shall adopt rules pursuant to chapter 34.04 RCW to comply with the provisions of this section." [1973 c 103 § 4.]

Additional notes found at www.leg.wa.gov

46.68.035 Disposition of combined vehicle license fees. The director shall forward all proceeds from vehicle license fees received by the director for vehicles registered under RCW 46.17.330, 46.17.350(1) (c) and (k), 46.17.355, and 46.17.400(1)(c) to the state treasurer to be distributed into accounts according to the following method:

(1) 22.36 percent must be deposited into the state patrol highway account of the motor vehicle fund;

(2) 1.375 percent must be deposited into the Puget Sound ferry operations account of the motor vehicle fund;

(3) 5.237 percent must be deposited into the transportation 2003 account (nickel account);

(4) 11.533 percent must be deposited into the transportation partnership account created in RCW 46.68.290; and

(5) The remaining proceeds must be deposited into the motor vehicle fund. [2017 c 147 § 10; 2010 c 161 § 804; 2006 c 337 § 1; 2005 c 314 § 205; 2003 c 361 § 202; 2000 2nd sp.s. c 4 § 8; 1993 c 102 § 7; 1990 c 42 § 106; 1989 c 156 § 4; 1985 c 380 § 21.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Findings—2003 c 361: See note following RCW 82.38.030.

Purpose—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 46.68.090.

Additional notes found at www.leg.wa.gov

46.68.060 Highway safety fund. There is hereby created in the state treasury a fund to be known as the highway safety fund to the credit of which must be deposited all moneys directed by law to be deposited therein. This fund must be used for carrying out the provisions of law relating to driver licensing, driver improvement, financial responsibility, cost of furnishing abstracts of driving records and maintaining such case records, and to carry out the purposes set forth in RCW 43.59.010, and chapters 46.72 and 46.72A RCW. During the 2013-2015 and 2015-2017 fiscal biennia, the legislature may transfer from the highway safety fund to the Puget Sound ferry operations account, the motor vehicle

fund, and the multimodal transportation account such amounts as reflect the excess fund balance of the highway safety fund. During the 2017-2019 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys in the highway safety fund to the multimodal transportation account. [2017 c 313 § 707; 2015 3rd sp.s. c 43 § 602; 2013 c 306 § 717. Prior: 2011 c 367 § 718; 2011 c 298 § 26; 2009 c 470 § 711; 2007 c 518 § 714; 1969 c 99 § 11; 1967 c 174 § 4; 1965 c 25 § 3; 1961 c 12 § 46.68.060; prior: 1957 c 104 § 1; 1937 c 188 § 81; RRS § 6312-81; 1921 c 108 § 13; RRS § 6375.]

Effective date—2017 c 313: See note following RCW 43.19.642.

Effective date—2015 3rd sp.s. c 43: See note following RCW 46.68.030.

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—2011 c 367: See note following RCW 47.29.170.

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Effective date—2009 c 470: See note following RCW 46.68.170.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Deposits into account: RCW 46.20.505, 46.20.510, 46.81A.030.

Additional notes found at www.leg.wa.gov

46.68.113 Preservation rating information—Review.

(1) During the 2013-2015 fiscal biennium, cities and towns shall provide to the transportation commission, or its successor entity, preservation rating information on at least seventy percent of the total city and town arterial network. Thereafter, the preservation rating information requirement shall increase in five percent increments in subsequent biennia, but in no case shall it exceed eighty percent. The rating system used by cities and towns must be based upon the Washington state pavement rating method or an equivalent standard approved by the department of transportation. Beginning January 1, 2007, the preservation rating information shall be submitted to the department.

(2) The requirement that cities and towns report preservation rating information to the department of transportation or the transportation commission under subsection (1) of this section is eliminated during the 2017-2019 fiscal biennium.

(3) The department of transportation shall, in consultation with cities, towns, and the transportation commission, review the pavement preservation rating reporting requirements and recommend to the legislature whether a repeal of the pavement preservation rating report is warranted. In its analysis, the department shall determine (a) what pavement preservation rating information exists through other reporting requirements and how the department's migration toward an asset management accountability framework affects the pavement preservation rating report, and (b) whether such other reporting requirements will serve as a replacement, or an addition, to the report. The department must report its findings to the legislature by December 1, 2017. [2017 c 139 § 1; 2013 c 306 § 704; 2011 c 353 § 7; 2006 c 334 § 21; 2003 c 363 § 305.]

Effective date—2013 c 306: See note following RCW 47.64.170.

Intent—2011 c 353: See note following RCW 36.70A.130.

Finding—Intent—2003 c 363: See note following RCW 35.84.060.

Additional notes found at www.leg.wa.gov

46.68.280 Transportation 2003 account (nickel account). (1) The transportation 2003 account (nickel account) is hereby created in the motor vehicle fund. Money in the account may be spent only after appropriation. Expenditures from the account must be used only for projects or improvements identified as transportation 2003 projects or improvements in the omnibus transportation budget and to pay the principal and interest on the bonds authorized for transportation 2003 projects or improvements. Upon completion of the projects or improvements identified as transportation 2003 projects or improvements, moneys deposited in this account must only be used to pay the principal and interest on the bonds authorized for transportation 2003 projects or improvements, and any funds in the account in excess of the amount necessary to make the principal and interest payments may be used for maintenance on the completed projects or improvements.

(2) During the 2015-2017 fiscal biennium, the legislature may transfer from the transportation 2003 account (nickel account) to the connecting Washington account such amounts as reflect the excess fund balance of the transportation 2003 account (nickel account).

(3) During the 2017-2019 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys in the transportation 2003 account (nickel account) to the connecting Washington account.

(4) The "nickel account" means the transportation 2003 account. [2017 c 313 § 708; 2015 3rd sp.s. c 43 § 603; 2003 c 361 § 601.]

Effective date—2017 c 313: See note following RCW 43.19.642.

Effective date—2015 3rd sp.s. c 43: See note following RCW 46.68.030.

Findings—2003 c 361: See note following RCW 82.38.030.

Additional notes found at www.leg.wa.gov

46.68.290 Transportation partnership account—Definitions—Performance audits. (1) The transportation partnership account is hereby created in the state treasury. All distributions to the account from RCW 46.68.090 must be deposited into the account. Money in the account may be spent only after appropriation. Expenditures from the account must be used only for projects or improvements identified as 2005 transportation partnership projects or improvements in the omnibus transportation appropriations act, including any principal and interest on bonds authorized for the projects or improvements.

(2) The legislature finds that:

(a) Citizens demand and deserve accountability of transportation-related programs and expenditures. Transportation-related programs must continuously improve in quality, efficiency, and effectiveness in order to increase public trust;

(b) Transportation-related agencies that receive tax dollars must continuously improve the way they operate and deliver services so citizens receive maximum value for their tax dollars; and

(c) Fair, independent, comprehensive performance audits of transportation-related agencies overseen by the elected state auditor are essential to improving the efficiency, economy, and effectiveness of the state's transportation system.

(3) For purposes of chapter 314, Laws of 2005:

(a) "Performance audit" means an objective and systematic assessment of a state agency or agencies or any of their programs, functions, or activities by the state auditor or designee in order to help improve agency efficiency, effectiveness, and accountability. Performance audits include economy and efficiency audits and program audits.

(b) "Transportation-related agency" means any state agency, board, or commission that receives funding primarily for transportation-related purposes. At a minimum, the department of transportation, the transportation improvement board or its successor entity, the county road administration board or its successor entity, and the traffic safety commission are considered transportation-related agencies. The Washington state patrol and the department of licensing shall not be considered transportation-related agencies under chapter 314, Laws of 2005.

(4) Within the authorities and duties under chapter 43.09 RCW, the state auditor shall establish criteria and protocols for performance audits. Transportation-related agencies shall be audited using criteria that include generally accepted government auditing standards as well as legislative mandates and performance objectives established by state agencies. Mandates include, but are not limited to, agency strategies, timelines, program objectives, and mission and goals as required in RCW 43.88.090.

(5) Within the authorities and duties under chapter 43.09 RCW, the state auditor may conduct performance audits for transportation-related agencies. The state auditor shall contract with private firms to conduct the performance audits.

(6) The audits may include:

(a) Identification of programs and services that can be eliminated, reduced, consolidated, or enhanced;

(b) Identification of funding sources to the transportation-related agency, to programs, and to services that can be eliminated, reduced, consolidated, or enhanced;

(c) Analysis of gaps and overlaps in programs and services and recommendations for improving, dropping, blending, or separating functions to correct gaps or overlaps;

(d) Analysis and recommendations for pooling information technology systems used within the transportation-related agency, and evaluation of information processing and telecommunications policy, organization, and management;

(e) Analysis of the roles and functions of the transportation-related agency, its programs, and its services and their compliance with statutory authority and recommendations for eliminating or changing those roles and functions and ensuring compliance with statutory authority;

(f) Recommendations for eliminating or changing statutes, rules, and policy directives as may be necessary to ensure that the transportation-related agency carry out reasonably and properly those functions vested in the agency by statute;

(g) Verification of the reliability and validity of transportation-related agency performance data, self-assessments, and performance measurement systems as required under RCW 43.88.090;

(h) Identification of potential cost savings in the transportation-related agency, its programs, and its services;

(i) Identification and recognition of best practices;

(j) Evaluation of planning, budgeting, and program evaluation policies and practices;

(k) Evaluation of personnel systems operation and management;

(l) Evaluation of purchasing operations and management policies and practices;

(m) Evaluation of organizational structure and staffing levels, particularly in terms of the ratio of managers and supervisors to nonmanagement personnel; and

(n) Evaluation of transportation-related project costs, including but not limited to environmental mitigation, competitive bidding practices, permitting processes, and capital project management.

(7) Within the authorities and duties under chapter 43.09 RCW, the state auditor must provide the preliminary performance audit reports to the audited state agency for comment. The auditor also may seek input on the preliminary report from other appropriate officials. Comments must be received within thirty days after receipt of the preliminary performance audit report unless a different time period is approved by the state auditor. The final performance audit report shall include the objectives, scope, and methodology; the audit results, including findings and recommendations; the agency's response and conclusions; and identification of best practices.

(8) The state auditor shall provide final performance audit reports to the citizens of Washington, the governor, the joint legislative audit and review committee, the appropriate legislative committees, and other appropriate officials. Final performance audit reports shall be posted on the internet.

(9) The audited transportation-related agency is responsible for follow-up and corrective action on all performance audit findings and recommendations. The audited agency's plan for addressing each audit finding and recommendation shall be included in the final audit report. The plan shall provide the name of the contact person responsible for each action, the action planned, and the anticipated completion date. If the audited agency does not agree with the audit findings and recommendations or believes action is not required, then the action plan shall include an explanation and specific reasons.

The office of financial management shall require periodic progress reports from the audited agency until all resolution has occurred. The office of financial management is responsible for achieving audit resolution. The office of financial management shall annually report by December 31st the status of performance audit resolution to the appropriate legislative committees and the state auditor. The legislature shall consider the performance audit results in connection with the state budget process.

The auditor may request status reports on specific audits or findings.

(10) For the period from July 1, 2005, until June 30, 2007, the amount of \$4,000,000 is appropriated from the transportation partnership account to the state auditors office for the purposes of subsections (2) through (9) of this section.

(11) During the 2015-2017 fiscal biennium, the legislature may transfer from the transportation partnership account to the connecting Washington account such amounts as reflect the excess fund balance of the transportation partnership account.

(12) During the 2017-2019 fiscal biennium, the legislature may direct the state treasurer to make transfers of mon-

neys in the transportation partnership account to the connecting Washington account. [2017 c 313 § 709; 2015 3rd sp.s. c 43 § 604; 2006 c 337 § 5; 2005 c 314 § 104.]

Effective date—2017 c 313: See note following RCW 43.19.642.

Effective date—2015 3rd sp.s. c 43: See note following RCW 46.68.030.

Additional notes found at www.leg.wa.gov

46.68.325 Rural mobility grant program account. (1)

The rural mobility grant program account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the grants provided under RCW 47.66.100.

(2) Beginning September 2011, by the last day of September, December, March, and June of each year, the state treasurer shall transfer from the multimodal transportation account to the rural mobility grant program account two million five hundred thousand dollars.

(3) During the 2015-2017 fiscal biennium, the legislature may transfer from the rural mobility grant program account to the multimodal transportation account such amounts as reflect the excess fund balance of the rural mobility grant program account.

(4) During the 2017-2019 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys in the rural mobility grant program account to the multimodal transportation account. [2017 c 313 § 710; 2015 1st sp.s. c 10 § 703; 2013 c 306 § 706; 2011 c 367 § 721; 2011 c 272 § 1.]

Effective date—2017 c 313: See note following RCW 43.19.642.

Effective date—2015 1st sp.s. c 10: See note following RCW 43.19.642.

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—2011 c 367: See note following RCW 47.29.170.

46.68.420 Special license plate fees by account—Disposition. (1) The department shall:

(a) Collect special license plate fees established under RCW 46.17.220;

(b) Deduct an amount not to exceed twelve dollars for initial issue and two dollars for renewal issue for administration and collection expenses incurred by it; and

(c) Remit the remaining proceeds to the custody of the state treasurer with a proper identifying detailed report.

(2) The state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the special license plate. Upon determination by the department that the state has been reimbursed, the state treasurer shall credit the remaining special license plate fee amounts for each special license plate to the following appropriate account as created in this section in the custody of the state treasurer:

ACCOUNT	CONDITIONS FOR USE OF FUNDS
4-H programs	Support Washington 4-H programs
Fred Hutch	Support cancer research at the Fred Hutchinson cancer research center
Gonzaga University alumni association	Scholarship funds to needy and qualified students attending or planning to attend Gonzaga University

ACCOUNT	CONDITIONS FOR USE OF FUNDS
Helping kids speak	Provide free diagnostic and therapeutic services to families of children who suffer from a delay in language or speech development
Law enforcement memorial	Provide support and assistance to survivors and families of law enforcement officers in Washington killed in the line of duty and to organize, finance, fund, construct, utilize, and maintain a memorial on the state capitol grounds to honor those fallen officers
Lighthouse environmental programs	Support selected Washington state lighthouses that are accessible to the public and staffed by volunteers; provide environmental education programs; provide grants for other Washington lighthouses to assist in funding infrastructure preservation and restoration; encourage and support interpretive programs by lighthouse docents
Music matters awareness	Promote music education in schools throughout Washington
Seattle Seahawks	Provide funds to InvestED to encourage secondary students who have economic needs to stay in school, return to school, or get involved within their learning community
Seattle Sounders FC	Provide funds to Washington state mentors and the association of Washington generals created in RCW 43.15.030 in the following manner: (a) Seventy percent and the remaining proceeds, if any, to Washington state mentors, to increase the number of mentors in the state by offering mentoring grants throughout Washington state that foster positive youth development and academic success, with up to twenty percent of these proceeds authorized for program administration costs; and (b) up to thirty percent, not to exceed forty-thousand dollars annually as adjusted for inflation by the office of financial management, to the association of Washington generals, to develop Washington state educational, veterans, international relations, and civics projects and to recognize the outstanding public service of individuals or groups in the state of Washington
Seattle University	Fund scholarships for students attending or planning to attend Seattle University
Share the road	Promote bicycle safety and awareness education in communities throughout Washington
Ski & ride Washington	Promote winter snowsports, such as skiing and snowboarding, and related programs, such as ski and ride safety programs, underprivileged youth ski and ride programs, and active, healthy lifestyle programs

ACCOUNT	CONDITIONS FOR USE OF FUNDS
State flower	Support Meerkerk Rhododendron Gardens and provide for grants to other qualified nonprofit organizations' efforts to preserve rhododendrons
Volunteer firefighters	Receive and disseminate funds for purposes on behalf of volunteer firefighters, their families, and others deemed in need
Washington farmers and ranchers	Provide funds to the Washington FFA Foundation for educational programs in Washington state
Washington state aviation	Provide funds to the department of transportation to support infrastructure improvements at public use airports in Washington state
Washington state wrestling	Provide funds to the Washington state wrestling foundation to fund new and existing college wrestling programs
Washington state council of firefighters benevolent fund	Receive and disseminate funds for charitable purposes on behalf of members of the Washington state council of firefighters, their families, and others deemed in need
Washington tennis	Provide funds to cities to assist in the construction and maintenance of a public tennis facility with at least four indoor tennis courts. A city is eligible for construction funds if the city does not already have a public or private facility with at least four indoor tennis courts. Funds for construction must first be made available to the most populous eligible city, according to the most recent census, for a time period not to exceed five years after January 1, 2017. After the five-year time period, the funds for construction must be made available to the next most populous eligible city. Funds for the maintenance of a public tennis facility with at least four indoor tennis courts must first be made available to the first eligible city that utilizes funds for construction provided by chapter 16, Laws of 2016
Washington's national park fund	Build awareness of Washington's national parks and support priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks
We love our pets	Support and enable the Washington federation of animal welfare and control agencies to promote and perform spay/neuter surgery of Washington state pets in order to reduce pet population

(3) Only the director or the director's designee may authorize expenditures from the accounts described in subsection (2) of this section. The accounts are subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) Funds in the special license plate accounts described in subsection (2) of this section must be disbursed subject to the conditions described in subsection (2) of this section and under contract between the department and qualified nonprofit organizations that provide the services described in subsection (2) of this section.

(5) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation operating in Washington that has received a determination of tax exempt status under 26 U.S.C. Sec. 501(c)(3). The qualified nonprofit organization must meet all the requirements under RCW 46.18.100(1). [2017 c 25 § 3; 2017 c 11 § 4. Prior: 2016 c 36 § 3; 2016 c 16 § 3; 2016 c 15 § 3; 2014 c 6 § 3; 2013 c 286 § 3; 2012 c 65 § 5; prior: 2011 c 229 § 4; 2011 c 225 § 3; 2011 c 171 § 87; 2010 c 161 § 809.]

Reviser's note: This section was amended by 2017 c 11 § 4 and by 2017 c 25 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2017 c 25: See note following RCW 46.18.200.

Finding—Intent—2017 c 11: See note following RCW 46.18.200.

Effective date—2016 c 36: See note following RCW 46.18.200.

Effective date—2016 c 16: See note following RCW 46.18.200.

Effective date—2016 c 15: See note following RCW 46.18.200.

Effective date—2014 c 6: See note following RCW 46.18.200.

Effective date—2013 c 286: See note following RCW 46.18.200.

Effective date—2012 c 65: See note following RCW 46.18.200.

Effective date—2011 c 229: See note following RCW 46.18.200.

Effective date—2011 c 225: See note following RCW 46.18.200.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Chapter 46.70 RCW

DEALERS AND MANUFACTURERS

Sections

46.70.005	Declaration of purpose. (<i>Effective July 1, 2019.</i>)
46.70.011	Definitions. (<i>Effective July 1, 2019.</i>)
46.70.023	Place of business. (<i>Effective July 1, 2019.</i>)
46.70.027	Accountability of dealer for employees—Violation of chapter. (<i>Effective July 1, 2019.</i>)
46.70.070	Dealers—Bond required, exceptions—Actions—Cancellation of license. (<i>Effective July 1, 2019.</i>)
46.70.180	Unlawful acts and practices.

46.70.005 Declaration of purpose. (*Effective July 1, 2019.*) The legislature finds and declares that the distribution, sale, and lease of vehicles in the state of Washington vitally affects the general economy of the state and the public interest and the public welfare, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate and license vehicle manufacturers, distributors, and factory or distributor representatives, and to regulate and license dealers of vehicles doing business in Washington, in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state. [2017 c 15 § 2; 2001 c 272 § 1; 1986 c 241 § 1; 1973 1st ex.s. c 132 § 1; 1967 ex.s. c 74 § 1.]

Effective date—2017 c 15: "Sections 2 through 6 of this act take effect July 1, 2019." [2017 c 15 § 8.]

Additional notes found at www.leg.wa.gov

46.70.011 Definitions. (Effective July 1, 2019.) As used in this chapter:

(1) "Auction" means a transaction conducted by means of exchanges between an auctioneer and the members of the audience, constituting a series of oral invitations for offers for the purchase of vehicles made by the auctioneer, offers to purchase by members of the audience, and the acceptance of the highest or most favorable offer to purchase.

(2) "Auction company" means a sole proprietorship, partnership, corporation, or other legal or commercial entity licensed under chapter 18.11 RCW that only sells or offers to sell vehicles at auction or only arranges or sponsors auctions.

(3) "Buyer's agent" means any person, firm, partnership, association, limited liability company, limited liability partnership, or corporation retained or employed by a consumer to arrange for or to negotiate, or both, the purchase or lease of a new motor vehicle on behalf of the consumer, and who is paid a fee or receives other compensation from the consumer for its services.

(4) "Department" means the department of licensing, which shall administer and enforce the provisions of this chapter.

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

(6) "Established place of business" means a location meeting the requirements of RCW 46.70.023(1) at which a vehicle dealer conducts business in this state.

(7) "Listing dealer" means a used mobile home dealer who makes contracts with sellers who will compensate the dealer for obtaining a willing purchaser for the seller's mobile home.

(8) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused vehicles or remanufactures vehicles in whole or in part and further includes the terms:

(a) "Distributor," which means any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new and unused vehicle to vehicle dealers or who maintains factory representatives.

(b) "Factory branch," which means a branch office maintained by a manufacturer for the purpose of selling or offering for sale, vehicles to a distributor or vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives, and further includes any sales promotion organization, whether a person, firm, or corporation, which is engaged in promoting the sale of new and unused vehicles in this state of a particular brand or make to vehicle dealers.

(c) "Factory representative," which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of their vehicles or for supervising or contracting with their dealers or prospective dealers.

(9) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated

upon rails, and which is required to be registered and titled under this title.

(10) "New motor vehicle" means any motor vehicle that is self-propelled and is required to be registered and titled under this title, has not been previously titled to a retail purchaser or lessee, and is not a "used vehicle" as defined under RCW 46.04.660.

(11) "Principal place of business" means that dealer firm's business location in the state, which place the dealer designates as their principal place of business.

(12) "Recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot.

(13) "Retail vehicle dealer" means a vehicle dealer who may buy and sell at both wholesale and retail.

(14) "Subagency" means any place of business of a vehicle dealer within the state, which place is physically and geographically separated from the principal place of business of the firm or any place of business of a vehicle dealer within the state, at which place the firm does business using a name other than the principal name of the firm, or both.

(15) "Temporary subagency" means a location other than the principal place of business or subagency within the state where a licensed vehicle dealer may secure a license to conduct the business and is licensed for a period of time not to exceed ten days for a specific purpose such as auto shows, shopping center promotions, tent sales, exhibitions, or similar merchandising ventures. No more than six temporary subagency licenses may be issued to a licensee in any twelve-month period.

(16) "Vehicle" means and includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(17) "Vehicle dealer" means any person, firm, association, corporation, or trust, not excluded by subsection (18) of this section, engaged in the business of buying, selling, listing, exchanging, offering, brokering, leasing with an option to purchase, auctioning, soliciting, or advertising the sale of new or used vehicles, or arranging or offering or attempting to solicit or negotiate on behalf of others, a sale, purchase, or exchange of an interest in new or used motor vehicles, irrespective of whether the motor vehicles are owned by that person. Vehicle dealers shall be classified as follows:

(a) A "motor vehicle dealer" is a vehicle dealer that deals in new or used motor vehicles, or both;

(b) A "mobile home and travel trailer dealer" is a vehicle dealer that deals in mobile homes, park trailers, or travel trailers, or more than one type of these vehicles;

(c) A "miscellaneous vehicle dealer" is a vehicle dealer that deals in motorcycles or vehicles other than motor vehicles or mobile homes and travel trailers or any combination of such vehicles;

(d) A "recreational vehicle dealer" is a vehicle dealer that deals in travel trailers, motor homes, truck campers, or camping trailers that are primarily designed and used as temporary

living quarters, are either self-propelled or mounted on or drawn by another vehicle, are transient, are not occupied as a primary residence, and are not immobilized or permanently affixed to a mobile home lot.

(18) "Vehicle dealer" does not include, nor do the licensing requirements of RCW 46.70.021 apply to, the following persons, firms, associations, or corporations:

(a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by, or acting under a judgment or order of, any court; or

(b) Public officers while performing their official duties; or

(c) Employees of vehicle dealers who are engaged in the specific performance of their duties as such employees; or

(d) Any person engaged in an isolated sale of a vehicle in which that person is the registered or legal owner, or both, thereof; or

(e) Any person, firm, association, corporation, or trust, engaged in the selling of equipment other than vehicles, subject to registration, used for agricultural or industrial purposes; or

(f) A real estate broker licensed under chapter 18.85 RCW, or an affiliated licensee, who, on behalf of another negotiates the purchase, sale, lease, or exchange of a manufactured or mobile home in conjunction with the purchase, sale, exchange, rental, or lease of the land upon which the manufactured or mobile home is, or will be, located; or

(g) Owners who are also operators of special highway construction equipment, as defined in RCW 46.04.551, or of the highway construction equipment for which a vehicle license and display vehicle license number plate is required; or

(h) Any bank, trust company, savings bank, mutual savings bank, savings and loan association, credit union, and any parent, subsidiary, or affiliate thereof, authorized to do business in this state under state or federal law with respect to the sale or other disposition of a motor vehicle owned and used in their business; or with respect to the acquisition and sale or other disposition of a motor vehicle in which the entity has acquired an interest as a lessor, lessee, or secured party; or

(i) Any person who is regularly engaged in the business of acquiring leases or installment contracts by assignment, with respect to the acquisition and sale or other disposition of a motor vehicle in which the person has acquired an interest as a result of the business.

(19) "Vehicle salesperson" means any person who for any form of compensation sells, auctions, leases with an option to purchase, or offers to sell or to so lease vehicles on behalf of a vehicle dealer. [2017 c 15 § 3; 2016 sp.s. c 26 § 1. Prior: 2010 c 161 § 1130; 2006 c 364 § 1; 2001 c 272 § 2; 1998 c 46 § 1; 1996 c 194 § 1; 1993 c 175 § 1; prior: 1989 c 337 § 11; 1989 c 301 § 1; 1988 c 287 § 1; 1986 c 241 § 2; 1981 c 305 § 2; 1979 c 158 § 186; 1979 c 11 § 3; prior: 1977 ex.s. c 204 § 2; 1977 ex.s. c 125 § 1; 1973 1st ex.s. c 132 § 2; 1969 ex.s. c 63 § 1; 1967 ex.s. c 74 § 3.]

Effective date—2017 c 15: See note following RCW 46.70.005.

Effective date—2016 sp.s. c 26: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 29, 2016]." [2016 sp.s. c 26 § 3.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

46.70.023 Place of business. (Effective July 1, 2019.)

(1) An "established place of business" requires a permanent, enclosed commercial building located within the state of Washington easily accessible at all reasonable times. The business of a vehicle dealer must be lawfully carried on at an established place of business in accordance with the terms of all applicable building code, zoning, and other land-use regulatory ordinances. A vehicle dealer may display a vehicle for sale only at its established place of business, licensed subagency, or temporary subagency site, except at auction. The dealer shall keep the building open to the public so that the public may contact the vehicle dealer or the dealer's salespersons at all reasonable times. The books, records, and files necessary to conduct the business shall be kept and maintained at that place. The established place of business shall display an exterior sign with the business name and nature of the business, such as auto sales, permanently affixed to the land or building, with letters clearly visible to the major avenue of traffic. A room or rooms in a hotel, rooming house, or apartment house building or part of a single or multiple-unit dwelling house may not be considered an "established place of business" unless the ground floor of such a dwelling is devoted principally to and occupied for commercial purposes and the dealer offices are located on the ground floor. A mobile office or mobile home may be used as an office if it is connected to utilities and is set up in accordance with state law. A statewide trade association representing manufactured housing dealers shall be permitted to use a manufactured home as an office if the office complies with all other applicable building code, zoning, and other land-use regulatory ordinances. This subsection does not apply to auction companies that do not own vehicle inventory or sell vehicles from an auction yard.

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

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

(4) If a dealer maintains a place of business at more than one location or under more than one name in this state, he or she shall designate one location as the principal place of business of the firm, one name as the principal name of the firm, and all other locations or names as subagencies. A subagency license is required for each and every subagency: PROVIDED, That the department may grant an exception to the subagency requirement in the specific instance where a licensed dealer is unable to locate their used vehicle sales facilities adjacent to or at the established place of business. This exception shall be granted and defined under the promulgation of rules consistent with the administrative procedure act.

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

(6) A subagency shall comply with all requirements of an established place of business, except that subagency records may be kept at the principal place of business designated by the dealer. Auction companies shall comply with the requirements in subsection (2) of this section.

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

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

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

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

(11) A vehicle dealer's license shall upon the death or incapacity of an individual vehicle dealer authorize the personal representative of such dealer, subject to payment of license fees, to continue the business for a period of six months from the date of the death or incapacity. [2017 c 15 § 4; 2016 sp.s. c 26 § 2; 1997 c 432 § 1; 1996 c 282 § 1; 1995 c 7 § 1; 1993 c 307 § 5; 1991 c 339 § 28; 1989 c 301 § 2; 1986 c 241 § 4.]

Effective date—2017 c 15: See note following RCW 46.70.005.

Effective date—2016 sp.s. c 26: See note following RCW 46.70.011.

46.70.027 Accountability of dealer for employees—Violation of chapter. (Effective July 1, 2019.) A vehicle dealer is accountable for the dealer's employees, sales personnel, and managerial personnel while in the performance of their official duties. Any violations of this chapter or applicable provisions of chapter 46.12 or 46.16A RCW committed by any of these employees subjects the dealer to license penalties prescribed under RCW 46.70.101. [2017 c 15 § 5; 2011 c 171 § 90; 1989 c 337 § 12; 1986 c 241 § 5.]

Effective date—2017 c 15: See note following RCW 46.70.005.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

46.70.070 Dealers—Bond required, exceptions—Actions—Cancellation of license. (Effective July 1, 2019.)

(1) Before issuing a vehicle dealer's license, the department shall require the applicant to file with the department a surety bond in the amount of:

- (a) Thirty thousand dollars for motor vehicle dealers;
 - (b) Thirty thousand dollars for mobile home, park trailer, and travel trailer dealers;
 - (c) Five thousand dollars for miscellaneous dealers,
- running to the state, and executed by a surety company authorized to do business in the state. Such bond shall be approved by the attorney general as to form and conditioned that the dealer shall conduct his or her business in conformity with the provisions of this chapter.

Any retail purchaser or consignor who is not a motor vehicle dealer and who has suffered any loss or damage by reason of any act by a dealer which constitutes a violation of this chapter may institute an action for recovery against such dealer and the surety upon such bond. Successive recoveries against said bond shall be permitted, but the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond. Upon exhaustion of the penalty of said bond or cancellation of the bond by the surety the vehicle dealer license shall automatically be deemed canceled.

(2) The bond for any vehicle dealer licensed or to be licensed under more than one classification shall be the highest bond required for any such classification.

(3) Vehicle dealers shall maintain a bond for each business location in this state and bond coverage for all temporary subagencies. [2017 c 15 § 6; 2001 c 272 § 13; 1996 c 194 § 2; 1989 c 337 § 15; 1986 c 241 § 11; 1981 c 152 § 1; 1973 1st ex.s. c 132 § 8; 1971 ex.s. c 74 § 4; 1967 ex.s. c 74 § 27; 1961 c 239 § 1; 1961 c 12 § 46.70.070. Prior: 1959 c 166 § 19; 1951 c 150 § 8.]

Effective date—2017 c 15: See note following RCW 46.70.005.

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

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

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

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

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

(d) That a new vehicle will be sold for a certain amount above or below cost without computing cost as the exact

amount of the factory invoice on the specific vehicle to be sold;

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

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

(ii) However, an amount not to exceed one hundred fifty dollars per vehicle sale or lease may be charged by a dealer to recover administrative costs for collecting motor vehicle excise taxes, licensing and registration fees and other agency fees, verifying and clearing titles, transferring titles, perfecting, releasing, or satisfying liens or other security interests, and other administrative and documentary services rendered by a dealer in connection with the sale or lease of a vehicle and in carrying out the requirements of this chapter or any other provisions of state law.

(b) A dealer may charge the documentary service fee in (a) of this subsection under the following conditions:

(i) The documentary service fee is disclosed in writing to a prospective purchaser or lessee before the execution of a purchase and sale or lease agreement;

(ii) The dealer discloses to the purchaser or lessee in writing that the documentary service fee is a negotiable fee. The disclosure must be written in a typeface that is at least as large as the typeface used in the standard text of the document that contains the disclosure and that is bold faced, capitalized, underlined, or otherwise set out from the surrounding material so as to be conspicuous. The dealer shall not represent to the purchaser or lessee that the fee or charge is required by the state to be paid by either the dealer or prospective purchaser or lessee;

(iii) The documentary service fee is separately designated from the selling price or capitalized cost of the vehicle and from any other taxes, fees, or charges; and

(iv) Dealers disclose in any advertisement that a documentary service fee in an amount up to one hundred fifty dollars may be added to the sale price or the capitalized cost.

For the purposes of this subsection (2), the term "documentary service fee" means the optional amount charged by a dealer to provide the services specified in (a) of this subsection.

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

(4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Entering into a written contract,

written purchase order or agreement, retail installment sales agreement, note and security agreement, or written lease agreement, hereinafter collectively referred to as contract or lease, signed by the prospective buyer or lessee of a vehicle, which:

(a) Is subject to any conditions or the dealer's or his or her authorized representative's future acceptance, and the dealer fails or refuses within the "bushing" period, which is four calendar days, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer or lessee to inform the buyer or lessee either: (i) That the dealer unconditionally accepts the contract or lease, having satisfied, removed, or waived all conditions to acceptance or performance, including, but not limited to, financing, assignment, or lease approval; or (ii) that the dealer rejects the contract or lease, thereby automatically voiding the contract or lease, as long as such voiding does not negate commercially reasonable contract or lease provisions pertaining to the return of the subject vehicle and any physical damage, excessive mileage after the demand for return of the vehicle, and attorneys' fees authorized by law, and tenders the refund of any initial payment or security made or given by the buyer or lessee, including, but not limited to, any down payment, and tenders return of the trade-in vehicle, key, other trade-in, or certificate of title to a trade-in. Tender may be conditioned on return of the subject vehicle if previously delivered to the buyer or lessee.

The provisions of this subsection (4)(a) do not impair, prejudice, or abrogate the rights of a dealer to assert a claim against the buyer or lessee for misrepresentation or breach of contract and to exercise all remedies available at law or in equity, including those under chapter 62A.9A RCW, if the dealer, bank, or other lender or leasing company discovers that approval of the contract or financing or approval of the lease was based upon material misrepresentations made by the buyer or lessee, including, but not limited to, misrepresentations regarding income, employment, or debt of the buyer or lessee, as long as the dealer, or his or her staff, has not, with knowledge of the material misrepresentation, aided, assisted, encouraged, or participated, directly or indirectly, in the misrepresentation. A dealer shall not be in violation of this subsection (4)(a) if the buyer or lessee made a material misrepresentation to the dealer, as long as the dealer, or his or her staff, has not, with knowledge of the material misrepresentation, aided, assisted, encouraged, or participated, directly or indirectly, in the misrepresentation.

A dealer may inform a buyer or lessee under this subsection (4)(a) regarding the unconditional acceptance or rejection of the contract, lease, or financing by sending an email message to the buyer's or lessee's supplied email address, by phone call, by leaving a voice message or sending a text message to a phone number provided by the buyer or lessee, by in-person oral communication, by mailing a letter by first-class mail if the buyer or lessee expresses a preference for a letter or declines to provide an email address and a phone number capable of receiving a free text message, or by another means agreed to by the buyer or lessee or approved by the department, effective upon the execution, mailing, or sending of the communication and before expiration of the "bushing" period;

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

(i) Failure to disclose that the vehicle's certificate of title has been branded for any reason, including, but not limited to, status as a rebuilt vehicle as provided in RCW 46.12.540 and 46.12.560; or

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

(iii) Excessive additional miles or a discrepancy in the mileage. "Excessive additional miles" means the addition of five hundred miles or more, as reflected on the vehicle's odometer, between the time the vehicle was first valued by the dealer for purposes of determining its trade-in value and the time of actual delivery of the vehicle to the dealer. "A discrepancy in the mileage" means (A) a discrepancy between the mileage reflected on the vehicle's odometer and the stated mileage on the signed odometer statement; or (B) a discrepancy between the mileage stated on the signed odometer statement and the actual mileage on the vehicle; or

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

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

(6) For any vehicle dealer or vehicle salesperson to refuse to furnish, upon request of a prospective purchaser or lessee, for vehicles previously registered to a business or governmental entity, the name and address of the business or governmental entity.

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

(8) To commit any offense relating to a dealer's temporary license permit, including but not limited to failure to properly complete each such permit, or the issuance of more than one such permit on any one vehicle. However, a dealer may issue a second temporary permit on a vehicle if the following conditions are met:

(a) The lienholder fails to deliver the vehicle title to the dealer within the required time period;

(b) The dealer has satisfied the lien; and

(c) The dealer has proof that payment of the lien was made within two calendar days, exclusive of Saturday, Sunday, or a legal holiday, after the sales contract has been executed by all parties and all conditions and contingencies in the sales contract have been met or otherwise satisfied.

(9) For a dealer, salesperson, or mobile home manufacturer, having taken an instrument or cash "on deposit" from a purchaser or lessee prior to the delivery of the bargained-for vehicle, to commingle the "on deposit" funds with assets of the dealer, salesperson, or mobile home manufacturer instead of holding the "on deposit" funds as trustee in a separate trust account until the purchaser or lessee has taken delivery of the bargained-for vehicle. Delivery of a manufactured home shall be deemed to occur in accordance with RCW 46.70.135(5). Failure, immediately upon receipt, to endorse

"on deposit" instruments to such a trust account, or to set aside "on deposit" cash for deposit in such trust account, and failure to deposit such instruments or cash in such trust account by the close of banking hours on the day following receipt thereof, shall be evidence of intent to commit this unlawful practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate trust account which equals his or her customary total customer deposits for vehicles for future delivery. For purposes of this section, "on deposit" funds received from a purchaser of a manufactured home means those funds that a seller requires a purchaser to advance before ordering the manufactured home, but does not include any loan proceeds or moneys that might have been paid on an installment contract.

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

(11) For a vehicle dealer to pay to or receive from any person, firm, partnership, association, or corporation acting, either directly or through a subsidiary, as a buyer's agent for consumers, any compensation, fee, purchase moneys or funds that have been deposited into or withdrawn out of any account controlled or used by any buyer's agent, gratuity, or reward in connection with the purchase, sale, or lease of a new motor vehicle.

(12) For a buyer's agent, acting directly or through a subsidiary, to pay to or to receive from any motor vehicle dealer any compensation, fee, gratuity, or reward in connection with the purchase, sale, or lease of a new motor vehicle. In addition, it is unlawful for any buyer's agent to engage in any of the following acts on behalf of or in the name of the consumer:

(a) Receiving or paying any purchase moneys or funds into or out of any account controlled or used by any buyer's agent;

(b) Signing any vehicle purchase orders, sales contracts, leases, odometer statements, or title documents, or having the name of the buyer's agent appear on the vehicle purchase order, sales contract, lease, or title; or

(c) Signing any other documentation relating to the purchase, sale, lease, or transfer of any new motor vehicle.

It is unlawful for a buyer's agent to use a power of attorney obtained from the consumer to accomplish or effect the purchase, sale, lease, or transfer of ownership documents of any new motor vehicle by any means which would otherwise be prohibited under (a) through (c) of this subsection. However, the buyer's agent may use a power of attorney for physical delivery of motor vehicle license plates to the consumer.

Further, it is unlawful for a buyer's agent to engage in any false, deceptive, or misleading advertising, disseminated in any manner whatsoever, including but not limited to making any claim or statement that the buyer's agent offers, obtains, or guarantees the lowest price on any motor vehicle or words to similar effect.

(13) For a buyer's agent to arrange for or to negotiate the purchase, or both, of a new motor vehicle through an out-of-state dealer without disclosing in writing to the customer that the new vehicle would not be subject to chapter 19.118 RCW. This subsection also applies to leased vehicles. In addition, it is unlawful for any buyer's agent to fail to have a written agreement with the customer that: (a) Sets forth the terms of the parties' agreement; (b) discloses to the customer the total amount of any fees or other compensation being paid by the customer to the buyer's agent for the agent's services; and (c) further discloses whether the fee or any portion of the fee is refundable.

(14) Being a manufacturer, other than a motorcycle manufacturer governed by chapter 46.93 RCW, to:

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

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

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

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

(e) Refuse to deliver any vehicle publicly advertised for immediate delivery to any duly licensed vehicle dealer having a franchise or contractual agreement for the retail sale or lease of new and unused vehicles sold or distributed by such manufacturer within sixty days after such dealer's order has been received in writing unless caused by inability to deliver because of shortage or curtailment of material, labor, transportation, or utility services, or by any labor or production difficulty, or by any cause beyond the reasonable control of the manufacturer;

(f) To provide under the terms of any warranty that a purchaser or lessee of any new or unused vehicle that has been sold or leased, distributed for sale or lease, or transferred into this state for resale or lease by the vehicle manufacturer may

only make any warranty claim on any item included as an integral part of the vehicle against the manufacturer of that item.

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

(15) Unlawful transfer of an ownership interest in a motor vehicle as defined in RCW 19.116.050.

(16) To knowingly and intentionally engage in collusion with a registered owner of a vehicle to repossess and return or resell the vehicle to the registered owner in an attempt to avoid a suspended license impound under chapter 46.55 RCW. However, compliance with chapter 62A.9A RCW in repossessing, selling, leasing, or otherwise disposing of the vehicle, including providing redemption rights to the debtor, is not a violation of this section.

(17)(a) For a dealer to enter into a new motor vehicle sales contract without disclosing in writing to a buyer of the new motor vehicle, or to a dealer in the case of an unregistered motor vehicle, any known damage and repair to the new motor vehicle if the damage exceeds five percent of the manufacturer's suggested retail price as calculated at the dealer's authorized warranty rate for labor and parts, or one thousand dollars, whichever amount is greater. A manufacturer or new motor vehicle dealer is not required to disclose to a dealer or buyer that glass, tires, bumpers, or cosmetic parts of a new motor vehicle were damaged at any time if the damaged item has been replaced with original or comparable equipment. A replaced part is not part of the cumulative damage required to be disclosed under this subsection.

(b) A manufacturer is required to provide the same disclosure to a dealer of any known damage or repair as required in (a) of this subsection.

(c) If disclosure of any known damage or repair is not required under this section, a buyer may not revoke or rescind a sales contract due to the fact that the new motor vehicle was damaged and repaired before completion of the sale.

(d) As used in this section:

(i) "Cosmetic parts" means parts that are attached by and can be replaced in total through the use of screws, bolts, or other fasteners without the use of welding or thermal cutting, and includes windshields, bumpers, hoods, or trim panels.

(ii) "Manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer, and includes the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer that is not included within the retail price suggested by the manufacturer for the new motor vehicle. [2017 c 41 § 1; 2012 c 74 § 8; 2010 c 161 § 1136. Prior: 2009 c 123 § 1; 2009 c 49 § 1; 2007 c 155 § 2; 2006 c 289 § 1; 2003 c 368 § 1; prior: 2001 c

272 § 10; 2001 c 64 § 9; 1999 c 398 § 10; 1997 c 153 § 1; 1996 c 194 § 3; 1995 c 256 § 26; 1994 c 284 § 13; 1993 c 175 § 3; 1990 c 44 § 14; 1989 c 415 § 20; 1986 c 241 § 18; 1985 c 472 § 13; 1981 c 152 § 6; 1977 ex.s. c 125 § 4; 1973 1st ex.s. c 132 § 18; 1969 c 112 § 1; 1967 ex.s. c 74 § 16.]

Effective date—2012 c 74 §§ 1-12: See note following RCW 46.17.100.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Effective date—2007 c 155: See note following RCW 46.16A.300.

Certificate of title—Failure to transfer within specified time: RCW 46.12.650.

Glass—Limited windows—Vehicle sale requirements: RCW 46.37.430.

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

Tires—Vehicle sale requirements: RCW 46.37.425.

Additional notes found at www.leg.wa.gov

Chapter 46.82 RCW DRIVER TRAINING SCHOOLS

Sections

46.82.280	Definitions. <i>(Effective August 1, 2018.)</i>
46.82.320	Instructor's license. <i>(Effective August 1, 2018.)</i>
46.82.330	Instructor's license—Application—Requirements. <i>(Effective August 1, 2018.)</i>
46.82.360	Suspension, revocation, or denial of licenses—Failure to comply with specified business practices. <i>(Effective August 1, 2018.)</i>
46.82.420	Required curriculum—Revocation of license for failure to teach. <i>(Effective August 1, 2018.)</i>
46.82.901	Coordination of responsibilities with the office of the superintendent of public instruction—2017 c 197.

46.82.280 Definitions. *(Effective August 1, 2018.)* The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Behind-the-wheel instruction" means instruction in an approved driver training school instruction vehicle according to and inclusive of the required curriculum. Behind-the-wheel instruction is characterized by driving experience.

(2) "Classroom" means a space dedicated to and used exclusively by a driver training instructor for the instruction of students. With prior department approval, a branch office classroom may be located within alternative facilities, such as a public or private library, school, community college, college or university, or a business training facility.

(3) "Classroom instruction" means that portion of a traffic safety education course that is characterized by classroom-based student instruction using the required curriculum conducted by or under the direct supervision of a licensed instructor or licensed instructors.

(4) "Director" means the director of the department of licensing of the state of Washington.

(5) "Driver training education course" means a course of instruction in traffic safety education approved and licensed by the department of licensing that consists of classroom and behind-the-wheel instruction that follows the approved curriculum.

(6) "Driver training school" means a commercial driver training school engaged in the business of giving instruction, for a fee, in the operation of automobiles.

(7) "Enrollment" means the collecting of a fee or the signing of a contract for a driver training education course. "Enrollment" does not include the collecting of names and contact information for enrolling students once a driver training school is licensed to instruct.

(8) "Fraudulent practices" means any conduct or representation on the part of a driver training school owner or instructor including:

(a) Inducing anyone to believe, or to give the impression, that a license to operate a motor vehicle or any other license granted by the director may be obtained by any means other than those prescribed by law, or furnishing or obtaining the same by illegal or improper means, or requesting, accepting, or collecting money for such purposes;

(b) Operating a driver training school without a license, providing instruction without an instructor's license, verifying enrollment prior to being licensed, misleading or false statements on applications for a commercial driver training school license or instructor's license or on any required records or supporting documentation;

(c) Failing to fully document and maintain all required driver training school records of instruction, school operation, and instructor training;

(d) Issuing a driver training course certificate without requiring completion of the necessary behind-the-wheel and classroom instruction.

(9) "Instructor" means any person employed by or otherwise associated with a driver training school to instruct persons in the operation of an automobile.

(10) "Owner" means an individual, partnership, corporation, association, or other person or group that holds a substantial interest in a driver training school.

(11) "Person" means any individual, firm, corporation, partnership, or association.

(12) "Place of business" means a designated location at which the business of a driver training school is transacted or its records are kept.

(13) "Student" means any person enrolled in an approved driver training course.

(14) "Substantial interest holder" means a person who has actual or potential influence over the management or operation of any driver training school. Evidence of substantial interest includes, but is not limited to, one or more of the following:

(a) Directly or indirectly owning, operating, managing, or controlling a driver training school or any part of a driver training school;

(b) Directly or indirectly profiting from or assuming liability for debts of a driver training school;

(c) Is an officer or director of a driver training school;

(d) Owning ten percent or more of any class of stock in a privately or closely held corporate driver training school, or five percent or more of any class of stock in a publicly traded corporate driver training school;

(e) Furnishing ten percent or more of the capital, whether in cash, goods, or services, for the operation of a driver training school during any calendar year; or

(f) Directly or indirectly receiving a salary, commission, royalties, or other form of compensation from the activity in which a driver training school is or seeks to be engaged.

[2017 c 197 § 8; 2010 1st sp.s. c 7 § 19; 2009 c 101 § 1; 2006 c 219 § 2; 1986 c 80 § 1; 1979 ex.s. c 51 § 1.]

Findings—Intent—Effective date—2017 c 197: See notes following RCW 28A.220.020.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Additional notes found at www.leg.wa.gov

46.82.320 Instructor's license. (Effective August 1, 2018.) (1) No person affiliated with a driver training school shall give instruction in the operation of an automobile for a fee without a license issued by the director for that purpose. An application for an original or renewal instructor's license shall be filed with the director, containing such information as prescribed by this chapter and by the director, accompanied by an application fee set by rule of the department, which shall in no event be refunded. An application for a renewal instructor's license must be accompanied by proof of the applicant's continuing professional development that meets the standards adopted by the director. If the applicant satisfactorily meets the application requirements as prescribed in RCW 46.82.330, the applicant shall be granted a license valid for a period of two years from the date of issuance. An applicant for a renewal instructor's license is not required to retake the examination specified in RCW 46.82.330 to renew his or her instructor's license if his or her original instructor's license is unexpired or has not been expired for longer than six months before submission of his or her renewal application.

(2) The director shall issue a license certificate to each qualified applicant.

(a) An employing driver training school must conspicuously display an instructor's license at its established place of business and display copies of the instructor's license at any branch office where the instructor provides instruction.

(b) Unless revoked, canceled, or denied by the director, the license shall remain the property of the licensee in the event of termination of employment or employment by another driver training school.

(c) If the director has not received a renewal application on or before the date a license expires, the license is void, requiring a new application as provided for in this chapter, including payment of all fees, as well as an examination subject to the exception in subsection (1) of this section.

(d) If revoked, canceled, or denied by the director, the license must be surrendered to the department within ten days following the effective date of such action.

(3) Each licensee shall be provided with a wallet-size identification card by the director at the time the license is issued which shall be in the instructor's immediate possession at all times while engaged in instructing.

(4) The person to whom an instructor's license has been issued shall notify the director in writing within ten days of any change of employment or termination of employment, providing the name and address of the new driver training school by whom the instructor will be employed. [2017 c 197 § 9; 2009 c 101 § 4; 2006 c 219 § 5; 2002 c 352 § 25; 1989 c 337 § 18; 1986 c 80 § 2; 1979 ex.s. c 51 § 5.]

Findings—Intent—Effective date—2017 c 197: See notes following RCW 28A.220.020.

Additional notes found at www.leg.wa.gov

46.82.330 Instructor's license—Application—Requirements. (Effective August 1, 2018.) (1) The application for an instructor's license shall document the applicant's fitness, knowledge, skills, and abilities to teach the classroom and behind-the-wheel instruction portions of a driver training education program in a commercial driver training school.

(2) An applicant shall be eligible to apply for an original instructor's certificate if the applicant possesses and meets the following qualifications and conditions:

(a) Has been licensed to drive for five or more years and possesses a current and valid Washington driver's license or is a resident of a jurisdiction immediately adjacent to Washington state and possesses a current and valid license issued by such jurisdiction, and does not have on his or her driving record any of the violations or penalties set forth in (a)(i), (ii), or (iii) of this subsection. The director shall have the right to examine the driving record of the applicant from the department of licensing and from other jurisdictions and from these records determine if the applicant has had:

(i) Not more than one moving traffic violation within the preceding twelve months or more than two moving traffic violations in the preceding twenty-four months;

(ii) No drug or alcohol-related traffic violation or incident within the preceding three years. If there are two or more drug or alcohol-related traffic violations in the applicant's driving history, the applicant is no longer eligible to be a driving instructor; and

(iii) No driver's license suspension, cancellation, revocation, or denial within the preceding two years, or no more than two of these occurrences in the preceding five years;

(b) Is a high school graduate or the equivalent and at least twenty-one years of age;

(c) Has completed an acceptable application on a form prescribed by the director;

(d) Has satisfactorily completed a course of instruction in the training of drivers acceptable to the director that is no less than sixty hours in length and includes instruction in classroom and behind-the-wheel teaching methods and supervised practice behind-the-wheel teaching of driving techniques; and

(e) Has paid an examination fee as set by rule of the department and has successfully completed an instructor's examination. [2017 c 197 § 10; 2010 1st sp.s. c 7 § 21; 2009 c 101 § 6; 2006 c 219 § 7; 1979 ex.s. c 51 § 6.]

Findings—Intent—Effective date—2017 c 197: See notes following RCW 28A.220.020.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Additional notes found at www.leg.wa.gov

46.82.360 Suspension, revocation, or denial of licenses—Failure to comply with specified business practices. (Effective August 1, 2018.) The license of any driver training school or instructor may be suspended, revoked, denied, or refused renewal, or such other disciplinary action authorized under RCW 18.235.110 may be imposed, for failure to comply with the business practices specified in this section.

(1) No place of business shall be established nor any business of a driver training school conducted or solicited within one thousand feet of an office or building owned or

leased by the department of licensing in which examinations for drivers' licenses are conducted. The distance of one thousand feet shall be measured along the public streets by the nearest route from the place of business to such building.

(2) Any automobile used by a driver training school or an instructor for instruction purposes must be equipped with:

(a) Dual controls for foot brake and clutch, or foot brake only in a vehicle equipped with an automatic transmission;

(b) An instructor's rear view mirror; and

(c) A sign in legible, printed English letters displayed on the back or top, or both, of the vehicle that:

(i) Is not less than twenty inches in horizontal width or less than ten inches in vertical height;

(ii) Has the words "student driver," "instruction car," or "driving school" in letters at least two and one-half inches in height near the top;

(iii) Has the name and telephone number of the school in similarly legible letters not less than one inch in height placed somewhere below the aforementioned words;

(iv) Has lettering and background colors that make it clearly readable at one hundred feet in clear daylight;

(v) Is displayed at all times when instruction is being given.

(3) Instruction may not be given by an instructor to a student who is under the age of fifteen, and behind-the-wheel instruction may not be given by an instructor to a student in an automobile unless the student possesses a current and valid instruction permit issued pursuant to RCW 46.20.055 or a current and valid driver's license.

(4) No driver training school or instructor shall advertise or otherwise indicate that the issuance of a driver's license is guaranteed or assured as a result of the course of instruction offered.

(5) No driver training school or instructor shall utilize any types of advertising without using the full, legal name of the school and identifying itself as a driver training school. Instruction vehicles and equipment, classrooms, driving simulators, training materials and services advertised must be available in a manner as might be expected by the average person reading the advertisement.

(6) A driver training school shall have an established place of business owned, rented, or leased by the school and regularly occupied and used exclusively for the business of giving driver instruction. The established place of business of a driver training school shall be located in a district that is zoned for business or commercial purposes or zoned for conditional use permits for schools, trade schools, or colleges. However, the use of public or private schools does not alleviate the driver training school from securing and maintaining an established place of business or from using its own classroom on a regular basis as required under this chapter.

(a) The established place of business, branch office, or classroom or advertised address of any such driver training school shall not consist of or include a house trailer, residence, tent, temporary stand, temporary address, bus, telephone answering service if such service is the sole means of contacting the driver training school, a room or rooms in a hotel or rooming house or apartment house, or premises occupied by a single or multiple-unit dwelling house.

(b) A driver training school may lease classroom space within a public or private school that is recognized and regu-

lated by the office of the superintendent of public instruction to conduct student instruction as approved by the director. However, such use of public or private classroom space does not alleviate the driver training school from securing and maintaining an established place of business nor from using its own classroom on a regular basis as required by this chapter.

(c) To classify as a branch office or classroom the facility must be within a thirty-five mile radius of the established place of business. The department may waive or extend the thirty-five mile restriction for driver training schools located in counties below the median population density.

(d) Nothing in this subsection may be construed as limiting the authority of local governments to grant conditional use permits or variances from zoning ordinances.

(7) No driver training school or instructor shall conduct any type of instruction or training on a course used by the department of licensing for testing applicants for a Washington driver's license.

(8) Each driver training school shall maintain its student, instructor, vehicle, insurance, and operating records at its established place of business.

(a) Student records must include the student's name, address, and telephone number, date of enrollment and all dates of instruction, the student's instruction permit or driver's license number, the type of training given, the total number of hours of instruction, and the name and signature of the instructor or instructors.

(b) Vehicle records shall include the original insurance policies and copies of the vehicle registration for all instruction vehicles.

(c) Student and instructor records shall be maintained for three years following the completion of the instruction. Vehicle records shall be maintained for five years following their issuance. All records shall be made available for inspection upon the request of the department.

(d) Upon a transfer or sale of school ownership the school records shall be transferred to and become the property and responsibility of the new owner.

(9) Each driver training school shall, at its established place of business, display, in a place where it can be seen by all clients, a copy of the required curriculum furnished by the department. Copies of the required curriculum are to be provided to driver training schools and instructors by the director.

(10) Driver training schools and instructors shall submit to periodic inspections of their business practices, facilities, records, and insurance by authorized representatives of the director of the department of licensing. [2017 c 197 § 11; 2009 c 101 § 7; 2006 c 219 § 10; 1989 c 337 § 19; 1979 ex.s. c 51 § 9.]

Findings—Intent—Effective date—2017 c 197: See notes following RCW 28A.220.020.

Additional notes found at www.leg.wa.gov

46.82.420 Required curriculum—Revocation of license for failure to teach. (Effective August 1, 2018.) (1) The department and the office of the superintendent of public instruction shall jointly develop and maintain a required curriculum as specified in RCW 28A.220.035. The department shall furnish to each qualifying applicant for an instructor's

license or a driver training school license a copy of such curriculum.

(2) In addition to information on the safe, lawful, and responsible operation of motor vehicles on the state's highways, the required curriculum shall include information on:

(a) Intermediate driver's license issuance, passenger and driving restrictions and sanctions for violating the restrictions, and the effect of traffic violations and collisions on the driving privileges;

(b) The effects of alcohol and drug use on motor vehicle operators, including information on drug and alcohol related traffic injury and mortality rates in the state of Washington and the current penalties for driving under the influence of drugs or alcohol;

(c) Motorcycle awareness, approved by the director, to ensure new operators of motor vehicles have been instructed in the importance of safely sharing the road with motorcyclists;

(d) Bicycle safety, to ensure that operators of motor vehicles have been instructed in the importance of safely sharing the road with bicyclists; and

(e) Pedestrian safety, to ensure that operators of motor vehicles have been instructed in the importance of safely sharing the road with pedestrians.

(3) Should the director be presented with acceptable proof that any licensed instructor or driver training school is not showing proper diligence in teaching the required curriculum, the instructor or school shall be required to appear before the director and show cause why the license of the instructor or school should not be revoked for such negligence. If the director does not accept such reasons as may be offered, the director may revoke the license of the instructor or school, or both. [2017 c 197 § 12; 2010 1st sp.s. c 7 § 22; 2008 c 125 § 3; 2007 c 97 § 3; 2006 c 219 § 12; 2004 c 126 § 2; 1991 c 217 § 3; 1979 ex.s. c 51 § 15.]

Findings—Intent—Effective date—2017 c 197: See notes following RCW 28A.220.020.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Findings—2008 c 125: "The legislature finds and declares that it is the policy of the state of Washington to encourage the safe and efficient use of the roads by all citizens, regardless of mode of transportation. In furtherance of this policy, the legislature further finds and declares that driver training programs should enhance the driver training curriculum in order to emphasize the importance of safely sharing the road with bicyclists and pedestrians." [2008 c 125 § 1.]

Short title—2008 c 125: "This act may be known and cited as the Matthew "Tatsuo" Nakata act." [2008 c 125 § 2.]

Additional notes found at www.leg.wa.gov

46.82.901 Coordination of responsibilities with the office of the superintendent of public instruction—2017 c 197. See RCW 28A.220.901.

Chapter 46.93 RCW

MOTORSPORTS VEHICLES—DEALER AND MANUFACTURER FRANCHISES

Sections

46.93.210 Reporting of warranties for off-road vehicles and snowmobiles sold by out-of-state dealers—Department notice to buyers—Apportionment of fines.

46.93.210 Reporting of warranties for off-road vehicles and snowmobiles sold by out-of-state dealers—Department notice to buyers—Apportionment of fines.

(1) By the first business day in February of each year, beginning in 2018, motorsports vehicle manufacturers must report to the department of licensing a listing of all motorsports vehicle warranties for off-road vehicles under chapter 46.09 RCW and snowmobiles under chapter 46.10 RCW sold to Washington residents by out-of-state motorsports vehicle dealers in the previous calendar year. The report must be transmitted such that the department receives the listing no later than the first business day in February. Failure to report a complete listing as required under this subsection results in an administrative fine of one hundred dollars for each day after the first business day in February that the department has not received the report.

(2) The department of licensing shall examine the listing reported in subsection (1) of this section to verify whether the vehicles are properly registered in the state. Beginning in 2018, and to the extent that it has received the listing required under subsection (1) of this section, the department shall notify by certified mail from the United States postal service, with return receipt requested, by the end of February of each year, the purchasers of the warranties of the off-road vehicles and snowmobiles that are not properly registered in the state of the owner's obligations under state law regarding vehicle titling, registration, and use tax payment, as well as of the penalties for failure to comply with the law.

(3) Fines received under this section must be paid into the state treasury and credited to the nonhighway and off-road vehicle activities program account under RCW 46.09.510 and to the snowmobile account under RCW 46.68.350. The state treasurer must apportion the fines between the accounts according to the pro rata share of the number of off-road vehicle and snowmobile registrations in the previous calendar year. The department must provide the state treasurer with the information needed to determine the apportionment. [2017 c 218 § 4.]

Application—2017 c 218 § 4: "Section 4 of this act applies to the sales of off-road vehicles and snowmobiles beginning in January 2017." [2017 c 218 § 5.]

Finding—Intent—Effective date—2017 c 218: See notes following RCW 46.09.495.

Title 47

PUBLIC HIGHWAYS AND TRANSPORTATION

Chapters

- 47.01 Department of transportation.
- 47.04 General provisions.
- 47.06 Statewide transportation planning.
- 47.29 Transportation innovative partnerships.
- 47.32 Obstructions on right-of-way.
- 47.56 State toll bridges, tunnels, and ferries.
- 47.60 Puget sound ferry and toll bridge system.
- 47.68 Aeronautics.
- 47.78 High capacity transportation development.
- 47.80 Regional transportation planning organizations.

Chapter 47.01 RCW

DEPARTMENT OF TRANSPORTATION

Sections

47.01.141	Repealed.
47.01.321	Repealed.
47.01.350	Repealed.
47.01.360	Repealed.
47.01.400	Repealed.
47.01.405	Repealed.
47.01.406	Repealed.
47.01.410	Repealed.
47.01.418	Repealed.
47.01.505	Interstate 5 Columbia river bridge project—Joint legislative action committee.

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

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

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

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

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

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

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

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

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

47.01.505 Interstate 5 Columbia river bridge project—Joint legislative action committee. (1) On behalf of the state, the legislature of the state of Washington invites the legislature of the state of Oregon to participate in a joint legislative action committee regarding the construction of a new Interstate 5 bridge spanning the Columbia river that achieves the following purposes:

(a) Works with both states' departments of transportation and transportation commissions and stakeholders to begin a process toward project development. It is assumed that the appropriate local and bistate entities already tasked with related work will also be included when the legislative and interagency agreements are ready to move forward. The legislative action committee must convene its first meeting by December 15, 2017;

(b) Reviews and confirms lead roles related to permitting, construction, operation, and maintenance of a future Interstate 5 bridge project;

(c) Establishes a process to seek public comment on the Interstate 5 bridge project development plan selected and presents final recommendations for the process and financing to both states;

(d) Works to ensure that there are sufficient resources available to both states' departments of transportation to inventory and utilize existing data and any prior relevant work to allow for nonduplicative and efficient decision making regarding a new project;

(e) Examines all of the potential mass transit options available for a future Interstate 5 bridge project;

(f) Utilizes design-build procurement, or an equivalent or better innovation delivery method, and determines the least costly, most efficient project management and best practices tools consistent with work already completed including, but not limited to, height, navigation needs, transparency, economic development, and other critical elements, while minimizing the impacts of congestion during construction;

(g) Considers the creation of a Columbia river bridge authority to review bridge needs for possible repair, maintenance, or new construction, prioritizing those needs and making recommendations to both states with regard to financing specific projects, timing, authorities, and operations; and

(h) Provides a report to the legislatures of each state that details the findings and recommendations of the legislative action committee by December 15, 2018. The report must also contain a recommendation as to whether the Interstate 5 project should be designated by the legislature of the state of Washington as a project of statewide significance and by the state of Oregon with an equivalent designation.

(2)(a) The joint Oregon-Washington legislative action committee is established, with sixteen members as provided in this subsection:

(i) The speaker and minority leader of the house of representatives of each state shall jointly appoint four members, two from each of the two largest caucuses of their state's house of representatives.

(ii) The majority leader and minority leader of the senate of each state shall jointly appoint four members, two from each of the two largest caucuses of their state's senate.

(b) The legislative action committee shall choose its cochairs from among its membership, one each from the senate and the house of representatives of both states.

(c) Executive agencies, including the departments of transportation and the transportation commissions, shall cooperate with the committee and provide information and other assistance as the cochairs may reasonably request.

(d) Staff support for the legislative action committee must be provided by the Washington house of representatives office of program research, Washington senate committee services, and, contingent upon the acceptance by the legislature of the state of Oregon of the invitation in subsection (1) of this section to participate in the legislative action committee, the Oregon legislative policy and research office.

(e) Legislative members of the legislative action committee are reimbursed for travel expenses. For Washington legislative members, this reimbursement must be in accordance with RCW 44.04.120.

(f) The expenses of the legislative action committee must be paid jointly by both states' senate and house of representatives. In Washington, committee expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

(g) Each meeting of the legislative action committee must allow an opportunity for public comment. Legislative action committee meetings must be scheduled and conducted in accordance with the requirements of both the senate and the house of representatives of both states. [2017 c 288 § 4.]

Finding—2017 c 288: See note following RCW 43.157.010.

Chapter 47.04 RCW GENERAL PROVISIONS

Sections

47.04.360 Commercial advertising on web sites and social media.

47.04.360 Commercial advertising on web sites and social media. (1) The department is authorized to sell commercial advertising, including product placement, on department web sites and social media. In addition, the department is authorized to sell a version of its mobile application(s) to users who desire to have access to application(s) without advertising. The authority granted in this section does not affect the department's advertising authority provided in RCW 47.60.140.

(2) The department shall deposit all moneys received from the sale of advertisements on web site and mobile applications as authorized in this section into the motor vehicle fund created in RCW 46.68.070.

(3) The department shall adopt standards for advertising, product placement, and other forms of commercial recognition that require the department to define and prohibit, at minimum, the content containing any of the following characteristics, which is not permitted:

- (a) Obscene, indecent, or discriminatory content;
- (b) Political or public issue advocacy content;
- (c) Products, services, or other materials that are offensive, insulting, disparaging, or degrading; or
- (d) Products, services, or messages that are contrary to the public interest, including any advertisement that encourages or depicts unsafe behaviors or encourages unsafe or prohibited driving activities. Alcohol, tobacco, and cannabis are included among the products prohibited. [2017 c 157 § 1.]

Effective date—2017 c 157: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2017." [2017 c 157 § 2.]

Chapter 47.06 RCW STATEWIDE TRANSPORTATION PLANNING

Sections

47.06.110 Public transportation plan.

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

- (1) Articulates the state vision of an interest in public transportation and provides quantifiable objectives, including benefits indicators;
- (2) Identifies the goals for public transit and the roles of federal, state, regional, and local entities in achieving those goals;

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

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

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

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

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

The department shall submit to the senate and house transportation committees by December 1st of each year, reports summarizing the plan's progress. [2017 3rd sp.s. c 25 § 41; 2005 c 319 § 124; 1996 c 186 § 512; 1995 c 399 § 120; 1993 c 446 § 11.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Environmental review of transportation projects: RCW 47.01.290.

Chapter 47.29 RCW TRANSPORTATION INNOVATIVE PARTNERSHIPS

Sections

47.29.170 Unsolicited proposals.

47.29.170 Unsolicited proposals. Before accepting any unsolicited project proposals, the commission must adopt rules to facilitate the acceptance, review, evaluation, and selection of unsolicited project proposals. These rules must include the following:

- (1) Provisions that specify unsolicited proposals must meet predetermined criteria;
- (2) Provisions governing procedures for the cessation of negotiations and consideration;
- (3) Provisions outlining that unsolicited proposals are subject to a two-step process that begins with concept proposals and would only advance to the second step, which are fully detailed proposals, if the commission so directed;
- (4) Provisions that require concept proposals to include at least the following information: Proposers' qualifications and experience; description of the proposed project and impact; proposed project financing; and known public benefits and opposition; and
- (5) Provisions that specify the process to be followed if the commission is interested in the concept proposal, which must include provisions:
 - (a) Requiring that information regarding the potential project would be published for a period of not less than thirty days, during which time entities could express interest in submitting a proposal;

(b) Specifying that if letters of interest were received during the thirty days, then an additional sixty days for submission of the fully detailed proposal would be allowed; and

(c) Procedures for what will happen if there are insufficient proposals submitted or if there are no letters of interest submitted in the appropriate time frame.

The commission may adopt other rules as necessary to avoid conflicts with existing laws, statutes, or contractual obligations of the state.

The commission may not accept or consider any unsolicited proposals before July 1, 2018. [2017 c 313 § 711; 2015 1st sp.s. c 10 § 704; 2013 c 306 § 708; 2011 c 367 § 701; 2009 c 470 § 702; 2007 c 518 § 702; 2006 c 370 § 604; 2005 c 317 § 17.]

Effective date—2017 c 313: See note following RCW 43.19.642.

Effective date—2015 1st sp.s. c 10: See note following RCW 43.19.642.

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—2011 c 367: "Except for sections 703, 704, 705, 716, 719, and 722 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 2011]." [2011 c 367 § 1102.]

Effective date—2009 c 470: See note following RCW 46.68.170.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Additional notes found at www.leg.wa.gov

Chapter 47.32 RCW OBSTRUCTIONS ON RIGHT-OF-WAY

Sections

47.32.140 Railroad grade crossings, obstructions—Hearing.

47.32.140 Railroad grade crossings, obstructions—Hearing. Each railroad company shall keep its right-of-way clear of all brush and timber in the vicinity of a railroad grade crossing with a state highway for a distance of one hundred feet from the crossing in such manner as to permit a person upon the highway to obtain an unobstructed view in both directions of an approaching train or other on-track equipment. The department shall cause brush and timber to be cleared from the right-of-way of a state highway in the proximity of a railroad grade crossing for a distance of one hundred feet from the crossing in such manner as to permit a person upon the highway to obtain an unobstructed view in both directions of an approaching train or other on-track equipment. It is unlawful to erect or maintain a sign, signboard, or billboard, except official highway signs and traffic devices and railroad warning or operating signs, outside the corporate limits of any city or town within a distance of one hundred feet from the point of intersection of the highway and railroad grade crossing unless, after thirty days notice to the Washington utilities and transportation commission and the railroad operating the crossing, the department determines that it does not obscure the sight distance of a person operating a vehicle or train approaching the grade crossing.

When a person who has erected or who maintains such a sign, signboard, or billboard or when a railroad company permits such brush or timber in the vicinity of a railroad grade crossing with a state highway or permits the surface of a

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grade crossing to become inconvenient or dangerous for passage and who has the duty to maintain it, fails, neglects, or refuses to remove or cause to be removed such brush, timber, sign, signboard, or billboard, or maintain the surface of the crossing, the utilities and transportation commission upon complaint of the department or upon complaint of any party interested, or upon its own motion, shall enter upon a hearing in the manner now provided for hearings with respect to railroad-highway grade crossings, and make and enforce proper orders for the removal of the brush, timber, sign, signboard or billboard, or maintenance of the crossing. However, nothing in this section prevents the posting or maintaining of any legal notice or sign, signal, or traffic device required or permitted to be posted or maintained, or the placing and maintaining thereon of highway or road signs or traffic devices giving directions or distances for the information of the public when the signs are approved by the department. The department shall inspect highway grade crossings and make complaint of the violation of any provisions of this section. [2017 c 87 § 6; 1983 c 19 § 2; 1961 c 13 § 47.32.140. Prior: 1955 c 310 § 7; 1937 c 53 § 81; RRS § 6400-81; prior: 1923 c 129 §§ 1-6; RRS §§ 10510-1—10510-6.]

Railroad grade crossings, obstructions: RCW 36.86.100.

Chapter 47.56 RCW

STATE TOLL BRIDGES, TUNNELS, AND FERRIES

Sections

47.56.403 High occupancy toll lane pilot project.
47.56.876 State route number 520 civil penalties account.

47.56.403 High occupancy toll lane pilot project. (1) The department may provide for the establishment, construction, and operation of a pilot project of high occupancy toll lanes on state route 167 high occupancy vehicle lanes within King county. The department may issue, buy, and redeem bonds, and deposit and expend them; secure and remit financial and other assistance in the construction of high occupancy toll lanes, carry insurance, and handle any other matters pertaining to the high occupancy toll lane pilot project.

(2) Tolls for high occupancy toll lanes will be established as follows:

(a) The schedule of toll charges for high occupancy toll lanes must be established by the transportation commission and collected in a manner determined by the commission.

(b) Toll charges shall not be assessed on transit buses and vanpool vehicles owned or operated by any public agency.

(c) The department shall establish performance standards for the state route 167 high occupancy toll lane pilot project. The department must automatically adjust the toll charge, using dynamic tolling, to ensure that toll-paying single-occupant vehicle users are only permitted to enter the lane to the extent that average vehicle speeds in the lane remain above forty-five miles per hour at least ninety percent of the time during peak hours. The toll charge may vary in amount by time of day, level of traffic congestion within the highway facility, vehicle occupancy, or other criteria, as the commission may deem appropriate. The commission may also vary toll charges for single-occupant inherently low-

emission vehicles such as those powered by electric batteries, natural gas, propane, or other clean burning fuels.

(d) The commission shall periodically review the toll charges to determine if the toll charges are effectively maintaining travel time, speed, and reliability on the highway facilities.

(3) The department shall monitor the state route 167 high occupancy toll lane pilot project and shall annually report to the transportation commission and the legislature on operations and findings. At a minimum, the department shall provide facility use data and review the impacts on:

- (a) Freeway efficiency and safety;
- (b) Effectiveness for transit;
- (c) Person and vehicle movements by mode;
- (d) Ability to finance improvements and transportation services through tolls; and

(e) The impacts on all highway users. The department shall analyze aggregate use data and conduct, as needed, separate surveys to assess usage of the facility in relation to geographic, socioeconomic, and demographic information within the corridor in order to ascertain actual and perceived questions of equitable use of the facility.

(4) The department shall modify the pilot project to address identified safety issues and mitigate negative impacts to high occupancy vehicle lane users.

(5) Authorization to impose high occupancy vehicle tolls for the state route 167 high occupancy toll pilot project expires if either of the following two conditions apply:

(a) If no contracts have been let by the department to begin construction of the toll facilities associated with this pilot project within four years of July 24, 2005; or

(b) If high occupancy vehicle tolls are being collected on June 30, 2019.

(6) The department of transportation shall adopt rules that allow automatic vehicle identification transponders used for electronic toll collection to be compatible with other electronic payment devices or transponders from the Washington state ferry system, other public transportation systems, or other toll collection systems to the extent that technology permits.

(7) The conversion of a single existing high occupancy vehicle lane to a high occupancy toll lane as proposed for SR-167 must be taken as the exception for this pilot project.

(8) A violation of the lane restrictions applicable to the high occupancy toll lanes established under this section is a traffic infraction.

(9) Procurement activity associated with this pilot project shall be open and competitive in accordance with *chapter 39.29 RCW. [2017 c 313 § 712; 2015 1st sp.s. c 10 § 705; 2013 c 306 § 709; 2011 c 367 § 709; 2005 c 312 § 3.]

***Reviser's note:** Chapter 39.29 RCW was repealed by 2012 c 224 § 29, effective January 1, 2013. See chapter 39.26 RCW.

Effective date—2017 c 313: See note following RCW 43.19.642.

Effective date—2015 1st sp.s. c 10: See note following RCW 43.19.642.

Contingent effective date—2013 c 306 § 709: "Section 709 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2013, unless *chapter . . . (Substitute House Bill No. 1745), Laws of 2013 is enacted on or before June 30, 2013, in which case section 709 of this act does not take effect." [2013 c 306 § 1404.]

***Reviser's note:** Substitute House Bill No. 1745 was not enacted on or before June 30, 2013.

Effective date—2011 c 367: See note following RCW 47.29.170.

Intent—Captions—2005 c 312: See notes following RCW 47.56.401.

47.56.876 State route number 520 civil penalties account. A special account to be known as the state route number 520 civil penalties account is created in the state treasury. All state route number 520 bridge replacement and HOV program civil penalties generated from the nonpayment of tolls on the state route number 520 corridor must be deposited into the account, as provided under RCW 47.56.870(4)(b)(vii). Moneys in the account may be spent only after appropriation. Expenditures from the account may be used to fund any project within the state route number 520 bridge replacement and HOV program, including mitigation. During the 2013-2015 and 2015-2017 fiscal biennia, the legislature may transfer from the state route number 520 civil penalties account to the state route number 520 corridor account such amounts as reflect the excess fund balance of the state route number 520 civil penalties account. Funds transferred must be used solely for capital expenditures for the state route number 520 bridge replacement and HOV project. During the 2017-2019 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys in the state route number 520 civil penalties account to the state route number 520 corridor account. [2017 c 313 § 713; 2015 1st sp.s. c 10 § 706; 2013 c 306 § 710; 2011 c 367 § 720; 2010 c 248 § 5.]

Effective date—2017 c 313: See note following RCW 43.19.642.

Effective date—2015 1st sp.s. c 10: See note following RCW 43.19.642.

Effective date—2013 c 306: See note following RCW 47.64.170.

Effective date—2011 c 367: See note following RCW 47.29.170.

Chapter 47.60 RCW

PUGET SOUND FERRY AND TOLL BRIDGE SYSTEM

Sections

47.60.530	Puget Sound ferry operations account.
47.60.645	Repealed.

47.60.530 Puget Sound ferry operations account. (1) The Puget Sound ferry operations account is created in the motor vehicle fund.

(2) The following funds must be deposited into the account:

- (a) All moneys directed by law;
- (b) All revenues generated from ferry fares; and
- (c) All revenues generated from commercial advertising, concessions, parking, and leases as allowed under RCW 47.60.140.

(3) Moneys in the account may be spent only after appropriation.

(4) Expenditures from the account may be used only for the maintenance, administration, and operation of the Washington state ferry system.

(5) During the 2015-2017 fiscal biennium, the legislature may transfer from the Puget Sound ferry operations account to the connecting Washington account such amounts as

reflect the excess fund balance of the Puget Sound ferry operations account.

(6) During the 2017-2019 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys in the Puget Sound ferry operations account to the connecting Washington account. [2017 c 313 § 714; 2015 3rd sp.s. c 43 § 605; 2011 1st sp.s. c 16 § 1; 1979 c 27 § 4; 1972 ex.s. c 24 § 3.]

Effective date—2017 c 313: See note following RCW 43.19.642.

Effective date—2015 3rd sp.s. c 43: See note following RCW 46.68.030.

Effective date—2011 1st sp.s. c 16 §§ 1-15: "Sections 1 through 15 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [June 7, 2011]." [2011 1st sp.s. c 16 § 30.]

Additional notes found at www.leg.wa.gov

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

Chapter 47.68 RCW AERONAUTICS

Sections

47.68.090	Aid to municipalities, Indian tribes, persons—Federal aid.
47.68.250	Registration of aircraft. (<i>Effective until July 1, 2021.</i>)
47.68.250	Registration of aircraft. (<i>Effective July 1, 2021.</i>)

47.68.090 Aid to municipalities, Indian tribes, persons—Federal aid. (1) The department of transportation may make available its engineering and other technical services, with or without charge, to any municipality or person desiring them in connection with the planning, acquisition, construction, improvement, maintenance, or operation of airports or air navigation facilities.

(2)(a) The department may render financial assistance by grant or loan, or both, to the following entities out of appropriations made by the legislature for the following purposes:

(i) Any municipality or municipalities acting jointly in the planning, acquisition, construction, improvement, maintenance, or operation of an airport owned or controlled, or to be owned or controlled by such municipality or municipalities;

(ii) Any Indian tribe recognized as such by the federal government or such tribes acting jointly in the planning, acquisition, construction, improvement, maintenance, or operation of an airport, owned or controlled, or to be owned or controlled by such tribe or tribes, and to be held available for the general use of the public; or

(iii) Any person or persons acting jointly in the planning, acquisition, construction, improvement, maintenance, or operation of an airport, owned or controlled, or to be owned or controlled by such person or persons, and to be held available for the general use of the public.

(b) Such financial assistance may be furnished in connection with federal or other financial aid for the same purposes: PROVIDED, That no grant or loan, or both, shall be in excess of seven hundred fifty thousand dollars for any one project: PROVIDED FURTHER, That no grant or loan, or both, shall be granted unless the municipality or municipalities acting jointly, the tribe or tribes acting jointly, or the per-

son or persons acting jointly shall from their own funds match any funds made available by the department upon such ratio as the department may prescribe.

(c) The department must establish, by rule, criteria for administering financial assistance to any entity.

(3) The department is authorized to act as agent of any municipality or municipalities acting jointly, any tribe or tribes acting jointly, or any person or persons acting jointly upon the request of such municipality or municipalities, tribe or tribes, or person or persons in accepting, receiving, receipting for, and disbursing federal moneys, and other moneys public or private, made available to finance, in whole or in part, the planning, acquisition, construction, improvement, maintenance, or operation of an airport or air navigation facility; and if requested by such municipality or municipalities, tribe or tribes, or person or persons, may act as its or their agent in contracting for and supervising such planning, acquisition, construction, improvement, maintenance, or operation; and all municipalities, tribes, and persons are authorized to designate the department as their agent for the foregoing purposes. The department, as principal on behalf of the state, and any municipality on its own behalf, may enter into any contracts, with each other or with the United States or with any person, which may be required in connection with a grant or loan of federal moneys for airport or air navigation facility purposes. All federal moneys accepted under this section shall be accepted and transferred or expended by the department upon such terms and conditions as are prescribed by the United States. All moneys received by the department pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available: PROVIDED, That any landing fee or charge imposed by any Indian tribe or tribes for the privilege of use of an airport facility planned, acquired, constructed, improved, maintained, or operated with financial assistance from the department pursuant to this section must apply equally to tribal and nontribal members: PROVIDED FURTHER, That in the event any municipality or municipalities, Indian tribe or tribes, or person or persons, or any distributor of aircraft fuel as defined by RCW 82.42.010 which operates in any airport facility which has received financial assistance pursuant to this section, fails to collect the aircraft fuel excise tax as specified in chapter 82.42 RCW, all funds or value of technical assistance given or paid to such municipality or municipalities, Indian tribe or tribes, or person or persons under the provisions of this section shall revert to the department, and shall be due and payable to the department immediately. [2017 c 48 § 2; 2011 c 51 § 1; 2009 c 470 § 718; 1980 c 67 § 1; 1975 1st ex.s. c 161 § 1; 1947 c 165 § 9; Rem. Supp. 1947 § 10964-89. Formerly RCW 14.04.090.]

Finding—2017 c 48: "The legislature finds that the Washington state department of transportation airport investment study identified total statewide airport preservation and capital needs and included a list of recommended changes. One of the recommendations is to increase the maximum

amount authorized by the airport aid program per grant to airports. This change can help smaller airports use the state grant to match federal funding." [2017 c 48 § 1.]

Effective date—2009 c 470: See note following RCW 46.68.170.

Distributor of aircraft fuel defined: RCW 82.42.010(7).

47.68.250 Registration of aircraft. (Effective until July 1, 2021.) (1) Every aircraft must be registered with the department for each calendar year in which the aircraft is operated or is based within this state. A fee of fifteen dollars is charged for each such registration and each annual renewal thereof.

(2) Possession of the appropriate effective federal certificate, permit, rating, or license relating to ownership and airworthiness of the aircraft, and payment of the excise tax imposed by Title 82 RCW for the privilege of using the aircraft within this state during the year for which the registration is sought, and payment of the registration fee required by this section are the only requisites for registration of an aircraft under this section.

(3) The registration fee imposed by this section is payable to and collected by the secretary. The fee for any calendar year must be paid during the month of January, and must be collected by the secretary at the time of the collection by him or her of the excise tax. If the secretary is satisfied that the requirements for registration of the aircraft have been met, he or she must issue to the owner of the aircraft a certificate of registration therefor. The secretary must pay to the state treasurer the registration fees collected under this section, which registration fees must be credited to the aeronautics account.

(4) It is not necessary for the registrant to provide the secretary with originals or copies of federal certificates, permits, ratings, or licenses. The secretary must issue certificates of registration, or such other evidences of registration or payment of fees as he or she may deem proper; and in connection therewith may prescribe requirements for the possession and exhibition of such certificates or other evidences.

(5) The provisions of this section do not apply to:

(a) An aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

(b) An aircraft registered under the laws of a foreign country;

(c) An aircraft that is owned by a nonresident if:

(i) The aircraft remains in this state or is based in this state, or both, for a period less than ninety days; or

(ii) The aircraft is a large private airplane as defined in RCW 82.08.215 and remains in this state for a period of ninety days or longer, but only when:

(A) The airplane is in this state exclusively for the purpose of repairs, alterations, or reconstruction, including any flight testing related to the repairs, alterations, or reconstruction, or for the purpose of continual storage of not less than one full calendar year;

(B) An employee of the facility providing these services is on board the airplane during any flight testing; and

(C) Within ninety days of the date the airplane first arrived in this state during the calendar year, the nonresident files a written statement with the department indicating that the airplane is exempt from registration under this subsection (5)(c)(ii). The written statement must be filed in a form and manner prescribed by the department and must include such information as the department requires. The department may require additional periodic verification that the airplane remains exempt from registration under this subsection (5)(c)(ii) and that written statements conform with the provisions of RCW 9A.72.085;

(d) An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(e) An aircraft owned by the commercial manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft;

(f) An aircraft being held for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of an aircraft dealer licensed under Title 14 RCW; and

(g) An aircraft based within the state that is in an unairworthy condition, is not operated within the registration period, and has obtained a written exemption issued by the secretary.

(6) The secretary must be notified within thirty days of any change in ownership of a registered aircraft. The notification must contain the N, NC, NR, NL, or NX number of the aircraft, the full name and address of the former owner, and the full name and address of the new owner. For failure to so notify the secretary, the registration of that aircraft may be canceled by the secretary, subject to reinstatement upon application and payment of a reinstatement fee of ten dollars by the new owner.

(7) A municipality or port district that owns, operates, or leases an airport, as defined in RCW 47.68.020, with the intent to operate, must require from an aircraft owner proof of aircraft registration as a condition of leasing or selling tiedown or hangar space for an aircraft. It is the responsibility of the lessee or purchaser to register the aircraft. Proof of registration must be provided according to the following schedule:

(a) For the purchase of tiedown or hangar space, the municipality or port district must allow the purchaser thirty days from the date of the application for purchase to produce proof of aircraft registration.

(b) For the lease of tiedown or hangar space that extends thirty days or more, the municipality or port district must allow the lessee thirty days to produce proof of aircraft registration from the date of the application for lease of tiedown or hangar space.

(c) For the lease of tiedown or hangar space that extends less than thirty days, the municipality or port district must allow the lessee to produce proof of aircraft registration at any point prior to the final day of the lease.

(8) The airport must work with the aviation division to assist in its efforts to register aircraft by providing information about based aircraft on an annual basis as requested by the division. [2017 3rd sp.s. c 25 § 44; 2016 c 20 § 3; 2013 2nd sp.s. c 13 § 1102; 2003 c 375 § 4; 1999 c 302 § 2; 1998 c 188 § 1; 1995 c 170 § 3; 1993 c 208 § 7; 1987 c 220 § 3; 1979 c 158 § 206; 1967 ex.s. c 9 § 8; 1955 c 150 § 11; 1949 c 49 §

12; 1947 c 165 § 25; Rem. Supp. 1949 § 10964-105. Formerly RCW 14.04.250.]

Expiration date—2017 3rd sp.s. c 25 § 44: "Section 44 of this act expires July 1, 2021." [2017 3rd sp.s. c 25 § 45.]

Effective date—2016 c 20 § 3: "Section 3 of this act takes effect July 1, 2016." [2016 c 20 § 6.]

Expiration date—2016 c 20 § 3: "Section 3 of this act expires July 1, 2021." [2016 c 20 § 7.]

Findings—Intent—2016 c 20: See note following RCW 47.68.240.

Intent—Findings—2013 2nd sp.s. c 13: "(1) The legislature intends to promote the economic development of our state's aerospace cluster and increase the tax revenues collected by the state through promoting a competitive marketplace for storing and modifying unfurnished, noncommercial aircraft. The legislature finds that Washington is currently losing these types of jobs to other states, resulting in the loss of high-wage jobs and new tax revenue. Further, the legislature finds that the current tax statutes are an impediment to encouraging the development of aerospace clusters in our state. Therefore, the legislature intends to modify our state's tax policy to encourage aerospace cluster development within the state and increase tax revenues.

(2) The joint legislative audit and review committee, as part of its tax preference review process, must estimate the net impact on state tax revenues by comparing the decrease in state revenues resulting from the changes made in part XI of this act to the additional tax revenues generated from the direct, indirect, and induced economic impacts from those changes. The committee must also, to the extent practicable, estimate job growth in the aerospace cluster resulting from the changes made in part XI of this act. The committee must conduct its tax preference review of part XI of this act during calendar year 2016 and report its findings and recommendations to the legislature by January 1, 2017." [2013 2nd sp.s. c 13 § 1101.]

Effective date—Expiration date—2013 2nd sp.s. c 13: See notes following RCW 82.08.215.

Aircraft dealers: Chapter 14.20 RCW.

Definition of terms: RCW 14.20.010, 47.68.020.

Additional notes found at www.leg.wa.gov

47.68.250 Registration of aircraft. (Effective July 1, 2021.) (1) Every aircraft must be registered with the department for each calendar year in which the aircraft is operated or is based within this state. A fee of fifteen dollars is charged for each such registration and each annual renewal thereof.

(2) Possession of the appropriate effective federal certificate, permit, rating, or license relating to ownership and airworthiness of the aircraft, and payment of the excise tax imposed by Title 82 RCW for the privilege of using the aircraft within this state during the year for which the registration is sought, and payment of the registration fee required by this section are the only requisites for registration of an aircraft under this section.

(3) The registration fee imposed by this section is payable to and collected by the secretary. The fee for any calendar year must be paid during the month of January, and collected by the secretary at the time of the collection by him or her of the said excise tax. If the secretary is satisfied that the requirements for registration of the aircraft have been met, he or she must issue to the owner of the aircraft a certificate of registration therefor. The secretary must pay to the state treasurer the registration fees collected under this section, which registration fees must be credited to the aeronautics account.

(4) It is not necessary for the registrant to provide the secretary with originals or copies of federal certificates, permits, ratings, or licenses. The secretary must issue certificates of registration, or such other evidences of registration or payment of fees as he or she may deem proper; and in connection

therewith may prescribe requirements for the possession and exhibition of such certificates or other evidences.

(5) The provisions of this section do not apply to:

(a) An aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

(b) An aircraft registered under the laws of a foreign country;

(c) An aircraft which is owned by a nonresident and registered in another state. However, if said aircraft remains in and/or is based in this state for a period of ninety days or longer it is not exempt under this section;

(d) An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(e) An aircraft owned by the commercial manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft;

(f) An aircraft being held for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of an aircraft dealer licensed under Title 14 RCW;

(g) An aircraft based within the state that is in an unairworthy condition, is not operated within the registration period, and has obtained a written exemption issued by the secretary.

(6) The secretary must be notified within thirty days of any change in ownership of a registered aircraft. The notification must contain the N, NC, NR, NL, or NX number of the aircraft, the full name and address of the former owner, and the full name and address of the new owner. For failure to so notify the secretary, the registration of that aircraft may be canceled by the secretary, subject to reinstatement upon application and payment of a reinstatement fee of ten dollars by the new owner.

(7) A municipality or port district that owns, operates, or leases an airport, as defined in RCW 47.68.020, with the intent to operate, must require from an aircraft owner proof of aircraft registration as a condition of leasing or selling tie-down or hangar space for an aircraft. It is the responsibility of the lessee or purchaser to register the aircraft. Proof of registration must be provided according to the following schedule:

(a) For the purchase of tiedown or hangar space, the municipality or port district must allow the purchaser thirty days from the date of the application for purchase to produce proof of aircraft registration.

(b) For the lease of tiedown or hangar space that extends thirty days or more, the municipality or port district must allow the lessee thirty days to produce proof of aircraft registration from the date of the application for lease of tiedown or hangar space.

(c) For the lease of tiedown or hangar space that extends less than thirty days, the municipality or port district must allow the lessee to produce proof of aircraft registration at any point prior to the final day of the lease.

(8) The airport must work with the aviation division to assist in its efforts to register aircraft by providing information about based aircraft on an annual basis as requested by the division. [2017 3rd sp.s. c 25 § 46; 2016 c 20 § 4; 2003 c

375 § 4; 1999 c 302 § 2; 1998 c 188 § 1; 1995 c 170 § 3; 1993 c 208 § 7; 1987 c 220 § 3; 1979 c 158 § 206; 1967 ex.s. c 9 § 8; 1955 c 150 § 11; 1949 c 49 § 12; 1947 c 165 § 25; Rem. Supp. 1949 § 10964-105. Formerly RCW 14.04.250.]

Effective date—2017 3rd sp.s. c 25 § 46: "Section 46 of this act takes effect July 1, 2021." [2017 3rd sp.s. c 25 § 47.]

Effective date—2016 c 20 § 4: "Section 4 of this act takes effect July 1, 2021." [2016 c 20 § 8.]

Findings—Intent—2016 c 20: See note following RCW 47.68.240.

Aircraft dealers: Chapter 14.20 RCW.

Definition of terms: RCW 14.20.010, 47.68.020.

Additional notes found at www.leg.wa.gov

Chapter 47.78 RCW

HIGH CAPACITY TRANSPORTATION DEVELOPMENT

Sections

47.78.010 Repealed.

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

Chapter 47.80 RCW

REGIONAL TRANSPORTATION PLANNING ORGANIZATIONS

Sections

47.80.020 Regional transportation planning organizations authorized.

47.80.020 Regional transportation planning organizations authorized. The legislature hereby authorizes creation of regional transportation planning organizations within the state. Each regional transportation planning organization shall be formed through the voluntary association of local governments within a county, or within geographically contiguous counties. Each organization shall:

- (1) Encompass at least one complete county;
- (2)(a) Have a population of at least one hundred thousand, (b) have a population of at least seventy-five thousand and contain a Washington state ferries terminal, (c) have a population of at least forty thousand and cover a geographic area of at least five thousand square miles, or (d) contain a minimum of three counties; and
- (3) Have as members all counties within the region, and at least sixty percent of the cities and towns within the region representing a minimum of seventy-five percent of the cities' and towns' population.

The state department of transportation must verify that each regional transportation planning organization conforms with the requirements of this section.

In urbanized areas, the regional transportation planning organization is the same as the metropolitan planning organization designated for federal transportation planning purposes. [2017 c 68 § 1; 2016 c 27 § 1; 1990 1st ex.s. c 17 § 54.]

Effective date—2016 c 27: "This act takes effect July 1, 2016." [2016 c 27 § 2.]

**Title 48
INSURANCE**

Chapters

- 48.02 Insurance commissioner.**
- 48.15 Unauthorized insurers.**
- 48.17 Insurance producers, title insurance agents, and adjusters.**
- 48.18A Variable contract act.**
- 48.20 Disability insurance.**
- 48.21 Group and blanket disability insurance.**
- 48.23 Life insurance and annuities.**
- 48.24 Group life and annuities.**
- 48.25 Industrial life insurance.**
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- 48.43 Insurance reform.**
- 48.62 Local government insurance transactions.**
- 48.102 Life settlements act.**
- 48.185 Electronic notices and document delivery.**
- 48.190 Public benefit hospital entities—Joint self-insurance programs.**

Chapter 48.02 RCW

INSURANCE COMMISSIONER

Sections

- 48.02.068 Confidentiality of personal health information—Public disclosure.
- 48.02.210 Repealed.
- 48.02.230 Health insurance market stability program—Confidentiality—Definitions—Reports—Commissioner's responsibilities.

48.02.068 Confidentiality of personal health information—Public disclosure. (1) All nonpublic personal health information obtained by, disclosed to, or in the custody of the commissioner, regardless of the form or medium, is confidential and is not subject to public disclosure under chapter 42.56 RCW. The commissioner shall not disclose nonpublic personal health information except in the furtherance of regulatory or legal action brought as a part of the commissioner's official duties.

(2) The following definitions apply only for the purposes of this section:

(a) "Health information" means any information or data, except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or a patient, or a policyholder or enrollee, that relates to:

- (i) The past, present, or future physical, mental, or behavioral health or condition of an individual;
- (ii) The provision of health care to an individual; or
- (iii) Payment for the provision of health care to an individual.

(b) "Health care" means preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, services, procedures, tests, or counseling that:

- (i) Relates to the physical, mental, or behavioral condition of an individual;
- (ii) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs, or any other tissue; or

(iii) Prescribes, dispenses, or furnishes to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

(c) "Nonpublic personal health information" means health information:

(i) That identifies an individual who is the subject of the information; or

(ii) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

(d) "Patient" means an individual who is receiving, has received, or has sought health care. The term includes a deceased individual who has received health care.

(e) "Policyholder" or "enrollee" means a person who is covered by, enrolled in, has applied for, or purchased, an insurance policy, a health plan as defined in RCW 48.43.005, a group plan, or any other product regulated by the insurance commissioner. "Policyholder" or "enrollee" may include, without limitation, a subscriber, member, annuitant, beneficiary, spouse, or dependent.

(3) The commissioner may:

(a) Share documents, materials, or other information, including the confidential documents, materials, or information subject to subsection (1) of this section, with (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of this and other states and nations, the federal government, and international authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(b) Receive documents, materials, or information, including otherwise either confidential or privileged documents, materials, or information, from (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of this and other states and nations, the federal government, and international authorities and must maintain as confidential or privileged any document, material, or information received that is either confidential or privileged, or both, under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) Enter into agreements governing the sharing and use of information consistent with this subsection.

(4) No waiver of an existing claim of confidentiality or privilege in the documents, materials, or information may occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

(5) The commissioner shall add language in large font to the release consumers use when filing complaints with the office, whether on-line or in writing, informing them that the office may share their personal health information with other entities and for the purposes authorized under subsection (3) of this section, and that the information will only be shared if it is to be held confidential by the other entity. Consumers shall be provided the opportunity to opt out at the time of filing their complaint, indicating that their personal health information may not be shared under subsection (3) of this section. [2017 c 193 § 1.]

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

48.02.230 Health insurance market stability program—Confidentiality—Definitions—Reports—Commissioner's responsibilities. (1) For the purposes of developing or implementing an individual health insurance market stability program, any reports, data, documents, or materials that health carriers submit to or receive from the United States department of health and human services as part of any health and human services operated risk adjustment or reinsurance program, or that the Washington state health insurance pool, established under chapter 48.41 RCW, prepares for purposes of this section that are obtained by, disclosed to, or in the custody of the commissioner, regardless of the form or medium, are confidential and are not subject to public disclosure under chapter 42.56 RCW. The commissioner shall not disclose these reports, data, documents, or materials except in the furtherance of developing and implementing an individual health insurance market stability program.

(2) For the purposes of this section:

(a) A health and human services operated risk adjustment or reinsurance program is any of the health insurance risk adjustment or reinsurance programs established under 42 U.S.C. Secs. 18061 and 18063. The reports, data, documents, and materials that are confidential under this section include all data and information carriers are required to provide to health and human services through the dedicated data environments required by 45 C.F.R. Sec. 153.700 et seq. for all health carriers participating in any health and human services health insurance risk adjustment or reinsurance program; and

(b) "Health carrier" has the same meaning as in RCW 48.43.005.

(3) The commissioner may:

(a) Share documents, materials, or other information, including the confidential documents, materials, or information subject to subsection (1) of this section, with contractors conducting actuarial, economic, or other analyses necessary to develop or implement an individual health insurance market stability program.

(b) Enter into agreements governing the sharing and use of information consistent with this subsection.

(4) No waiver of an existing claim of confidentiality or privilege in the documents, materials, or information may occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

(5) Nothing in this section may be construed to authorize the commissioner to submit a complete application to the federal government for a waiver of any provision of federal law, including the federal patient protection and affordable care act, P.L. 111-148, as amended by the federal health care and education reconciliation act, P.L. 111-152, or federal regulations or guidance issued under the affordable care act. The commissioner shall provide the joint select committee on health care oversight established by RCW 44.82.010 with a progress report prior to submitting a draft waiver application to the federal government.

(6) Reports, data, documents, and materials subject to this section are those obtained by the commissioner as of December 31, 2019.

(7) The study conducted under this section to examine individual market stability options must be conducted one time only, and the data requested for purposes of the study must be mutually agreed on between the commissioner and the carriers. [2017 3rd sp.s. c 30 § 1.]

Effective date—2017 3rd sp.s. c 30: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 7, 2017]." [2017 3rd sp.s. c 30 § 3.]

Chapter 48.15 RCW UNAUTHORIZED INSURERS

Sections

- 48.15.070 Surplus line brokers—Licensing—Bond—Renewal. (*Effective January 1, 2018.*)
48.15.073 Nonresident surplus line brokers—Licensing—Reciprocity—Service of process. (*Effective January 1, 2018.*)

48.15.070 Surplus line brokers—Licensing—Bond—Renewal. (*Effective January 1, 2018.*) Any individual while a resident of this state, or any firm, corporation, or other business entity that has in its employ a qualified individual who is a resident of this state and who is authorized to exercise the powers of the firm or corporation, deemed by the commissioner to be competent and trustworthy, and while maintaining an office at a designated location in this state, may be licensed as a surplus line broker in accordance with this section.

(1) An applicant and a licensee for a resident surplus line broker license must have and maintain a license from the commissioner as a resident insurance producer with property and casualty lines of authority.

(2) Each applicant for a resident surplus line broker's license must pass the required examination and pay the required fee when applying for a license.

(3) If a nonresident that is licensed as a resident surplus line broker in another state moves to this state and wishes to become licensed as a resident surplus line broker in this state, then the examination requirement is waived if the application is received by the commissioner within ninety days of the cancellation of the surplus line broker's resident license in the other state.

(4) Application to the commissioner for the license must be made on forms furnished by the commissioner. As part of, or in connection with, this application, the applicant must furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business records; purposes; and other pertinent information, as the commissioner may reasonably require. If in the process of verifying fingerprints, business records, or other information, the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges must be paid to the commissioner's office by the applicant.

(5) Every resident surplus line broker licensed under this chapter must maintain a bond in favor of the state of Washington in the penal sum of twenty thousand dollars, with authorized corporate sureties approved by the commissioner,

conditioned that the licensee will conduct business under the license in accordance with the provisions of this chapter and that the licensee will promptly remit the taxes provided by RCW 48.15.120. The licensee must maintain such bond in force for as long as the license remains in effect.

(6) Every resident surplus line broker licensed under this chapter must maintain in force while so licensed a bond in favor of the people of the state of Washington or a named insured such that the people of the state are covered by the bond, executed by an authorized corporate surety approved by the commissioner, in the amount of two thousand five hundred dollars, or five percent of the premiums from placement of coverage with surplus line insurers in the previous calendar year, whichever is greater, but not to exceed one hundred thousand dollars total aggregate liability. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the required amount of the bond. The bond must be contingent on the accounting by the resident surplus line broker to any person requesting the broker to obtain insurance, for moneys or premiums collected in connection therewith. A bond issued in accordance with RCW 48.17.250 or with this subsection will satisfy the requirements of both RCW 48.17.250 and this subsection if the limit of liability is not less than the greater of the requirement of RCW 48.17.250 or the requirement of this subsection.

(7) Authorized surplus line brokers of a business entity may meet the requirements of subsection (6) of this section with a bond in the name of the business entity, continuous in form, and in the amount set forth in subsection (6) of this section.

(8) Surplus line brokers may meet the requirements of this section with a bond in the name of an association. The association must have been in existence for five years, have common membership, and have been formed for a purpose other than obtaining a bond. An individual surplus line broker remains responsible for assuring that a bond is in effect and is for the correct amount.

(9) Members of an association may meet the requirements of subsection (6) of this section with a bond in the name of the association that is continuous in form and in the amounts set forth in subsection (6) of this section for each participating member.

(10) The surety may cancel the bond and be released from further liability thereunder upon thirty days' written notice in advance to the principal. The cancellation does not affect any liability incurred or accrued under the bond before the termination of the thirty-day period.

(11) Failure to have and maintain the bonds required under subsections (5) and (6) of this section is grounds for revocation of a license under RCW 48.15.140.

(12) If a party injured under the terms of the bond required under subsection (6) of this section requests the surplus line broker to provide the name of the surety and the bond number, the surplus line broker must provide the information within three working days after receiving the request.

(13) All records relating to the bonds required by this section must be kept available and open to the inspection of the commissioner at any business time.

(14) A surplus line broker's license expires if not timely renewed. Surplus line broker licenses are valid for the time

period established by the commissioner unless suspended or revoked at an earlier date.

(15) Subject to the right of the commissioner to suspend, revoke, or refuse to renew any surplus line broker's license as provided in this title, the license may be renewed into another like period by filing with the commissioner by any means acceptable to the commissioner on or before the expiration date a request, by or on behalf of the licensee, for the renewal accompanied by payment of the renewal fee as specified in RCW 48.14.010.

(16) If the request and fee for renewal of a surplus line broker's license are filed with the commissioner prior to expiration of the existing license, the licensee may continue to act under the license, unless sooner revoked or suspended, until the issuance of a renewal license, or until the expiration of fifteen days after the commissioner has refused to renew the license and has mailed notification of the refusal to the licensee. If the request and fee for the license are not received by the expiration date, the authority conferred by the license ends on the expiration date.

(17) If the request for renewal of a surplus line broker's license and payment of the fee are not received by the commissioner prior to the expiration date, the applicant for renewal must pay to the commissioner in addition to the renewal fee, a surcharge as follows:

(a) For the first thirty days or part thereof of delinquency, the surcharge is fifty percent of the renewal fee; and

(b) For the next thirty days or part thereof of delinquency, the surcharge is one hundred percent of the renewal fee.

(18) If the request for renewal of a surplus line broker's license and payment of the renewal fee are not received by the commissioner after sixty days but prior to twelve months after the expiration date, the application must be for reinstatement of the license and the applicant for reinstatement must pay to the commissioner the license fee and a surcharge of two hundred percent of the license fee.

(19) Subsections (17) and (18) of this section do not exempt any person from any penalty provided by law for transacting business without a valid and subsisting license.

(20) An individual surplus line broker who allows his or her license to lapse may, within twelve months after the expiration date, reinstate the same license without the necessity of passing a written examination.

(21) For the purposes of this section, a "qualified individual" is a natural person who has met all the requirements that must be met by an individual surplus line broker.

(22) The commissioner may require any documents reasonably necessary to verify the information contained in an application and may, from time to time, require any licensed surplus line broker to produce the information called for in an application for license. [2017 c 49 § 1; 2010 c 18 § 1; 2009 c 162 § 3; 2002 c 227 § 3; 1994 c 131 § 3; 1983 1st ex.s. c 32 § 24; 1982 c 181 § 5; 1981 c 199 § 1; 1980 c 102 § 3; 1979 ex.s. c 130 § 3; 1977 ex.s. c 182 § 2; 1959 c 225 § 4; 1947 c 79 § .15.07; Rem. Supp. 1947 § 45.15.07.]

Effective date—2017 c 49: "This act takes effect January 1, 2018." [2017 c 49 § 3.]

Effective date—2010 c 18: "This act takes effect July 26, 2010." [2010 c 18 § 6.]

Effective date—2009 c 162: See note following RCW 48.03.020.

[2017 RCW Supp—page 626]

Additional notes found at www.leg.wa.gov

48.15.073 Nonresident surplus line brokers—Licensing—Reciprocity—Service of process. (Effective January 1, 2018.) (1) The commissioner may license a nonresident person as a surplus line broker who is not a resident of this state if the person's resident state issues nonresident surplus line broker licenses to residents of this state on the same basis.

(2) A nonresident that holds a surplus line broker's license, or the equivalent, in the applicant's home state, and that license is in good standing is deemed qualified and meets the minimum standards of this state for licensing as a nonresident surplus line broker.

(3) Once a person has been issued a nonresident surplus line broker's license by the commissioner, the licensee must fulfill all the same responsibilities as a resident surplus line broker, except for bonding, and is subject to the (a) commissioner's supervision as though resident in this state and (b) rules adopted under this chapter.

(4) A nonresident surplus line broker's license expires if not timely renewed. A nonresident surplus line broker's license is valid for the time period established by the commissioner unless suspended or revoked at an earlier date. The request and fee for the renewal of the license is the same as the renewal and fee requirements for a resident surplus line broker licensed under RCW 48.15.070.

(5) Each licensed nonresident surplus line broker, by application for and issuance of a license, is deemed to have appointed the commissioner as the surplus line broker's attorney to receive service of legal process issued against the surplus line broker in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes effective legal service upon the surplus line broker.

(a) The appointment of the commissioner as attorney is irrevocable, binds any successor in interest or to the assets or liabilities of the surplus line broker, and remains in effect for as long as there could be any cause of action against the surplus line broker arising out of the surplus line broker's insurance transactions in this state.

(b) Service of legal process must be accomplished and processed in the manner prescribed in RCW 48.02.200. [2017 c 49 § 2; 2010 c 18 § 2; 2009 c 162 § 4; 2001 c 91 § 1.]

Effective date—2017 c 49: See note following RCW 48.15.070.

Effective date—2010 c 18: See note following RCW 48.15.070.

Effective date—2009 c 162: See note following RCW 48.03.020.

Chapter 48.17 RCW INSURANCE PRODUCERS, TITLE INSURANCE AGENTS, AND ADJUSTERS

Sections

48.17.563 Insurance education providers—Commissioner's approval—Renewal fee.

48.17.563 Insurance education providers—Commissioner's approval—Renewal fee. (1) The commissioner may require insurance education providers to furnish specific information regarding their curricula, faculty, methods of monitoring attendance, and other matters reasonably related

to providing insurance education under this chapter. The commissioner may grant approvals to such providers who demonstrate the ability to conduct and certify completion of one or more courses satisfying the insurance education requirements of RCW 48.17.150.

(2) Provider and course approvals are valid for the time period established by the commissioner and shall expire if not timely renewed. Each provider shall pay the renewal fee set forth in *RCW 48.14.010(1)(n). [2017 3rd sp.s. c 25 § 15; 1994 c 131 § 6; 1989 c 323 § 7.]

***Reviser's note:** The reference to RCW 48.14.010(1)(n) appears to be erroneous. See RCW 48.14.010.

Additional notes found at www.leg.wa.gov

Chapter 48.18A RCW VARIABLE CONTRACT ACT

Sections

48.18A.035 Return of policy and refund of premium—Notice required—Effect of return.

48.18A.035 Return of policy and refund of premium—Notice required—Effect of return. Every individual variable contract issued shall have printed on its face or attached thereto a notice stating in substance that the policy owner shall be permitted to return the policy within ten days after it is received by the policy owner and to have the market value of the assets purchased by its premium, less taxes and investment brokerage commissions, if any, refunded, if, after examination of the policy, the policy owner is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or insurance producer. If a policy owner pursuant to such notice returns the policy to the insurer at its home or branch office or to the insurance producer through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued. [2017 3rd sp.s. c 25 § 16; 2008 c 217 § 19; 1983 1st ex.s. c 32 § 7; 1982 c 181 § 15.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Additional notes found at www.leg.wa.gov

Chapter 48.20 RCW DISABILITY INSURANCE

Sections

48.20.322 Decodified.

48.20.322 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 48.21 RCW GROUP AND BLANKET DISABILITY INSURANCE

Sections

48.21.380 Noninsurance benefits.

48.21.380 Noninsurance benefits. (1) A disability insurer may include the following noninsurance benefits as

part of a policy or certificate of group disability insurance, with the prior approval of the commissioner and where such benefits bear a reasonable relationship to the disability insurance with which they are intended to be offered:

- (a) Will preparation services;
- (b) Financial planning and estate planning services;
- (c) Probate and estate settlement services;
- (d) Grief counseling;
- (e) Funeral planning and funeral services, but it must be disclosed that this noninsurance benefit does not constitute an insurance funded prearrangement contract, pursuant to RCW 18.39.255; and
- (f) Such other services as the commissioner may identify by rule.

(2) The commissioner may adopt rules to regulate the disclosure of noninsurance benefits permitted under this section, including but not limited to guidelines regarding the coverage provided under the policy or certificate of insurance.

(3) Those providing the services listed in subsection (1) of this section must be appropriately licensed.

(4) This section does not require the commissioner to approve any particular proposed noninsurance benefit. The commissioner may disapprove any proposed noninsurance benefit that the commissioner determines may tend to promote or facilitate the violation of any other section of this title.

(5) This section does not expand, limit, or otherwise affect the authority and ethical obligations of those who are authorized by the state supreme court to practice law in this state. This section does not limit the prohibition against the unauthorized practice of law under chapter 2.48 RCW.

(6) This section does not affect the application of chapter 21.20 RCW.

(7) This section does not affect wellness programs as described in RCW 48.30.140(6). [2017 c 32 § 2; 2016 c 143 § 2.]

Chapter 48.23 RCW LIFE INSURANCE AND ANNUITIES

Sections

48.23.520 Decodified.

48.23.520 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 48.24 RCW GROUP LIFE AND ANNUITIES

Sections

48.24.280 Group life insurance—Noninsurance benefits.

48.24.280 Group life insurance—Noninsurance benefits. (1) A life insurer may include the following noninsurance benefits as part of a policy or certificate of group life insurance, with the prior approval of the commissioner:

- (a) Will preparation services;
- (b) Financial planning and estate planning services;
- (c) Probate and estate settlement services;

(d) Grief counseling;

(e) Funeral planning and funeral services, but it must be disclosed that this noninsurance benefit does not constitute an insurance funded prearrangement contract, pursuant to RCW 18.39.255; and

(f) Such other services as the commissioner may identify by rule.

(2) The commissioner may adopt rules to regulate the disclosure of noninsurance benefits permitted under this section, including but not limited to guidelines regarding the coverage provided under the policy or certificate of insurance.

(3) Those providing the services listed in subsection (1) of this section must be appropriately licensed.

(4) This section does not require the commissioner to approve any particular proposed noninsurance benefit. The commissioner may disapprove any proposed noninsurance benefit that the commissioner determines may tend to promote or facilitate the violation of any other section of this title.

(5) This section does not expand, limit, or otherwise affect the authority and ethical obligations of those who are authorized by the state supreme court to practice law in this state. This section does not limit the prohibition against the unauthorized practice of law under chapter 2.48 RCW.

(6) This section does not affect the application of chapter 21.20 RCW. [2017 c 32 § 1; 2016 c 143 § 1; 2009 c 76 § 2.]

Chapter 48.25 RCW INDUSTRIAL LIFE INSURANCE

Sections

48.25.140 Authority to alter policy.

48.25.140 Authority to alter policy. There shall be a provision that no insurance producer shall have the power or authority to waive, change, or alter any of the terms or conditions of any policy; except that, at the option of the insurer, the terms or conditions may be changed by an endorsement signed by a duly authorized officer of the insurer. [2017 3rd sp.s. c 25 § 17; 2008 c 217 § 33; 1947 c 79 § .25.14; Rem. Supp. 1947 § 45.25.14.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Chapter 48.29 RCW TITLE INSURERS

Sections

48.29.005 Administration of chapter—Rules.
48.29.010 Scope of chapter—Definitions.
48.29.015 Requirement to maintain records—Report to commissioner.
48.29.017 Statistical reporting agent—Duties—Required reports—Costs—Rules—Information and data exchange.
48.29.147 Required filings—Information subject to review—Commissioner's powers—Timing.
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48.29.400 Rating organizations—Intent.
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48.29.445 Rating organizations—Actuarial, technical, and other services.
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48.29.455 Rating organizations—Members and subscribers—Appeal to commissioner.
48.29.460 Rating organizations—Members and subscribers—Discrimination.
48.29.465 Rating organizations—Membership or subscription not required.
48.29.470 Rating organizations—Aggregate information and experience data—Exchange.
48.29.500 Advisory organizations—Filings with commissioner.
48.29.510 Advisory organizations—Acts and practices inconsistent with chapter.

48.29.005 Administration of chapter—Rules. The commissioner may adopt rules to implement and administer this chapter, including but not limited to:

(1) Establishing the information to be included in the report required under RCW 48.29.015;

(2) Establishing the information required for the filing of rates for title insurance under RCW 48.29.147;

(3) Establishing standards which title insurance rate filings must satisfy under RCW 48.29.147;

(4) Establishing a date, which date shall not be earlier than January 1, 2010, by which all title insurers selling policies in this state must file their rates with the commissioner under RCW 48.29.143 and 48.29.147 rather than under RCW 48.29.140 and refile any rates that were in effect prior to the date established by the commissioner;

(5) Defining what things of value a title insurance insurer or title insurance agent is permitted to give to any person in a position to refer or influence the referral of title insurance business under RCW 48.29.210(2). In adopting rules under this subsection, the commissioner shall work with representatives of the title insurance and real estate industries and consumer groups in developing the rules;

(6) Establishing the fee for a license as a rating organization under RCW 48.29.410;

(7) Establishing license requirements that an applicant for a license as a rating organization and a licensee must comply with; and

(8) Requiring a rating organization to periodically update the title insurance rates, manuals of rules and rates, rating plans, rate schedules, minimum rates, class rates, or rating rules, filed by the rating organization on behalf of its members or subscribers. [2017 c 103 § 23; 2008 c 110 § 9.]

48.29.010 Scope of chapter—Definitions. (1) This chapter relates only to title insurers for real property.

(2) This code does not apply to persons engaged in the business of preparing and issuing abstracts of title to property and certifying to their correctness so long as the persons do not guarantee or insure the titles.

(3) For purposes of this chapter, unless the context clearly requires otherwise:

(a) "Abstract of title" means a written representation, provided under contract, whether written or oral, intended to be relied upon by the person who has contracted for the receipt of this representation, listing all recorded conveyances, instruments, or documents that, under the laws of the state of Washington, impart constructive notice with respect

to the chain of title to the real property described. An abstract of title is not a title policy as defined in this subsection.

(b)(i) "Advisory organization" means a group, association, or other organization of insurers that assists insurers or rating organizations in rate making by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but that does not make filings under this chapter.

(ii) The term "advisory organization" does not include subscribers' committees provided for in RCW 48.29.430 or the statistical reporting agent provided for in RCW 48.29.017.

(c) "Associates of producers" means any person who has one or more of the following relationships with a producer of title insurance business:

(i) A spouse, parent, or child of a producer;

(ii) A corporation or business entity that controls, is controlled by, or is under common control with a producer;

(iii) An employer, employee, independent contractor, officer, director, partner, franchiser, or franchisee of a producer; or

(iv) Anyone who has an agreement, arrangement, or understanding with a producer, the purpose or substantial effect of which is to enable the person in a position to influence the selection of a title insurer or title insurance agent to benefit financially from the selection of the title insurer or title insurance agent.

(d) "Financial interest" means any interest, legal or beneficial, that entitles the holder directly or indirectly to any of the net profits or net worth of the entity in which the interest is held.

(e) "Member" means an insurer that participates in or is entitled to participate in the management of a rating organization or an advisory organization.

(f) "Preliminary report," "commitment," or "binder" means reports furnished in connection with an application for title insurance and are offers to issue a title policy subject to the stated exceptions in the reports, the conditions and stipulations of the report and the issued policy, and other matters as may be incorporated by reference. The reports are not abstracts of title, nor are any of the rights, duties, or responsibilities applicable to the preparation and issuance of an abstract of title applicable to the issuance of any report. The report is not a representation as to the condition of the title to real property, but is a statement of terms and conditions upon which the issuer is willing to issue its title policy, if the offer is accepted.

(g) "Producers of title insurance business" means real estate agents and brokers, lawyers, mortgagees, mortgage loan brokers, financial institutions, escrow agents, persons who lend money for the purchase of real estate or interests therein, building contractors, real estate developers and subdividers, and any other person who is or may be in a position to influence the selection of a title insurer or title insurance agent whether or not the consent or approval of any other person is sought or obtained with respect to the selection of the title insurer or title insurance agent.

(h)(i) "Rating organization" means an entity, the object or purpose of which is the adoption or making of title insurance forms, including forms of policy, application, rider, and endorsement, and title insurance rates, manuals of rules and

rates, rating plans, rate schedules, minimum rates, class rates, and rating rules.

(ii) The term "rating organization" does not include two or more insurers operating under the authority granted in RCW 48.29.440.

(i) "Subscriber" means an insurer that employs the services of a rating organization for the purpose of making form or rate filings, whether or not the title insurer is a member of such rating organization.

(j) "Title policy" means any written instrument, contract, or guarantee by means of which title insurance liability is assumed. [2017 c 103 § 2; 2008 c 110 § 1; 2005 c 223 § 14; 1997 c 14 § 1; 1947 c 79 § .29.01; Rem. Supp. 1947 § 45.29.01.]

48.29.015 Requirement to maintain records—Report to commissioner. (1) A title insurance agent shall maintain records of its title orders sufficient to indicate the source of the title orders.

(2) Every title insurance agent shall file with the commissioner annually by March 15th of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for filing, a report, on a form prescribed by the commissioner, setting forth:

(a) The names and addresses of those persons, if any, who have had a financial interest in the title insurance agent during the calendar year, who are known or reasonably believed by the title insurance agent to be producers of title business or associates of producers; and

(b) The percent of title orders originating from each person who owns, or had owned during the preceding calendar year, a financial interest in the title insurance agent.

(3) Each title insurance agent shall keep current the information required by that portion of the report required by subsection (2)(a) of this section by reporting all changes or additions within fifteen days after the end of the month in which it learns of each change or addition.

(4) Each title insurance agent shall file that portion of the report required by subsection (2)(a) of this section with its application for a license. [2017 3rd sp.s. c 25 § 18; 2008 c 110 § 2.]

48.29.017 Statistical reporting agent—Duties—Required reports—Costs—Rules—Information and data exchange. (1) The commissioner must designate one statistical reporting agent to assist him or her in gathering information on title insurance policy issuance, business income, and expenses and making compilations thereof. The costs and expenses of the statistical reporting agent must be borne by all the authorized title insurance companies and title insurance agents licensed to conduct the business of title insurance in this state. The commissioner may adopt rules setting forth how the costs and expenses of the statistical reporting agent are to be paid and apportioned among the authorized title insurers and licensed title insurance agents.

(2) Upon designation of a statistical reporting agent by the commissioner under subsection (1) of this section all authorized title insurance companies and licensed title insurance agents must annually, by May 31st, file a report with the statistical reporting agent of their policy issuance, business income, expenses, and loss experience in this state. The

report must be filed with the statistical reporting agent in a manner and form prescribed by the commissioner by rule, which must be consistent with the manner and form adopted by the national association of insurance commissioners.

(3) The statistical reporting agent must review the information filed with it for completeness, accuracy, and quality within one hundred twenty days of its receipt. All title insurance companies and title insurance agents must cooperate with the statistical reporting agent to verify the completeness, accuracy, and quality of the data that they submitted.

(4) Within thirty days after completing its review of the information for quality and accuracy, the statistical reporting agent must file the information for each title insurance company and title insurance agent, individually and in the aggregate, with the commissioner with a copy of the aggregate data from such statistical reporting agent provided to each title insurer and title insurance agent.

(5) The commissioner may adopt rules to implement and administer this section.

(6) The statistical reporting agent may exchange aggregate information and experience data with title insurance companies and rating organizations in this state in accordance with RCW 48.29.470. [2017 c 103 § 22; 2013 c 65 § 1.]

48.29.147 Required filings—Information subject to review—Commissioner's powers—Timing. (1)(a) Every title insurer shall, before using, file with the commissioner every form, manual of title insurance rules and rates, rating plan, rate schedule, minimum rate, class rate, and rating rule, and every modification of any of the filings under this subsection which it proposes.

(b) A rating organization's filing on behalf of its members or subscribers satisfies a title insurer's duty in (a) of this subsection if the title insurer is a member or subscriber of the rating organization.

(2) Every filing shall be accompanied by sufficient information to permit the commissioner to determine whether the filing meets the requirements of RCW 48.29.143 and this section for rate filings, and RCW 48.18.100 and 48.18.110 for form filings.

(3) Data used to justify title insurance rates may not include escrow income or expenses. The title insurance company or rating organization shall include a detailed explanation showing how expenses are allocated between the title operations and escrow operations of the insurer or title insurance agent.

(4) Every such filing shall state its proposed effective date.

(5) The commissioner shall review a filing as soon as reasonably possible after it is received, to determine whether it meets the requirements of RCW 48.29.143.

(6) The filing's proposed effective date shall be no earlier than thirty days after the date on which the filing is received by the commissioner. By giving notice to the insurer or rating organization within this thirty days, the commissioner may extend this waiting period for an additional period not to exceed an additional fifteen days. The commissioner may, upon application and for cause shown, waive part or all of the waiting period with respect to a filing the commissioner has not disapproved. If the commissioner does not disapprove the

filing during the waiting period, the filing takes effect on its proposed effective date, except as to filings made by a rating organization on behalf of its members or subscribers pursuant to this section.

(7) If within the waiting period or any extension thereof as provided in subsection (6) of this section, the commissioner finds that a filing does not meet the requirements of RCW 48.29.143 or the requirements of subsections (2) through (4) of this section, the commissioner shall disapprove the filing and shall give notice to the insurer or rating organization that the filing has been disapproved. This notice must specify the respect in which the commissioner finds the filing fails to meet the requirements and must state that the filing does not become effective as proposed.

(8)(a) Except as to filings made by a rating organization on behalf of its members or subscribers pursuant to this section, if a filing is not disapproved by the commissioner within the waiting period or any extension thereof, the filing becomes effective as proposed.

(b) Before the commissioner approves a filing by a rating organization, the commissioner shall review all materials contained in the filing, including, as applicable, materials submitted by the rating organization, materials provided by the statistical reporting agent pursuant to RCW 48.29.017, as well as materials concerning any public hearings, market investigations, studies, or other information collected during the review, and determine that the filing complies with the requirements of this chapter.

(c) Filings made by a rating organization on behalf of its members or subscribers pursuant to this section may not become effective, notwithstanding expiration of a waiting period, unless the commissioner approves the filings in accordance with (b) of this subsection.

(9) A filing made under this section is exempt from RCW 48.02.120(3). However, the filing and all supporting information accompanying it is open to public inspection only after the filing becomes effective.

(10) A title insurer or title insurance agent shall not make or issue a title insurance contract or policy, or use or collect any premium on or after a date set by the commissioner by rule, which date shall not be any earlier than January 1, 2010, except in accordance with rates and rules filed with the commissioner as required by this section or as provided under RCW 48.29.148.

(11) If at any time subsequent to the applicable review period provided for in subsection (6) of this section, the commissioner has reason to believe that a title insurer's or rating organization's rates do not meet the requirements of RCW 48.29.143 or are otherwise contrary to law, or if any person having an interest in the rates makes a written complaint to the commissioner setting forth specific and reasonable grounds for the complaint and requests a hearing, or if any insurer or rating organization upon notice of the commissioner's disapproval of a filing made under this section requests a hearing, the commissioner shall hold a hearing within thirty days and shall, in advance of it, give written notice of the hearing to all parties in interest. The commissioner may, by issuing an order, confirm, modify, change, or rescind any previous action, if it is warranted by the facts shown at the hearing. The order shall not affect any contract

or policy made or issued prior to a reasonable period of time, to be specified in the order, after the order is issued.

(12) In any hearing regarding rates filed under this chapter the burden is on the title insurer or rating organization to prove by a preponderance of the evidence that the rates comply with RCW 48.29.143. [2017 c 103 § 21; 2008 c 110 § 5.]

48.29.148 Form and rate filings by rating organization. If so authorized by an insurer that is a member or subscriber of a rating organization, the commissioner shall accept, in lieu of filings by the insurer, form and rate filings on its behalf made by a rating organization then licensed as provided in this chapter. Rate filings accepted by the commissioner become effective only as provided in RCW 48.29.147. Form filings accepted by the commissioner become effective only as provided in chapter 48.18 RCW. [2017 c 103 § 3.]

48.29.149 Form and rate filings by rating organization—Deviation. Every member or subscriber to a rating organization shall adhere to the filings made on its behalf by such rating organization. Deviations from the rating organization's filings are permitted only when filed with the commissioner in accordance with this title. A copy of the deviation filing must be sent simultaneously to such rating organization. [2017 c 103 § 14.]

48.29.400 Rating organizations—Intent. It is the legislature's intent to establish a system by which title insurers may adopt a rating organization's form and rate filings pursuant to this chapter in order to benefit consumers and entities purchasing, selling, or financing real property. It is further the legislature's intent that the system so established under state oversight comply with state and federal law so that title insurers and rating organizations acting in accordance with this chapter may lawfully cooperate in the preparation of title insurance forms and manuals, and the recommendation of rates, subject to approval by the commissioner. [2017 c 103 § 1.]

48.29.405 Rating organizations—License required. A rating organization may not do business in this state or make filings with the commissioner unless then licensed by the commissioner as a rating organization. [2017 c 103 § 4.]

48.29.410 Rating organizations—License applications. Any person, whether domiciled within or outside this state, except as provided in this section, may make application to the commissioner for a license as a rating organization for title insurance. The application must include:

(1) A copy of the applicant's constitution, articles of agreement or association, certificate of incorporation, or trust agreement, and of its bylaws, rules, and regulations governing the conduct of its business;

(2) A list of its members and a list of its subscribers;

(3) The name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served; and

(4) A statement of its qualifications as a rating organization. [2017 c 103 § 5.]

48.29.415 Rating organizations—License issuance—Term. (1) If the commissioner finds that the applicant for a license as a rating organization is competent, trustworthy, and otherwise qualified to act, and that its constitution, articles of agreement or association, certificate of incorporation, or trust agreement, and its bylaws, rules, and regulations governing the conduct of its business conform to the requirements of law, the commissioner shall, upon payment of a license fee of the amount established by the commissioner pursuant to RCW 48.29.005, issue a license authorizing the applicant to act as a rating organization for title insurance.

(2) The commissioner shall grant or deny in whole or in part every such application within sixty days of the date of its filing.

(3) A license issued pursuant to this section remains in effect for three years unless sooner suspended or revoked by the commissioner. [2017 c 103 § 6.]

48.29.420 Rating organizations—License suspension and revocation. (1) The commissioner may, after a hearing, suspend or revoke the license issued to a rating organization for any of the following causes:

(a) The commissioner finds that the licensee no longer meets the qualifications for the license.

(b) The rating organization fails to comply with an order of the commissioner within the time limited by the order, or any extension thereof which the commissioner may grant.

(2) The commissioner shall not so suspend or revoke a license for failure to comply with an order until the time prescribed by this code for an appeal from such order to the superior court has expired or if such appeal has been taken, until such order has been affirmed.

(3) The commissioner may determine when a suspension or revocation of license is effective. A suspension of license remains in effect for the period fixed by the commissioner, unless the commissioner modifies or rescinds the suspension, or until the order, failure to comply with which constituted grounds for the suspension, is modified, rescinded, or reversed. [2017 c 103 § 7.]

48.29.425 Rating organizations—Commissioner notification. Every rating organization shall notify the commissioner promptly of every change in:

(1) Its constitution, its articles of agreement or association, its certificate of incorporation, or trust agreement, and its bylaws, rules, and regulations governing the conduct of its business;

(2) Its list of members and subscribers; and

(3) The name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served. [2017 c 103 § 8.]

48.29.430 Rating organizations—Subscribers. (1) Subject to rules and regulations approved by the commissioner as reasonable, each rating organization shall permit any title insurance company, not a member, to subscribe to its rating services.

(2) Notice of proposed changes to the rules and regulations must be given to each subscriber.

(3) A title insurer shall not concurrently be a subscriber to the services of more than one rating organization.

(4) The subscribers of any rating organization may, from time to time, individually or through committees representing various subscribers, consult with the rating organization with respect to matters within this chapter that affect such subscribers. [2017 c 103 § 9.]

48.29.435 Rating organizations—Review by commissioner. (1) The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon notice to the rating organization and to the subscriber or insurer.

(2) If the commissioner finds that a rule or regulation is unreasonable in its application to subscribers, the commissioner shall order that the rule or regulation is not applicable to subscribers that are not members of the rating organization.

(3) If a rating organization fails to grant or reject an insurer's application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, the commissioner shall order the rating organization to admit the insurer as a subscriber. If the commissioner finds that the action of the rating organization was justified, the commissioner shall make an order affirming its action. [2017 c 103 § 10.]

48.29.440 Rating organizations—Cooperative activities and practices. (1) Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this chapter is hereby authorized and the filings resulting from such cooperation are subject to all the provisions of this title that are applicable to filings generally.

(2) The commissioner shall review such cooperative activities and practices and if, after a hearing, the commissioner finds that any such activity or practice is inconsistent with the provisions of this code, the commissioner may issue a written order specifying in what respect such activity or practice is so inconsistent, and requiring the discontinuance of such activity or practice. [2017 c 103 § 11.]

48.29.445 Rating organizations—Actuarial, technical, and other services. Any rating organization may subscribe for or purchase actuarial, technical, or other services, and such services must be available to all subscribers without discrimination. [2017 c 103 § 12.]

48.29.450 Rating organizations—Records—Commissioner cost recovery rules. (1) Each rating organization shall keep an accurate and complete record of all work performed by it, and of all its receipts and disbursements. Such rating organization and its records shall be examined by the commissioner at such times and in such manner as is provided in chapter 48.03 RCW.

(2) The commissioner may adopt rules to enable the commissioner to recover the costs of the commissioner's examination of a rating organization from the rating organization or the rating organization's members and subscribers. [2017 c 103 § 13.]

48.29.455 Rating organizations—Members and subscribers—Appeal to commissioner. (1) Any member of or subscriber to a rating organization may appeal to the commissioner from the rating organization's action or decision in approving or rejecting any proposed change in or addition to the rating organization's filings. The commissioner shall, after a hearing on the appeal:

(a) Issue an order approving the rating organization's action or decision or directing it to give further consideration to such proposal; or

(b) If the appeal is from the rating organization's action or decision in rejecting a proposed addition to its filings, the commissioner may, upon finding that the action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its subscribers, in a manner consistent with the commissioner's findings, within a reasonable time after the issuance of such order.

(2) If such appeal is based upon the rating organization's failure to make a filing on behalf of such subscriber which is based on a system of expense provisions that differs from the system of expense provisions included in a filing made by the rating organization, the commissioner shall, if the appeal is granted, order the rating organization to make the requested filing for use by the appellant.

(3) In deciding the appeal the commissioner shall apply the standards set forth in RCW 48.29.143 and 48.29.147 for rate filings, and the standards set forth in RCW 48.18.100 and 48.18.110 for form filings. [2017 c 103 § 15.]

48.29.460 Rating organizations—Members and subscribers—Discrimination. (1) Every rating organization operating in this state shall furnish its services without discrimination as between its members and subscribers.

(2) This chapter is not intended to and does not govern or affect the membership relation as such between a rating organization and insurers that are its members. [2017 c 103 § 16.]

48.29.465 Rating organizations—Membership or subscription not required. This chapter does not require any insurer to be a member of or subscriber to, or in any other respect affiliated with, any rating organization. [2017 c 103 § 17.]

48.29.470 Rating organizations—Aggregate information and experience data—Exchange. Every rating organization may exchange aggregate information and experience data with insurers, rating organizations in this state, and the statistical reporting agent designated in accordance with RCW 48.29.017, and may consult with insurers and rating organizations in this state with respect to form and rate making and the application of rating systems, except to the extent that an agreement between a rating organization and its member or subscriber prohibits the rating organization from disclosing any information or experience data of such

member or subscriber to other insurers, members, subscribers, rating organizations, or the statistical reporting agent. [2017 c 103 § 18.]

48.29.500 Advisory organizations—Filings with commissioner. Every advisory organization before serving as such to any rating organization or insurer doing business in this state must provide the following to the commissioner:

(1) A copy of its constitution, its articles of agreement or association, or its certificate of incorporation and of its bylaws, rules, and regulations governing its activities;

(2) A list of its members;

(3) The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his or her direction may be served; and

(4) An agreement that the commissioner may examine such advisory organization in accordance with the provisions of RCW 48.03.010. [2017 c 103 § 19.]

48.29.510 Advisory organizations—Acts and practices inconsistent with chapter. If, after a hearing, the commissioner finds that the furnishing of information or assistance by an advisory organization involves any act or practice that is inconsistent with the provisions of this code, the commissioner may issue a written order specifying in what respect such act or practice is so inconsistent, and requiring the discontinuance of such act or practice. [2017 c 103 § 20.]

Chapter 48.31 RCW

MERGERS, REHABILITATION, LIQUIDATION, SUPERVISION

Sections

48.31.115 Immunity from suit and liability—Persons entitled to protection.

48.31.115 Immunity from suit and liability—Persons entitled to protection. (1) The persons entitled to protection under this section are:

(a) The commissioner and any other receiver or administrative supervisor responsible for conducting a delinquency proceeding under this chapter, including present and former commissioners, administrative supervisors, and receivers; and

(b) The commissioner's employees, meaning all present and former special deputies and assistant special deputies and special receivers and special administrative supervisors appointed by the commissioner and all persons whom the commissioner, special deputies, or assistant special deputies have employed to assist in a delinquency proceeding under this chapter. Attorneys, accountants, auditors, and other professional persons or firms who are retained as independent contractors, and their employees, are not considered employees of the commissioner for purposes of this section.

(2) The commissioner and the commissioner's employees are immune from suit and liability, both personally and in their official capacities, for a claim for damage to or loss of property or personal injury or other civil liability caused by or resulting from an alleged act or omission of the commissioner or an employee arising out of or by reason of his or her duties or employment. However, nothing in this subsection

may be construed to hold the commissioner or an employee immune from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the commissioner or an employee.

(3) If a legal action is commenced against the commissioner or an employee, whether against him or her personally or in his or her official capacity, alleging property damage, property loss, personal injury, or other civil liability caused by or resulting from an alleged act or omission of the commissioner or an employee arising out of or by reason of his or her duties or employment, the commissioner and any employee shall be indemnified from the assets of the insurer for all expenses, attorneys' fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action unless it is determined upon a final adjudication on the merits that the alleged act or omission of the commissioner or employee giving rise to the claim did not arise out of or by reason of his or her duties or employment, or was caused by intentional or willful and wanton misconduct.

(a) Attorneys' fees and related expenses incurred in defending a legal action for which immunity or indemnity is available under this section shall be paid from the assets of the insurer, as they are incurred, in advance of the final disposition of such action upon receipt of an undertaking by or on behalf of the commissioner or employee to repay the attorneys' fees and expenses if it is ultimately determined upon a final adjudication on the merits and that the commissioner or employee is not entitled to immunity or indemnity under this section.

(b) Any indemnification under this section is an administrative expense of the insurer.

(c) In the event of an actual or threatened litigation against the commissioner or an employee for which immunity or indemnity may be available under this section, a reasonable amount of funds that in the judgment of the commissioner may be needed to provide immunity or indemnity shall be segregated and reserved from the assets of the insurer as security for the payment of indemnity until all applicable statutes of limitation have run or all actual or threatened actions against the commissioner or an employee have been completely and finally resolved, and all obligations of the insurer and the commissioner under this section have been satisfied.

(d) In lieu of segregation and reserving of funds, the commissioner may obtain a surety bond or make other arrangements that will enable the commissioner to secure fully the payment of all obligations under this section.

(4) If a legal action against an employee for which indemnity may be available under this section is settled before final adjudication on the merits, the insurer shall pay the settlement amount on behalf of the employee, or indemnify the employee for the settlement amount, unless the commissioner determines:

(a) That the claim did not arise out of or by reason of the employee's duties or employment; or

(b) That the claim was caused by the intentional or willful and wanton misconduct of the employee.

(5) In a legal action in which the commissioner is a defendant, that portion of a settlement relating to the alleged act or omission of the commissioner is subject to the approval

of the court before which the delinquency proceeding is pending. The court may not approve that portion of the settlement if it determines:

(a) That the claim did not arise out of or by reason of the commissioner's duties or employment; or

(b) That the claim was caused by the intentional or willful and wanton misconduct of the commissioner.

(6) Nothing in this section removes or limits an immunity, indemnity, benefit of law, right, or defense otherwise available to the commissioner, an employee, or any other person, not an employee under subsection (1)(b) of this section, who is employed by or in the office of the commissioner or otherwise employed by the state. [2017 3rd sp.s. c 25 § 19; 2005 c 432 § 2; 1993 c 462 § 60.]

Additional notes found at www.leg.wa.gov

Chapter 48.41 RCW

HEALTH INSURANCE COVERAGE ACCESS ACT

Sections

48.41.100	Eligibility for coverage.
48.41.160	Pool policy requirements—Continued coverage—Rate changes—Continuation—Statement of intent to discontinue pool coverage.

48.41.100 Eligibility for coverage. (1)(a) The following persons who are residents of this state are eligible for pool coverage:

(i) Any resident of the state not eligible for medicare coverage or medicaid coverage, and residing in a county where an individual health plan other than a catastrophic health plan as defined in RCW 48.43.005 is not offered to the resident during defined open enrollment or special enrollment periods at the time of application to the pool, whether through the health benefit exchange operated pursuant to chapter 43.71 RCW or in the private insurance market, and who makes application to the pool for coverage prior to December 31, 2022;

(ii) Any resident of the state not eligible for medicare coverage, enrolled in the pool prior to December 31, 2013, shall remain eligible for pool coverage except as provided in subsections (2) and (3) of this section through December 31, 2022;

(iii) Any person becoming eligible for medicare before August 1, 2009, who provides evidence of (A) a rejection for medical reasons, (B) a requirement of restrictive riders, (C) an up-rated premium, (D) a preexisting conditions limitation, or (E) lack of access to or for a comprehensive medicare supplemental insurance policy under chapter 48.66 RCW, the effect of any of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application; and

(iv) Any person becoming eligible for medicare on or after August 1, 2009, who does not have access to a reasonable choice of comprehensive medicare part C plans, as defined in (b) of this subsection, and who provides evidence of (A) a rejection for medical reasons, (B) a requirement of restrictive riders, (C) an up-rated premium, (D) a preexisting conditions limitation, or (E) lack of access to or for a comprehensive medicare supplemental insurance policy under chap-

ter 48.66 RCW, the effect of any of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application.

(b) For purposes of (a)(i) of this subsection, by December 1, 2013, the board shall develop and implement a process to determine an applicant's eligibility based on the criteria specified in (a)(i) of this subsection.

(c) For purposes of (a)(iv) of this subsection (1), a person does not have access to a reasonable choice of plans unless the person has a choice of health maintenance organization or preferred provider organization medicare part C plans offered by at least three different carriers that have had provider networks in the person's county of residence for at least five years. The plan options must include coverage at least as comprehensive as a plan F medicare supplement plan combined with medicare parts A and B. The plan options must also provide access to adequate and stable provider networks that make up-to-date provider directories easily accessible on the carrier web site, and will provide them in hard copy, if requested. In addition, if no health maintenance organization or preferred provider organization plan includes the health care provider with whom the person has an established care relationship and from whom he or she has received treatment within the past twelve months, the person does not have reasonable access.

(2) The following persons are not eligible for coverage by the pool:

(a) Any person having terminated coverage in the pool unless (i) twelve months have lapsed since termination, or (ii) that person can show continuous other coverage which has been involuntarily terminated for any reason other than non-payment of premiums. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(b) Inmates of public institutions and those persons who become eligible for medical assistance after June 30, 2008, as defined in RCW 74.09.010. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b)).

(3) When a carrier or insurer regulated under chapter 48.15 RCW begins to offer an individual health benefit plan in a county where no carrier had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in a pool plan pursuant to subsection (1)(a)(i) of this section in that county shall no longer be eligible for coverage under that plan pursuant to subsection (1)(a)(i) of this section; and

(b) The pool administrator shall provide written notice to any person who is no longer eligible for coverage under a pool plan under this subsection (3) within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options, either in or outside of the pool, available to the person; and (iii) describe the enrollment process for the available options outside of the

pool. [2017 c 110 § 2; 2013 c 279 § 3. Prior: 2011 c 315 § 5; 2011 c 314 § 15; 2009 c 555 § 3; 2007 c 259 § 30; 2001 c 196 § 3; 2000 c 79 § 12; 1995 c 34 § 5; 1989 c 121 § 7; 1987 c 431 § 10.]

Findings—Intent—2017 c 110: "(1) The legislature finds that:

(a) The Washington state health insurance pool currently provides subsidized health coverage to almost one thousand five hundred people in medicare supplemental plans and nonmedicare health plans;

(b) Enrollees in Washington state health insurance pool plans tend to have higher health care costs than enrollees in other types of health plans;

(c) Having a separate insurance pool for high-risk individuals benefits all purchasers of health insurance products by keeping premium costs down;

(d) The costs of subsidizing Washington state health insurance pool enrollees are borne disproportionately by purchasers of small group and individual market plans;

(e) The Washington state health insurance pool is scheduled to close its nonmedicare enrollment after December 31, 2017; and

(f) Uncertainty due to changes to the health care marketplace on the federal and state levels increases the necessity of keeping the Washington state health insurance pool open, at least in the short term.

(2) The legislature therefore intends to:

(a) Extend the expiration date for nonmedicare coverage in the Washington state health insurance pool; and

(b) Study:

(i) The necessity of continuing Washington state health insurance pool coverage in the short and long terms;

(ii) The role of the Washington state health insurance pool in light of the evolving health care landscape; and

(iii) The creation of a funding mechanism that equitably and broadly apportions Washington state health insurance pool costs across Washington's health care marketplace." [2017 c 110 § 1.]

Effective date—2013 c 279 §§ 2 and 3: See note following RCW 48.41.060.

Finding—Intent—2013 c 279: See note following RCW 48.41.060.

Effective date—2011 c 315 §§ 5 and 6: "Sections 5 and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 11, 2011]." [2011 c 315 § 7.]

Intent—2011 c 315: See note following RCW 48.43.005.

Contingent effective date—2009 c 555 § 3: "Section 3 of this act takes effect if section 4, chapter 317, Laws of 2008 is null and void on July 26, 2009; otherwise section 3 of this act is null and void." [2009 c 555 § 6.]

Effective date—2007 c 259 § 30: "Section 30 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2007]." [2007 c 259 § 75.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Additional notes found at www.leg.wa.gov

48.41.160 Pool policy requirements—Continued coverage—Rate changes—Continuation—Statement of intent to discontinue pool coverage. (1) On or before December 31, 2007, the pool shall cancel all existing pool policies and replace them with policies that are identical to the existing policies except for the inclusion of a provision providing for a guarantee of the continuity of coverage consistent with this section. As a means to minimize the number of policy changes for enrollees, replacement policies provided under this subsection also may include the plan modifications authorized in RCW 48.41.100, 48.41.110, and 48.41.120.

(2) A pool policy shall contain a guarantee of the individual's right to continued coverage, subject to the provisions of subsections (4), (5), (7), and (8) of this section.

(3) The guarantee of continuity of coverage required by this section shall not prevent the pool from canceling or non-renewing a policy for:

(a) Nonpayment of premium;

(b) Violation of published policies of the pool;

(c) Failure of a covered person who becomes eligible for medicare benefits by reason of age to apply for a pool medical supplement plan, or a medicare supplement plan or other similar plan offered by a carrier pursuant to federal laws and regulations;

(d) Failure of a covered person to pay any deductible or copayment amount owed to the pool and not the provider of health care services;

(e) Covered persons committing fraudulent acts as to the pool;

(f) Covered persons materially breaching the pool policy; or

(g) Changes adopted to federal or state laws when such changes no longer permit the continued offering of such coverage.

(4)(a) The guarantee of continuity of coverage provided by this section requires that if the pool replaces a plan, it must make the replacement plan available to all individuals in the plan being replaced. The replacement plan must include all of the services covered under the replaced plan, and must not significantly limit access to the kind of services covered under the replacement plan through unreasonable cost-sharing requirements or otherwise. The pool may also allow individuals who are covered by a plan that is being replaced an unrestricted right to transfer to a fully comparable plan.

(b) The guarantee of continuity of coverage provided by this section requires that if the pool discontinues offering a plan: (i) The pool must provide notice to each individual of the discontinuation at least ninety days prior to the date of the discontinuation; (ii) the pool must offer to each individual provided coverage under the discontinued plan the option to enroll in any other plan currently offered by the pool for which the individual is otherwise eligible; and (iii) in exercising the option to discontinue a plan and in offering the option of coverage under (b)(ii) of this subsection, the pool must act uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for this coverage.

(c) The pool cannot replace or discontinue a plan under this subsection (4) until it has completed an evaluation of the impact of replacing the plan upon:

(i) The cost and quality of care to pool enrollees;

(ii) Pool financing and enrollment;

(iii) The board's ability to offer comprehensive and other plans to its enrollees;

(iv) Other items identified by the board.

In its evaluation, the board must request input from the constituents represented by the board members.

(d) The guarantee of continuity of coverage provided by this section does not apply if the pool has zero enrollment in a plan.

(5) The pool may not change the rates for pool policies except on a class basis, with a clear disclosure in the policy of the pool's right to do so.

(6) A pool policy offered under this chapter shall provide that, upon the death of the individual in whose name the pol-

icy is issued, every other individual then covered under the policy may elect, within a period specified in the policy, to continue coverage under the same or a different policy.

(7) All pool policies issued on or after January 1, 2014, must reflect the new eligibility requirements of RCW 48.41.100 and contain a statement of the intent to discontinue the pool coverage on December 31, 2022, under pool non-medicare plans.

(8) Pool policies issued prior to January 1, 2014, shall be modified effective January 1, 2018, consistent with subsection (3)(g) of this section, and contain a statement of the intent to discontinue pool coverage on December 31, 2022, under pool nonmedicare plans.

(9) The pool shall discontinue all nonmedicare pool plans effective December 31, 2022. [2017 c 110 § 3; 2013 c 279 § 4; 2007 c 259 § 27; 1987 c 431 § 16.]

Findings—Intent—2017 c 110: See note following RCW 48.41.100.

Finding—Intent—2013 c 279: See note following RCW 48.41.060.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Chapter 48.43 RCW INSURANCE REFORM

Sections

48.43.195	Contraceptive drugs—Twelve-month refill coverage.
48.43.735	Reimbursement of health care services provided through telemedicine or store and forward technology. (<i>Effective January 1, 2018.</i>)

48.43.195 Contraceptive drugs—Twelve-month refill coverage. (1) A health benefit plan issued or renewed on or after January 1, 2018, that includes coverage for contraceptive drugs must provide reimbursement for a twelve-month refill of contraceptive drugs obtained at one time by the enrollee, unless the enrollee requests a smaller supply or the prescribing provider instructs that the enrollee must receive a smaller supply. The health plan must allow enrollees to receive the contraceptive drugs on-site at the provider's office, if available. Any dispensing practices required by the plan must follow clinical guidelines for appropriate prescribing and dispensing to ensure the health of the patient while maximizing access to effective contraceptive drugs.

(2) Nothing in this section prohibits a health plan from limiting refills that may be obtained in the last quarter of the plan year if a twelve-month supply of the contraceptive drug has already been dispensed during the plan year.

(3) For purposes of this section, "contraceptive drugs" means all drugs approved by the United States food and drug administration that are used to prevent pregnancy, including, but not limited to, hormonal drugs administered orally, transdermally, and intravaginally. [2017 c 293 § 2.]

Finding—Intent—2017 c 293: "The legislature finds that a significant percentage of pregnancies are unintended and could be averted with broader access to health care and effective contraception. Research suggests that moving from twenty-eight day dispensing of contraceptive drugs to twelve-month dispensing improves adherence to maintenance of the drugs and effective use of the contraceptives. It is therefore the intent of the legislature to require private health insurers to require dispensing of contraceptive drugs with up to a twelve-month supply provided at one time." [2017 c 293 § 1.]

48.43.735 Reimbursement of health care services provided through telemedicine or store and forward tech-

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nology. (Effective January 1, 2018.) (1) For health plans issued or renewed on or after January 1, 2017, a health carrier shall reimburse a provider for a health care service provided to a covered person through telemedicine or store and forward technology if:

(a) The plan provides coverage of the health care service when provided in person by the provider;

(b) The health care service is medically necessary;

(c) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal patient protection and affordable care act in effect on January 1, 2015; and

(d) The health care service is determined to be safely and effectively provided through telemedicine or store and forward technology according to generally accepted health care practices and standards, and the technology used to provide the health care service meets the standards required by state and federal laws governing the privacy and security of protected health information.

(2)(a) If the service is provided through store and forward technology there must be an associated office visit between the covered person and the referring health care provider. Nothing in this section prohibits the use of telemedicine for the associated office visit.

(b) For purposes of this section, reimbursement of store and forward technology is available only for those covered services specified in the negotiated agreement between the health carrier and the health care provider.

(3) An originating site for a telemedicine health care service subject to subsection (1) of this section includes a:

(a) Hospital;

(b) Rural health clinic;

(c) Federally qualified health center;

(d) Physician's or other health care provider's office;

(e) Community mental health center;

(f) Skilled nursing facility;

(g) Home or any location determined by the individual receiving the service; or

(h) Renal dialysis center, except an independent renal dialysis center.

(4) Except for subsection (3)(g) of this section, any originating site under subsection (3) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement must be subject to a negotiated agreement between the originating site and the health carrier. A distant site or any other site not identified in subsection (3) of this section may not charge a facility fee.

(5) A health carrier may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.

(6) A health carrier may subject coverage of a telemedicine or store and forward technology health service under subsection (1) of this section to all terms and conditions of the plan in which the covered person is enrolled including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable health care service provided in person.

(7) This section does not require a health carrier to reimburse:

(a) An originating site for professional fees;

(b) A provider for a health care service that is not a covered benefit under the plan; or

(c) An originating site or health care provider when the site or provider is not a contracted provider under the plan.

(8) For purposes of this section:

(a) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through telemedicine;

(b) "Health care service" has the same meaning as in RCW 48.43.005;

(c) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW;

(d) "Originating site" means the physical location of a patient receiving health care services through telemedicine;

(e) "Provider" has the same meaning as in RCW 48.43.005;

(f) "Store and forward technology" means use of an asynchronous transmission of a covered person's medical information from an originating site to the health care provider at a distant site which results in medical diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email; and

(g) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "telemedicine" does not include the use of audio-only telephone, facsimile, or email. [2017 c 219 § 1; 2016 c 68 § 3; 2015 c 23 § 3.]

Effective date—2017 c 219: "Sections 1 through 3 of this act take effect January 1, 2018." [2017 c 219 § 4.]

Effective date—2016 c 68: "Sections 3 through 5 of this act take effect January 1, 2018." [2016 c 68 § 7.]

Intent—2016 c 68: "The legislature recognizes telemedicine will play an increasingly important role in the health care system. Telemedicine is a meaningful and efficient way to treat patients and control costs while improving access to care. The expansion of the use of telemedicine should be thoughtfully and systematically considered in Washington state in order to maximize its application and expand access to care. Therefore, it is the intent of the legislature to broaden the reimbursement opportunities for health care services and establish a collaborative for the advancement of telemedicine to provide guidance, research, and recommendations for the benefit of professionals providing care through telemedicine." [2016 c 68 § 1.]

Effective date—Adoption of sections—2015 c 23 §§ 2-4: See notes following RCW 41.05.700.

Intent—2015 c 23: See note following RCW 41.05.700.

Chapter 48.62 RCW

LOCAL GOVERNMENT INSURANCE TRANSACTIONS

Sections

48.62.181 Repealed.

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

Chapter 48.102 RCW LIFE SETTLEMENTS ACT

Sections

48.102.190 Repealed.

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

Chapter 48.185 RCW ELECTRONIC NOTICES AND DOCUMENT DELIVERY

Sections

48.185.005 Delivery by electronic means authorized—Insurer requirements—Party consent—Definitions.

48.185.005 Delivery by electronic means authorized—Insurer requirements—Party consent—Definitions. The definitions in this subsection apply throughout this chapter unless the context clearly requires otherwise.

(1)(a)(i) "Delivered by electronic means" includes:

(A) Delivery to an electronic mail address at which a party has consented to receive notices or documents; or

(B) Posting on an electronic network or site accessible via the internet, mobile application, computer, mobile device, tablet, or any other electronic device, together with separate notice of the posting which shall be provided by electronic mail to the address at which the party has consented to receive notice or by any other delivery method that has been consented to by the party.

(ii) "Delivered by electronic means" does not include any communication between an insurer and an insurance producer relating to RCW 48.17.591 and 48.17.595.

(b) "Party" means any recipient of any notice or document required as part of an insurance transaction, including but not limited to an applicant, an insured, a policyholder, or an annuity contract holder.

(2) Subject to the requirements of this section, any notice to a party or any other document required under applicable law in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means so long as it meets the requirements of the Washington electronic authentication act (chapter 19.34 RCW). An electronic signature is the equivalent of a digital signature, as those terms are defined in chapter 19.34 RCW, for the purposes of satisfying the requirements of chapter 19.34 RCW under this chapter.

(3) Delivery of a notice or document in accordance with this section is the equivalent to any delivery method required under applicable law, including delivery by first-class mail; first-class mail, postage prepaid; certified mail; or registered mail.

(4) A notice or document may be delivered by an insurer to a party by electronic means under this section only if:

(a) The party has affirmatively consented to that method of delivery and has not withdrawn the consent;

(b) The party, before giving consent, has been provided with a clear and conspicuous statement informing the party of:

(i) The right the party has to withdraw consent to have a notice or document delivered by electronic means at any

time, and any conditions or consequences imposed in the event consent is withdrawn;

(ii) The types of notices and documents to which the party's consent would apply;

(iii) The right of a party to have a notice or document in paper form; and

(iv) The procedures a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update the party's electronic mail address;

(c) The party:

(i) Before giving consent, has been provided with a statement of the hardware and software requirements for access to and retention of notices or documents delivered by electronic means; and

(ii) Consents electronically, or confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means as to which the party has given consent; and

(d) After consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to access or retain a notice or document delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice or document to which the consent applies:

(i) Shall provide the party with a statement that describes:

(A) The revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and

(B) The right of the party to withdraw consent without the imposition of any fee, condition, or consequence that was not disclosed at the time of initial consent; and

(ii) Complies with (b) of this subsection.

(5) This section does not affect requirements related to content or timing of any notice or document required under applicable law.

(6) If this title or applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

(7) The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party may not be denied solely because of the failure to obtain electronic consent or confirmation of consent of the party in accordance with subsection (4)(c)(ii) of this section.

(8)(a) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective.

(b) A withdrawal of consent by a party is effective within a reasonable period of time, not to exceed thirty days, after receipt of the withdrawal by the insurer.

(c) Failure by an insurer to comply with subsections (4)(d) and (10) of this section may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

(9) This section does not apply to a notice or document delivered by an insurer in an electronic form before July 24,

2015, to a party who, before that date, has consented to receive a notice or document in an electronic form otherwise allowed by law.

(10) If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before July 24, 2015, and pursuant to this section, an insurer intends to deliver additional notices or documents to such party in an electronic form, then prior to delivering such additional notices or documents electronically, the insurer shall:

(a) Provide the party with a statement that describes:

(i) The notices or documents that shall be delivered by electronic means under this section that were not previously delivered electronically; and

(ii) The party's right to withdraw consent to have notices or documents delivered by electronic means, without the imposition of any condition or consequence that was not disclosed at the time of initial consent; and

(b) Comply with subsection (4)(b) of this section.

(11) An insurer shall deliver a notice or document by any other delivery method permitted by law other than electronic means if:

(a) The insurer attempts to deliver the notice or document by electronic means and has a reasonable basis for believing that the notice or document has not been received by the party; or

(b) The insurer becomes aware that the electronic mail address provided by the party is no longer valid.

(12) A producer shall not be subject to civil liability for any harm or injury that occurs as a result of a party's election to receive any notice or document by electronic means or by an insurer's failure to deliver a notice or document by electronic means.

(13) This section does not modify, limit, or supersede the provisions of the federal electronic signatures in global and national commerce act (E-SIGN), P.L. 106-229, as amended. [2017 c 307 § 1; 2015 c 263 § 1.]

Chapter 48.190 RCW

PUBLIC BENEFIT HOSPITAL ENTITIES—JOINT SELF-INSURANCE PROGRAMS

Sections

48.190.005	Intent.
48.190.010	Definitions.
48.190.020	Formation—Powers—Service of process.
48.190.030	Applicability of chapter.
48.190.040	State risk manager—Rules.
48.190.050	State risk manager—Approval of program creation—Required submissions.
48.190.060	State risk manager—Approval and denial of program creation—Violations of chapter—Reports.
48.190.070	Participation with entities from other states.
48.190.080	Designation of treasurer—Interest and earnings.
48.190.090	Receiving or soliciting anything of value—Inducement.
48.190.100	Tax exemptions.
48.190.110	Fees.
48.190.120	Civil immunity—Filings and publications.

48.190.005 Intent. This chapter is intended to provide authority for two or more public benefit hospital entities to participate in a joint self-insurance program covering property or liability risks. This chapter provides public benefit hospital entities with the exclusive source of authority to jointly self-insure property and liability risks, jointly purchase insurance or reinsurance, and to contract for risk man-

agement, claims, and administrative services with other public benefit hospital entities, except as otherwise provided in this chapter. This chapter must be liberally construed to grant public benefit hospital entities maximum flexibility in jointly self-insuring to the extent the self-insurance programs are operated in a safe and sound manner. This chapter is intended to require prior approval for the establishment of every joint self-insurance program. In addition, this chapter is intended to require every joint self-insurance program for public benefit hospital entities established under this chapter to notify the state of the existence of the program and to comply with the regulatory and statutory standards governing the management and operation of the programs as provided in this chapter. This chapter is not intended to authorize or regulate self-insurance of unemployment compensation under chapter 50.44 RCW or industrial insurance under chapter 51.14 RCW. [2017 c 221 § 1.]

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

(1) "Hospital services" means clinically related (i.e., preventive, diagnostic, curative, rehabilitative, or palliative) services provided in a hospital setting.

(2) "Property and liability risks" include the risk of property damage or loss sustained by a public benefit hospital entity and the risk of claims arising from the tortious or negligent conduct or any error or omission of the entity, its officers, employees, agents, or volunteers as a result of which a claim may be made against the entity.

(3) "Public benefit hospital entity" means any of the following:

(a) A public hospital district organized under the laws of this state or another state and any agency or instrumentality of a public hospital district including, but not limited to, a legal entity created to conduct a joint self-insurance program for public hospital districts that is operating in accordance with chapter 48.62 RCW; or

(b) A nonprofit corporation, whether organized under the laws of this state or another state, that meets the following requirements:

(i) The nonprofit corporation operates one or more hospitals each of which is licensed for three hundred sixty or fewer beds by the department of health pursuant to chapter 70.41 RCW; and

(ii) The nonprofit corporation is engaged in providing hospital services.

(4) "Self-insurance" means a formal program of advance funding and management of entity financial exposure to a risk of loss that is not transferred through the purchase of an insurance policy or contract.

(5) "State risk manager" means the risk manager of the office of risk management within the department of enterprise services. [2017 c 221 § 2.]

48.190.020 Formation—Powers—Service of process.

(1) The governing body of a public benefit hospital entity may join or form a self-insurance program together with one or more other public benefit hospital entities, and may jointly purchase insurance or reinsurance with one or more other public benefit hospital entities for property and liability risks

only as permitted under this chapter. Public benefit hospital entities may contract for or hire personnel to provide risk management, claims, and administrative services in accordance with this chapter.

(2) The agreement to form a joint self-insurance program may include the organization of a separate legal or administrative entity with powers delegated to the entity.

(3) If provided for in the organizational documents, a joint self-insurance program may, in conformance with this chapter:

(a) Contract or otherwise provide for risk management and loss control services;

(b) Contract or otherwise provide legal counsel for the defense of claims and other legal services;

(c) Consult with the state insurance commissioner and the state risk manager;

(d) Jointly purchase insurance and reinsurance coverage in a form and amount as provided for in the organizational documents;

(e) Obligate the program's participants to pledge revenues or contribute money to secure the obligations or pay the expenses of the program, including the establishment of a reserve or fund for coverage; and

(f) Possess any other powers and perform all other functions reasonably necessary to carry out the purposes of this chapter.

(4) Every joint self-insurance program governed by this chapter must appoint the state risk manager as its attorney to receive service of, and upon whom must be served, all legal process issued against the program in this state upon causes of action arising in this state.

(a) Service upon the state risk manager as attorney constitutes service upon the program. Service upon joint self-insurance programs subject to this chapter may only occur by service upon the state risk manager. At the time of service, the plaintiff shall pay to the state risk manager a fee to be set by the state risk manager, taxable as costs in the action.

(b) With the initial filing for approval with the state risk manager, each joint self-insurance program must designate by name and address the person to whom the state risk manager must forward legal process that is served upon him or her. The joint self-insurance program may change this person by filing a new designation.

(c) The appointment of the state risk manager as attorney is irrevocable, binds any successor in interest or to the assets or liabilities of the joint self-insurance program, and remains in effect as long as there is in force in this state any contract made by the joint self-insurance program or liabilities or duties arising from the contract.

(d) The state risk manager shall keep a record of the day and hour of service upon him or her of all legal process. A copy of the process, by registered mail with return receipt requested, must be sent by the state risk manager to the person designated to receive legal process by the joint self-insurance program in its most recent designation filed with the state risk manager. Proceedings must not commence against the joint self-insurance program, and the program must not be required to appear, plead, or answer, until the expiration of forty days after the date of service upon the state risk manager. [2017 c 221 § 3.]

48.190.030 Applicability of chapter. This chapter does not apply to a public benefit hospital entity that:

(1) Individually self-insures for property and liability risks; or

(2) Participates in a risk pooling arrangement, including a risk retention group or a risk purchasing group, regulated under chapter 48.92 RCW, is a captive insurer authorized in its state of domicile, or participates in a local government risk pool formed under chapter 48.62 RCW. [2017 c 221 § 4.]

48.190.040 State risk manager—Rules. The state risk manager shall adopt rules governing the management and operation of joint self-insurance programs for public benefit hospital entities that cover property or liability risks. All rules must be appropriate for the type of program and class of risk covered. The state risk manager's rules must include:

(1) Standards for the management, operation, and solvency of joint self-insurance programs, including the necessity and frequency of actuarial analyses and claims audits;

(2) Standards for claims management procedures;

(3) Standards for contracts between joint self-insurance programs and private businesses, including standards for contracts between third-party administrators and programs; and

(4) Standards that preclude public hospital districts or other public entities participating in the joint self-insurance program from subsidizing, regardless of the form of subsidy, public benefit hospital entities that are not public hospital districts or public entities. These standards do not apply to the consideration attributable to the ownership interest of a public hospital district or other public entity in a separate legal or administrative entity organized with respect to the program. [2017 c 221 § 5.]

48.190.050 State risk manager—Approval of program creation—Required submissions. Before the establishment of a joint self-insurance program covering property or liability risks by public benefit hospital entities, the entities must obtain the approval of the state risk manager. The entities proposing the creation of a joint self-insurance program requiring prior approval shall submit a plan of management and operation to the state risk manager that provides at least the following information:

(1) The risk or risks to be covered, including any coverage definitions, terms, conditions, and limitations;

(2) The amount and method of funding the covered risks, including the initial capital and proposed rates and projected premiums;

(3) The proposed claim reserving practices;

(4) The proposed purchase and maintenance of insurance or reinsurance in excess of the amounts retained by the joint self-insurance program;

(5) The legal form of the program including, but not limited to, any articles of incorporation, bylaws, charter, or trust agreement or other agreement among the participating entities;

(6) The agreements with participants in the program defining the responsibilities and benefits of each participant and management;

(7) The proposed accounting, depositing, and investment practices of the program;

(8) The proposed time when actuarial analysis will be first conducted and the frequency of future actuarial analysis;

(9) A designation of the individual to whom service of process must be forwarded by the state risk manager on behalf of the program;

(10) All contracts between the program and private persons providing risk management, claims, or other administrative services;

(11) A professional analysis of the feasibility of the creation and maintenance of the program;

(12) A legal determination of the potential federal and state tax liabilities of the program; and

(13) Any other information required by rule of the state risk manager that is necessary to determine the probable financial and management success of the program or that is necessary to determine compliance with this chapter. [2017 c 221 § 6.]

48.190.060 State risk manager—Approval and denial of program creation—Violations of chapter—

Reports. (1) Within one hundred twenty days of receipt of a plan of management and operation, the state risk manager shall either approve or disapprove of the formation of the joint self-insurance program after reviewing the plan to determine whether the proposed program complies with this chapter and all rules adopted in accordance with this chapter.

(2) If the state risk manager denies a request for approval, the state risk manager shall specify in detail the reasons for denial and the manner in which the program fails to meet the requirements of this chapter or any rules adopted in accordance with this chapter.

(3) If the state risk manager determines that a joint self-insurance program covering property or liability risks is in violation of this chapter or is operating in an unsafe financial condition, the state risk manager may issue and serve upon the program an order to cease and desist from the violation or practice.

(a) The state risk manager shall deliver the order to the appropriate entity or entities directly or mail it to the appropriate entity or entities by certified mail with return receipt requested.

(b) If the program violates the order or has not taken steps to comply with the order after the expiration of twenty days after the cease and desist order has been received by the program, the program is deemed to be operating in violation of this chapter, and the state risk manager shall notify the attorney general of the violation.

(c) After hearing or with the consent of a program governed under this chapter and in addition to or in lieu of a continuation of the cease and desist order, the state risk manager may levy a fine upon the program in an amount not less than three hundred dollars and not more than ten thousand dollars. The order levying the fine must specify the period within which the fine must be fully paid. The period within which the fine must be paid must not be less than fifteen and no more than thirty days from the date of the order. Upon failure to pay the fine when due, the state risk manager shall request the attorney general to bring a civil action on the state risk manager's behalf to collect the fine. The state risk manager shall pay any fine collected to the state treasurer for the account of the general fund.

(4) Each joint self-insurance program approved by the state risk manager shall annually file a report with the state risk manager providing:

(a) Details of any changes in the articles of incorporation, bylaws, charter, or trust agreement or other agreement among the participating public benefit hospital entities;

(b) Copies of all the insurance coverage documents;

(c) A description of the program structure, including participants' retention, program retention, and excess insurance limits and attachment point;

(d) An actuarial analysis;

(e) A list of contractors and service providers;

(f) The financial and loss experience of the program; and

(g) Other information as required by rule of the state risk manager.

(5) A joint self-insurance program requiring the state risk manager's approval may not engage in an act or practice that in any respect significantly differs from the management and operation plan that formed the basis for the state risk manager's approval of the program unless the program first notifies the state risk manager in writing and obtains the state risk manager's approval. The state risk manager shall approve or disapprove the proposed change within sixty days of receipt of the notice. If the state risk manager denies a requested change, the state risk manager shall specify in detail the reasons for the denial and the manner in which the program would fail to meet the requirements of this chapter or any rules adopted in accordance with this chapter. [2017 c 221 § 8.]

48.190.070 Participation with entities from other states. A public benefit hospital entity may participate in a joint self-insurance program covering property or liability risks with similar public benefit hospital entities from other states if the program satisfies the following requirements:

(1) An ownership interest in the program is limited to some or all of the public benefit hospital entities of this state and public benefit hospital entities of other states that are provided insurance by the program;

(2) The participating public benefit hospital entities of this state and other states shall elect a board of directors to manage the program, a majority of whom must be affiliated with one or more of the participating public benefit hospital entities;

(3) The program must provide coverage through the delivery to each participating public benefit hospital entity of one or more written policies affecting insurance of covered risks;

(4) The program must be financed, including the payment of premiums and the contribution of initial capital, in accordance with the plan of management and operation submitted to the state risk manager in accordance with this chapter;

(5) The financial statements of the program must be audited annually by the certified public accountants for the program, and these audited financial statements must be delivered to the state risk manager not more than one hundred twenty days after the end of each fiscal year of the program;

(6) The investments of the program must be initiated only with financial institutions or broker-dealers, or both, doing business in those states in which participating public

benefit hospital entities are located, and these investments must be audited annually by the certified public accountants for the program;

(7) The treasurer of a multistate joint self-insurance program must be designated by resolution of the program and the treasurer must be located in the state of one of the participating entities;

(8) The participating entities may have no contingent liabilities for covered claims, other than liabilities for unpaid premiums, retrospective premiums, or assessments, if assets of the program are insufficient to cover the program's liabilities; and

(9) The program must obtain approval from the state risk manager in accordance with this chapter and must remain in compliance with this chapter, except if provided otherwise under this section. [2017 c 221 § 7.]

48.190.080 Designation of treasurer—Interest and earnings. (1) A joint self-insurance program may by resolution of the program designate a person having experience with investments or financial matters as treasurer of the program. The program must require a bond obtained from a surety company in an amount and under the terms and conditions that the program finds will protect against loss arising from mismanagement or malfeasance in investing and managing program funds. The program may pay the premium on the bond.

(2) All interest and earnings collected on joint self-insurance program funds belong to the program and must be deposited to the program's credit in the proper program account. [2017 c 221 § 9.]

48.190.090 Receiving or soliciting anything of value—Inducement. (1) An employee or official of a participating public benefit hospital entity in a joint self-insurance program may not directly or indirectly receive anything of value for services rendered in connection with the operation and management of a self-insurance program other than the salary and benefits provided by his or her employer or the reimbursement of expenses reasonably incurred in furtherance of the operation or management of the program. An employee or official of a participating public benefit hospital entity in a joint self-insurance program may not accept or solicit anything of value for personal benefit or for the benefit of others under circumstances in which it can be reasonably inferred that the employee's or official's independence of judgment is impaired with respect to the management and operation of the program.

(2) RCW 48.30.140, 48.30.150, and 48.30.157 apply to the use of insurance producers by a joint self-insurance program. [2017 c 221 § 10.]

48.190.100 Tax exemptions. A joint self-insurance program approved in accordance with this chapter is exempt from insurance premium taxes, fees assessed under chapter 48.02 RCW, chapters 48.32 and 48.32A RCW, business and occupation taxes imposed under chapter 82.04 RCW, and any assigned risk plan or joint underwriting association otherwise required by law. This section does not apply to, and no exemption is provided for, insurance companies issuing policies to cover program risks, and does not apply to or provide

an exemption for third-party administrators or insurance producers serving the joint self-insurance program. [2017 c 221 § 11.]

48.190.110 Fees. (1) The state risk manager shall establish and charge an investigation fee in an amount necessary to cover the costs for the initial review and approval of a joint self-insurance program. The fee must accompany the initial submission of the plan of operation and management.

(2) The costs of subsequent reviews and investigations must be charged to the joint self-insurance program being reviewed or investigated in accordance with the actual time and expenses incurred in the review or investigation.

(3) Any program failing to remit its assessment when due is subject to denial of permission to operate or to a cease and desist order until the assessment is paid. [2017 c 221 § 12.]

48.190.120 Civil immunity—Filings and publications. (1) Any person who files reports or furnishes other information required under this title, required by the state risk manager under the authority granted under this title, or which is useful to the state risk manager in the administration of this title, is immune from liability in any civil action or suit arising from the filing of any such report or furnishing such information to the state risk manager, unless actual malice, fraud, or bad faith is shown.

(2) The state risk manager and his or her agents and employees are immune from liability in any civil action or suit arising from the publication of any report or bulletins or arising from dissemination of information related to the official activities of the state risk manager unless actual malice, fraud, or bad faith is shown.

(3) The immunity granted under this section is in addition to any common law or statutory privilege or immunity enjoyed by such person. This section is not intended to abrogate or modify in any way such common law or statutory privilege or immunity. [2017 c 221 § 13.]

Title 49

LABOR REGULATIONS

Chapters

49.12	Industrial welfare.
49.17	Washington industrial safety and health act.
49.46	Minimum wage requirements and labor standards.
49.76	Domestic violence leave.
49.77	Military family leave act.
49.78	Family leave.
49.86	Family leave insurance.

Chapter 49.12 RCW INDUSTRIAL WELFARE

Sections

49.12.470 Farm internship pilot project. (*Expires December 31, 2019.*)
Paid sick leave required: RCW 49.46.200, 49.46.210.

49.12.470 Farm internship pilot project. (*Expires December 31, 2019.*) (1) The director shall establish a farm internship pilot project until December 1, 2017, for the [2017 RCW Supp—page 642]

employment of farm interns on small farms under special certificates at wages, if any, as authorized by the department and subject to such limitations as to time, number, proportion, and length of service as provided in this section and as prescribed by the department. The pilot project consists of the following counties: San Juan, Skagit, King, Whatcom, Kitsap, Pierce, Jefferson, Spokane, Yakima, Chelan, Grant, Island, Snohomish, Kittitas, Lincoln, Thurston, Walla Walla, Clark, Cowlitz, and Lewis.

(2) A small farm may employ no more than three interns at one time under this section.

(3) A small farm must apply for a special certificate on a form made available by the director. The application must set forth: The name of the farm and a description of the farm seeking the certificate; the type of work to be performed by a farm intern; a description of the internship program; the period of time for which the certificate is sought and the duration of an internship; the number of farm interns for which a special certificate is sought; the wages, if any, that will be paid to the farm intern; any room and board, stipends, and other remuneration the farm will provide to a farm intern; and the total number of workers employed by the farm.

(4) Upon receipt of an application, the department shall review the application and issue a special certificate to the requesting farm within fifteen days if the department finds that:

(a) The farm qualifies as a small farm;

(b) There have been no serious violations of chapter 49.46 RCW or Title 51 RCW that provide reasonable grounds to believe that the terms of an internship agreement may not be complied with;

(c) The issuance of a certificate will not create unfair competitive labor cost advantages nor have the effect of impairing or depressing wage or working standards established for experienced workers for work of a like or comparable character in the industry or occupation at which the intern is to be employed;

(d) A farm intern will not displace an experienced worker; and

(e) The farm demonstrates that the interns will perform work for the farm under an internship program that: (i) Provides a curriculum of learning modules and supervised participation in farm work activities designed to teach farm interns about farming practices and farm enterprises; (ii) is based on the bona fide curriculum of an educational or vocational institution; and (iii) is reasonably designed to provide the intern with vocational knowledge and skills about farming practices and enterprises. In assessing an internship program, the department may consult with relevant college and university departments and extension programs and state and local government agencies involved in the regulation or development of agriculture.

(5) A special certificate issued under this section must specify the terms and conditions under which it is issued, including: The name of the farm; the duration of the special certificate allowing the employment of farm interns and the duration of an internship; the total number of interns authorized under the special certificate; the authorized wage rate, if any; and any room and board, stipends, and other remuneration the farm will provide to the farm intern. A farm worker may be paid at wages specified in the certificate only during

the effective period of the certificate and for the duration of the internship.

(6) If the department denies an application for a special certificate, notice of denial must be mailed to the farm. The farm listed on the application may, within fifteen days after notice of such action has been mailed, file with the director a petition for review of the denial, setting forth grounds for seeking such a review. If reasonable grounds exist, the director or the director's authorized representative may grant such a review and, to the extent deemed appropriate, afford all interested persons an opportunity to be heard on such review.

(7) Before employing a farm intern, a farm must submit a statement on a form made available by the director stating that the farm understands: The requirements of the industrial welfare act, this chapter, that apply to farm interns; that the farm must pay workers' compensation premiums in the assigned intern risk class and must pay workers' compensation premiums for nonintern work hours in the applicable risk class; and that if the farm does not comply with subsection (8) of this section, the director may revoke the special certificate.

(8) The director may revoke a special certificate issued under this section if a farm fails to: Comply with the requirements of the industrial welfare act, this chapter, that apply to farm interns; pay workers' compensation premiums in the assigned intern risk class; or pay workers' compensation premiums in the applicable risk class for nonintern work hours.

(9) Before the start of a farm internship, the farm and the intern must sign a written agreement and send a copy of the agreement to the department. The written agreement must, at a minimum:

(a) Describe the internship program offered by the farm, including the skills and objectives the program is designed to teach and the manner in which those skills and objectives will be taught;

(b) Explicitly state that the intern is not entitled to unemployment benefits or minimum wages for work and activities conducted pursuant to the internship program for the duration of the internship;

(c) Describe the responsibilities, expectations, and obligations of the intern and the farm, including the anticipated number of hours of farm activities to be performed by and the anticipated number of hours of curriculum instruction provided to the intern per week;

(d) Describe the activities of the farm and the type of work to be performed by the farm intern; and

(e) Describes any wages, room and board, stipends, and other remuneration the farm will provide to the farm intern.

(10) The department must limit the administrative costs of implementing the internship pilot program by relying on farm organizations and other stakeholders to perform outreach and inform the farm community of the program and by limiting employee travel to the investigation of allegations of noncompliance with program requirements.

(11) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Farm intern" means an individual who provides services to a small farm under a written agreement and primarily as a means of learning about farming practices and farm enterprises.

(b) "Farm internship program" means an internship program described under subsection (4)(e) of this section.

(c) "Small farm" means a farm:

(i) Organized as a sole proprietorship, partnership, or corporation;

(ii) That reports on the applicant's schedule F of form 1040 or other applicable form filed with the United States internal revenue service annual sales less than two hundred fifty thousand dollars; and

(iii) Where all the owners or partners of the farm provide regular labor to and participate in the management of the farm, and own or lease the productive assets of the farm.

(12) The department shall monitor and evaluate the farm internships authorized by this section and report to the appropriate committees of the legislature by December 31, 2017. The report must include, but not be limited to: The number of small farms that applied for and received special certificates; the number of interns employed as farm interns; the nature of the educational activities provided to the farm interns; the wages and other remuneration paid to farm interns; the number of and type of workers' compensation claims for farm interns; the employment of farm interns following farm internships; and other matters relevant to assessing farm internships authorized in this section.

(13) This section expires December 31, 2019. [2017 c 150 § 1; 2014 c 131 § 1.]

Expiration date—2017 c 150; 2014 c 131: "This act expires December 31, 2019." [2017 c 150 § 2; 2014 c 131 § 5.]

Chapter 49.17 RCW

WASHINGTON INDUSTRIAL SAFETY AND HEALTH ACT

Sections

49.17.140 Appeal to board—Notification of assessment of penalty—Final order—Procedure—Redetermination—Hearing—Rules. (*Effective January 1, 2018.*)

49.17.140 Appeal to board—Notification of assessment of penalty—Final order—Procedure—Redetermination—Hearing—Rules. (*Effective January 1, 2018.*) (1)

If after an inspection or investigation the director or the director's authorized representative issues a citation under the authority of RCW 49.17.120 or 49.17.130, the department, within a reasonable time after the termination of such inspection or investigation, shall notify the employer using a method by which the mailing can be tracked or the delivery can be confirmed of the penalty to be assessed under the authority of RCW 49.17.180 and shall state that the employer has fifteen working days within which to notify the director that the employer wishes to appeal the citation or assessment of penalty. If, within fifteen working days from the communication of the notice issued by the director the employer fails to notify the director that the employer intends to appeal the citation or assessment penalty, and no notice is filed by any employee or representative of employees under subsection (3) of this section within such time, the citation and the assessment shall be deemed a final order of the department and not subject to review by any court or agency.

(2) If the director has reason to believe that an employer has failed to correct a violation for which the employer was

previously cited and which has become a final order, the director shall notify the employer using a method by which the mailing can be tracked or the delivery can be confirmed of such failure to correct the violation and of the penalty to be assessed under RCW 49.17.180 by reason of such failure, and shall state that the employer has fifteen working days from the communication of such notification and assessment of penalty to notify the director that the employer wishes to appeal the director's notification of the assessment of penalty. If, within fifteen working days from the receipt of notification issued by the director the employer fails to notify the director that the employer intends to appeal the notification of assessment of penalty, the notification and assessment of penalty shall be deemed a final order of the department and not subject to review by any court or agency.

(3) If any employer notifies the director that the employer intends to appeal the citation issued under either RCW 49.17.120 or 49.17.130 or notification of the assessment of a penalty issued under subsections (1) or (2) of this section, or if, within fifteen working days from the issuance of a citation under either RCW 49.17.120 or 49.17.130 any employee or representative of employees files a notice with the director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the director may reassume jurisdiction over the entire matter, or any portion thereof upon which notice of intention to appeal has been filed with the director pursuant to this subsection. If the director reassumes jurisdiction of all or any portion of the matter upon which notice of appeal has been filed with the director, any redetermination shall be completed and corrective notices of assessment of penalty, citations, or revised periods of abatement completed within a period of thirty working days. The thirty-working-day redetermination period may be extended up to forty-five additional working days upon agreement of all parties to the appeal. The redetermination shall then become final subject to direct appeal to the board of industrial insurance appeals within fifteen working days of such redetermination with service of notice of appeal upon the director. In the event that the director does not reassume jurisdiction as provided in this subsection, the director shall promptly notify the state board of industrial insurance appeals of all notifications of intention to appeal any such citations, any such notices of assessment of penalty and any employee or representative of employees notice of intention to appeal the period of time fixed for abatement of a violation and in addition certify a full copy of the record in such appeal matters to the board. The director shall adopt rules of procedure for the reassumption of jurisdiction under this subsection affording employers, employees, and employee representatives notice of the reassumption of jurisdiction by the director, and an opportunity to object or support the reassumption of jurisdiction, either in writing or orally at an informal conference to be held prior to the expiration of the redetermination period. Except as otherwise provided under subsection (4) of this section, a notice of appeal filed under this section shall stay the effectiveness of any citation or notice of the assessment of a penalty pending review by the board of industrial insurance appeals, but such appeal shall not stay the effectiveness of any order of immediate restraint issued by the director under the authority of RCW 49.17.130. The board of industrial insurance appeals

shall afford an opportunity for a hearing in the case of each such appellant and the department shall be represented in such hearing by the attorney general and the board shall in addition provide affected employees or authorized representatives of affected employees an opportunity to participate as parties to hearings under this subsection. The board shall thereafter make disposition of the issues in accordance with procedures relative to contested cases appealed to the state board of industrial insurance appeals.

Upon application by an employer showing that a good faith effort to comply with the abatement requirements of a citation has been made and that the abatement has not been completed because of factors beyond the employer's control, the director after affording an opportunity for a hearing shall issue an order affirming or modifying the abatement requirements in such citation.

(4) An appeal of any violation classified and cited as serious, willful, repeated serious violation, or failure to abate a serious violation does not stay abatement dates and requirements except as follows:

(a) An employer may request a stay of abatement for any serious, willful, repeated serious violation, or failure to abate a serious violation in a notice of appeal under subsection (3) of this section;

(b) When the director reassumes jurisdiction of an appeal under subsection (3) of this section, it will include the stay of abatement request. The issued redetermination decision will include a decision on the stay of abatement request. The department shall stay the abatement for any serious, willful, repeated serious violation, or failure to abate a serious violation where the department cannot determine that the preliminary evidence shows a substantial probability of death or serious physical harm to workers. The decision on stay of abatement will be final unless the employer renews the request for a stay of abatement in any direct appeal of the redetermination to the board of industrial insurance appeals under subsection (3) of this section;

(c) The board of industrial insurance appeals shall adopt rules necessary for conducting an expedited review on any stay of abatement requests identified in the employer's notice of appeal, and shall issue a final decision within forty-five working days of the board's notice of filing of appeal. This rule making shall be initiated in 2011;

(d) Affected employees or their representatives must be afforded an opportunity to participate as parties in an expedited review for stay of abatement;

(e) The board shall grant a stay of an abatement for a serious, willful, repeated serious violation, or failure to abate a serious violation where there is good cause for a stay unless based on the preliminary evidence it is more likely than not that a stay would result in death or serious physical harm to a worker;

(f) As long as a motion to stay abatement is pending all abatement requirements will be stayed.

(5) When the board of industrial insurance appeals denies a stay of abatement and abatement is required while the appeal is adjudicated, the abatement process must be the same process as the process required for abatement upon a final order.

(6) The department shall develop rules necessary to implement subsections (4) and (5) of this section. In an appli-

cation for a stay of abatement, the department will not grant a stay when it can determine that the preliminary evidence shows a substantial probability of death or serious physical harm to workers. The board will not grant a stay where based on the preliminary evidence it is more likely than not that a stay would result in death or serious physical harm to a worker. This rule making shall be initiated in 2011. [2017 c 13 § 1. Prior: 2011 c 301 § 13; 2011 c 91 § 1; 1994 c 61 § 1; 1986 c 20 § 1; 1973 c 80 § 14.]

Effective date—2017 c 13: "This act takes effect January 1, 2018." [2017 c 13 § 2.]

Chapter 49.46 RCW

MINIMUM WAGE REQUIREMENTS AND LABOR STANDARDS

(Formerly: Minimum wage act)

Sections

49.46.005	Declaration of necessity and police power—Conformity to modern fair labor standards.
49.46.010	Definitions. (<i>Effective until December 31, 2019.</i>)
49.46.010	Definitions. (<i>Effective December 31, 2019.</i>)
49.46.020	Minimum hourly wage—Paid sick leave.
49.46.090	Payment of amounts less than chapter requirements—Employer's liability—Assignment of claim.
49.46.100	Prohibited acts of employer—Penalty.
49.46.120	Chapter establishes minimum standards and is supplementary to other laws—More favorable standards unaffected.
49.46.200	Paid sick leave.
49.46.210	Paid sick leave—Authorized purposes—Limitations—"Family member" defined.
49.46.800	Rights and remedies—Long-term care individual providers covered under this chapter.
49.46.810	Adoption, implementation of rules.
49.46.820	Chapter 2, Laws of 2017 to be liberally construed—Local jurisdictions may adopt more favorable labor standards.
49.46.830	Chapter 2, Laws of 2017 subject to investigation and record-keeping provisions.

49.46.005 Declaration of necessity and police power—Conformity to modern fair labor standards. (1) Whereas the establishment of a minimum wage for employees is a subject of vital and imminent concern to the people of this state and requires appropriate action by the legislature to establish minimum standards of employment within the state of Washington, therefore the legislature declares that in its considered judgment the health, safety and the general welfare of the citizens of this state require the enactment of this measure, and exercising its police power, the legislature endeavors by this chapter to establish a minimum wage for employees of this state to encourage employment opportunities within the state. The provisions of this chapter are enacted in the exercise of the police power of the state for the purpose of protecting the immediate and future health, safety and welfare of the people of this state.

(2) Since the enactment of Washington's original minimum wage act, the legislature and the people have repeatedly amended this chapter to establish and enforce modern fair labor standards, including periodically updating the minimum wage and establishing the forty-hour workweek and the right to overtime pay.

(3) The people hereby amend this chapter to conform to modern fair labor standards by establishing a fair minimum wage and the right to paid sick leave to protect public health and allow workers to care for the health of themselves and

their families. [2017 c 2 § 2 (Initiative Measure No. 1433, approved November 8, 2016); 1961 ex.s. c 18 § 1.]

Intent—2017 c 2 (Initiative Measure No. 1433): "It is the intent of the people to establish fair labor standards and protect the rights of workers by increasing the hourly minimum wage to \$11.00 (2017), \$11.50 (2018), \$12.00 (2019)[,] and \$13.50 (2020), and requiring employers to provide employees with paid sick leave to care for the health of themselves and their families." [2017 c 2 § 1 (Initiative Measure No. 1433, approved November 8, 2016).]

Effective date—2017 c 2 (Initiative Measure No. 1433): "This act takes effect on January 1, 2017." [2017 c 2 § 14 (Initiative Measure No. 1433, approved November 8, 2016).]

49.46.010 Definitions. (*Effective until December 31, 2019.*) As used in this chapter:

(1) "Director" means the director of labor and industries;
 (2) "Employ" includes to permit to work;
 (3) "Employee" includes any individual employed by an employer but shall not include:

(a) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and customarily recognized as having been, paid on a piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesperson as those terms are defined and delimited by rules of the director. However, those terms shall be defined and delimited by the human resources director pursuant to chapter 41.06 RCW for employees employed under the director of personnel's jurisdiction;

(d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation therefor shall not affect or add to qualification, entitlement, or benefit rights under any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(f) Any newspaper vendor, carrier, or delivery person selling or distributing newspapers on the street, to offices, to businesses, or from house to house and any freelance news correspondent or "stringer" who, using his or her own equip-

ment, chooses to submit material for publication for free or a fee when such material is published;

(g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel;

(o) Any farm intern providing his or her services to a small farm which has a special certificate issued under RCW 49.12.470;

(p) An individual who is at least sixteen years old but under twenty-one years old, in his or her capacity as a player for a junior ice hockey team that is a member of a regional, national, or international league and that contracts with an arena owned, operated, or managed by a public facilities district created under chapter 36.100 RCW;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed;

(6) "Retail or service establishment" means an establishment seventy-five percent of whose annual dollar volume of sales of goods or services, or both, is not for resale and is recognized as retail sales or services in the particular industry;

(7) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the director. [2015 c 299 § 3. Prior: 2014 c 131 § 2; 2013 c 141 § 1; prior: 2011 1st sp.s. c 43 § 462; (2011 1st sp.s. c 43 § 461 expired December 31, 2011); prior: (2010 c 160 § 2 expired December 31, 2011); 2010 c 8 § 12040; 2002 c 354 § 231; 1997 c 203 § 3; 1993 c 281 § 56; 1989 c 1 § 1 (Initiative Measure No. 518, approved November 8, 1988); 1984 c 7 § 364; 1977 ex.s. c 69

§ 1; 1975 1st ex.s. c 289 § 1; 1974 ex.s. c 107 § 1; 1961 ex.s. c 18 § 2; 1959 c 294 § 1.]

Expiration date—2017 c 150: "2014 c 131 s 2 expires December 31, 2019." [2017 c 150 § 3.]

Recognition—Intent—2015 c 299: See note following RCW 49.12.005.

Expiration date—2014 c 131: See note following RCW 49.12.470.

Effective date—2011 1st sp.s. c 43 § 462: "Section 462 of this act takes effect December 31, 2011." [2011 1st sp.s. c 43 § 484.]

Expiration date—2011 1st sp.s. c 43 § 461: "Section 461 of this act expires December 31, 2011." [2011 1st sp.s. c 43 § 483.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Expiration date—2010 c 160: "This act expires December 31, 2011." [2010 c 160 § 6.]

Effect of offset of military pay on status of bona fide executive, administrative, and professional employees: RCW 73.16.080.

Additional notes found at www.leg.wa.gov

49.46.010 Definitions. (Effective December 31, 2019.)

As used in this chapter:

(1) "Director" means the director of labor and industries;

(2) "Employ" includes to permit to work;

(3) "Employee" includes any individual employed by an employer but shall not include:

(a) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and customarily recognized as having been, paid on a piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesperson as those terms are defined and delimited by rules of the director. However, those terms shall be defined and delimited by the human resources director pursuant to chapter 41.06 RCW for employees employed under the director of personnel's jurisdiction;

(d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation therefor shall not affect or add to qualification, entitlement, or ben-

efit rights under any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(f) Any newspaper vendor, carrier, or delivery person selling or distributing newspapers on the street, to offices, to businesses, or from house to house and any freelance news correspondent or "stringer" who, using his or her own equipment, chooses to submit material for publication for free or a fee when such material is published;

(g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel;

(o) An individual who is at least sixteen years old but under twenty-one years old, in his or her capacity as a player for a junior ice hockey team that is a member of a regional, national, or international league and that contracts with an arena owned, operated, or managed by a public facilities district created under chapter 36.100 RCW;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed;

(6) "Retail or service establishment" means an establishment seventy-five percent of whose annual dollar volume of sales of goods or services, or both, is not for resale and is recognized as retail sales or services in the particular industry;

(7) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the director. [2015 c 299 § 3. Prior: 2014 c 131 § 2; 2013 c 141 § 1; prior: 2011 1st sp.s. c 43 § 462; (2011 1st sp.s. c 43 § 461 expired December

31, 2011); prior: (2010 c 160 § 2 expired December 31, 2011); 2010 c 8 § 12040; 2002 c 354 § 231; 1997 c 203 § 3; 1993 c 281 § 56; 1989 c 1 § 1 (Initiative Measure No. 518, approved November 8, 1988); 1984 c 7 § 364; 1977 ex.s. c 69 § 1; 1975 1st ex.s. c 289 § 1; 1974 ex.s. c 107 § 1; 1961 ex.s. c 18 § 2; 1959 c 294 § 1.]

Recognition—Intent—2015 c 299: See note following RCW 49.12.005.

Expiration date—2014 c 131: See note following RCW 49.12.470.

Effective date—2011 1st sp.s. c 43 § 462: "Section 462 of this act takes effect December 31, 2011." [2011 1st sp.s. c 43 § 484.]

Expiration date—2011 1st sp.s. c 43 § 461: "Section 461 of this act expires December 31, 2011." [2011 1st sp.s. c 43 § 483.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Expiration date—2010 c 160: "This act expires December 31, 2011." [2010 c 160 § 6.]

Effect of offset of military pay on status of bona fide executive, administrative, and professional employees: RCW 73.16.080.

Additional notes found at www.leg.wa.gov

49.46.020 Minimum hourly wage—Paid sick leave.

(1)(a) Beginning January 1, 2017, and until January 1, 2018, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than eleven dollars per hour.

(b) Beginning January 1, 2018, and until January 1, 2019, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than eleven dollars and fifty cents per hour.

(c) Beginning January 1, 2019, and until January 1, 2020, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than twelve dollars per hour.

(d) Beginning January 1, 2020, and until January 1, 2021, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than thirteen dollars and fifty cents per hour.

(2)(a) Beginning on January 1, 2021, and each following January 1st as set forth under (b) of this subsection, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than the amount established under (b) of this subsection.

(b) On September 30, 2020, and on each following September 30th, the department of labor and industries shall calculate an adjusted minimum wage rate to maintain employee purchasing power by increasing the current year's minimum wage rate by the rate of inflation. The adjusted minimum wage rate shall be calculated to the nearest cent using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, for the twelve months prior to each September 1st as calculated by the United States department of labor. Each adjusted minimum wage rate calculated under this subsection (2)(b) takes effect on the following January 1st.

(3) An employer must pay to its employees: (a) All tips and gratuities; and (b) all service charges as defined under RCW 49.46.160 except those that, pursuant to RCW 49.46.160, are itemized as not being payable to the employee or employees servicing the customer. Tips and service

charges paid to an employee are in addition to, and may not count towards, the employee's hourly minimum wage.

(4) Beginning January 1, 2018, every employer must provide to each of its employees paid sick leave as provided in RCW 49.46.200 and 49.46.210.

(5) The director shall by regulation establish the minimum wage for employees under the age of eighteen years. [2017 c 2 § 3 (Initiative Measure No. 1433, approved November 8, 2016); 1999 c 1 § 1 (Initiative Measure No. 688, approved November 3, 1998); 1993 c 309 § 1; 1989 c 1 § 2 (Initiative Measure No. 518, approved November 8, 1988); 1975 1st ex.s. c 289 § 2; 1973 2nd ex.s. c 9 § 1; 1967 ex.s. c 80 § 1; 1961 ex.s. c 18 § 3; 1959 c 294 § 2.]

Intent—Effective date—2017 c 2 (Initiative Measure No. 1433): See notes following RCW 49.46.005.

Notification of employers: RCW 49.46.140.

Additional notes found at www.leg.wa.gov

49.46.090 Payment of amounts less than chapter requirements—Employer's liability—Assignment of claim. (1) Any employer who pays any employee less than the amounts to which such employee is entitled under or by virtue of this chapter, shall be liable to such employee affected for the full amount due to such employee under this chapter, less any amount actually paid to such employee by the employer, and for costs and such reasonable attorney's fees as may be allowed by the court. Any agreement between such employee and the employer allowing the employee to receive less than what is due under this chapter shall be no defense to such action.

(2) At the written request of any employee paid less than the amounts to which he or she is entitled under or by virtue of this chapter, the director may take an assignment under this chapter or as provided in RCW 49.48.040 of such claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. [2017 c 2 § 7 (Initiative Measure No. 1433, approved November 8, 2016); 2010 c 8 § 12043; 1959 c 294 § 9.]

Intent—Effective date—2017 c 2 (Initiative Measure No. 1433): See notes following RCW 49.46.005.

49.46.100 Prohibited acts of employer—Penalty. (1) Any employer who hinders or delays the director or his or her authorized representatives in the performance of his or her duties in the enforcement of this chapter, or refuses to admit the director or his or her authorized representatives to any place of employment, or fails to make, keep, and preserve any records as required under the provisions of this chapter, or falsifies any such record, or refuses to make any record accessible to the director or his or her authorized representatives upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the director or his or her authorized representatives upon demand, or pays or agrees to pay an employee less than the employee is entitled to under this chapter, or otherwise violates any provision of this chapter or of any regulation issued under this chapter shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor.

[2017 RCW Supp—page 648]

(2) Any employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his or her employer, to the director, or his or her authorized representatives that he or she has not been paid wages in accordance with the provisions of this chapter, or that the employer has violated any provision of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor. [2017 c 2 § 8 (Initiative Measure No. 1433, approved November 8, 2016); 2010 c 8 § 12044; 1959 c 294 § 10.]

Intent—Effective date—2017 c 2 (Initiative Measure No. 1433): See notes following RCW 49.46.005.

49.46.120 Chapter establishes minimum standards and is supplementary to other laws—More favorable standards unaffected. This chapter establishes minimum standards for wages, paid sick leave, and working conditions of all employees in this state, unless exempted herefrom, and is in addition to and supplementary to any other federal, state, or local law or ordinance, or any rule or regulation issued thereunder. Any standards relating to wages, hours, paid sick leave, or other working conditions established by any applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which are more favorable to employees than the minimum standards applicable under this chapter, or any rule or regulation issued hereunder, shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law. [2017 c 2 § 9 (Initiative Measure No. 1433, approved November 8, 2016); 1961 ex.s. c 18 § 4; 1959 c 294 § 12.]

Intent—Effective date—2017 c 2 (Initiative Measure No. 1433): See notes following RCW 49.46.005.

49.46.200 Paid sick leave. The demands of the workplace and of families need to be balanced to promote public health, family stability, and economic security. It is in the public interest to provide reasonable paid sick leave for employees to care for the health of themselves and their families. Such paid sick leave shall be provided at the greater of the newly increased minimum wage or the employee's regular and normal wage. [2017 c 2 § 4 (Initiative Measure No. 1433, approved November 8, 2016).]

Intent—Effective date—2017 c 2 (Initiative Measure No. 1433): See notes following RCW 49.46.005.

49.46.210 Paid sick leave—Authorized purposes—Limitations—"Family member" defined. (1) Beginning January 1, 2018, every employer shall provide each of its employees paid sick leave as follows:

(a) An employee shall accrue at least one hour of paid sick leave for every forty hours worked as an employee. An employer may provide paid sick leave in advance of accrual provided that such front-loading meets or exceeds the requirements of this section for accrual, use, and carryover of paid sick leave.

(b) An employee is authorized to use paid sick leave for the following reasons:

(i) An absence resulting from an employee's mental or physical illness, injury, or health condition; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventive medical care;

(ii) To allow the employee to provide care for a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care; and

(iii) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such a reason.

(c) An employee is authorized to use paid sick leave for absences that qualify for leave under the domestic violence leave act, chapter 49.76 RCW.

(d) An employee is entitled to use accrued paid sick leave beginning on the ninetieth calendar day after the commencement of his or her employment.

(e) Employers are not prevented from providing more generous paid sick leave policies or permitting use of paid sick leave for additional purposes.

(f) An employer may require employees to give reasonable notice of an absence from work, so long as such notice does not interfere with an employee's lawful use of paid sick leave.

(g) For absences exceeding three days, an employer may require verification that an employee's use of paid sick leave is for an authorized purpose. If an employer requires verification, verification must be provided to the employer within a reasonable time period during or after the leave. An employer's requirements for verification may not result in an unreasonable burden or expense on the employee and may not exceed privacy or verification requirements otherwise established by law.

(h) An employer may not require, as a condition of an employee taking paid sick leave, that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick leave.

(i) For each hour of paid sick leave used, an employee shall be paid the greater of the minimum hourly wage rate established in this chapter or his or her normal hourly compensation. The employer is responsible for providing regular notification to employees about the amount of paid sick leave available to the employee.

(j) Unused paid sick leave carries over to the following year, except that an employer is not required to allow an employee to carry over paid sick leave in excess of forty hours.

(k) This section does not require an employer to provide financial or other reimbursement for accrued and unused paid sick leave to any employee upon the employee's termination, resignation, retirement, or other separation from employment. When there is a separation from employment and the employee is rehired within twelve months of separation by the same employer, whether at the same or a different business location of the employer, previously accrued unused

paid sick leave shall be reinstated and the previous period of employment shall be counted for purposes of determining the employee's eligibility to use paid sick leave under subsection (1)(d) of this section.

(2) For purposes of this section, "family member" means any of the following:

(a) A child, including a biological, adopted, or foster child, stepchild, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status;

(b) A biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child;

(c) A spouse;

(d) A registered domestic partner;

(e) A grandparent;

(f) A grandchild; or

(g) A sibling.

(3) An employer may not adopt or enforce any policy that counts the use of paid sick leave time as an absence that may lead to or result in discipline against the employee.

(4) An employer may not discriminate or retaliate against an employee for his or her exercise of any rights under this chapter including the use of paid sick leave. [2017 c 2 § 5 (Initiative Measure No. 1433, approved November 8, 2016).]

Intent—Effective date—2017 c 2 (Initiative Measure No. 1433): See notes following RCW 49.46.005.

49.46.800 Rights and remedies—Long-term care individual providers covered under this chapter. (1) Beginning January 1, 2017, all existing rights and remedies available under state or local law for enforcement of the minimum wage shall be applicable to enforce all of the rights established under chapter 2, Laws of 2017.

(2) The state shall pay individual providers, as defined in RCW 74.39A.240, in accordance with the minimum wage, overtime, and paid sick leave requirements of this chapter. [2017 c 2 § 6 (Initiative Measure No. 1433, approved November 8, 2016).]

Intent—Effective date—2017 c 2 (Initiative Measure No. 1433): See notes following RCW 49.46.005.

49.46.810 Adoption, implementation of rules. The state department of labor and industries must adopt and implement rules to carry out and enforce chapter 2, Laws of 2017, including but not limited to procedures for notification to employees and reporting regarding sick leave, and protecting employees from retaliation for the lawful use of sick leave and exercising other rights under this chapter. The department's rules for enforcement of rights under chapter 2, Laws of 2017 shall be at least equal to enforcement of the minimum wage. [2017 c 2 § 10 (Initiative Measure No. 1433, approved November 8, 2016).]

Intent—Effective date—2017 c 2 (Initiative Measure No. 1433): See notes following RCW 49.46.005.

49.46.820 Chapter 2, Laws of 2017 to be liberally construed—Local jurisdictions may adopt more favor-

able labor standards. The provisions of chapter 2, Laws of 2017 are to be liberally construed to effectuate the intent, policies, and purposes of chapter 2, Laws of 2017. Nothing in chapter 2, Laws of 2017 precludes local jurisdictions from enacting additional local fair labor standards that are more favorable to employees, including but not limited to more generous minimum wage or paid sick leave requirements. [2017 c 2 § 11 (Initiative Measure No. 1433, approved November 8, 2016).]

Intent—Effective date—2017 c 2 (Initiative Measure No. 1433): See notes following RCW 49.46.005.

49.46.830 Chapter 2, Laws of 2017 subject to investigation and recordkeeping provisions. Chapter 2, Laws of 2017 shall be codified in . [2017 c 2 § 12 (Initiative Measure No. 1433, approved November 8, 2016).]

Intent—Effective date—2017 c 2 (Initiative Measure No. 1433): See notes following RCW 49.46.005.

Chapter 49.76 RCW DOMESTIC VIOLENCE LEAVE

Sections

49.76.020 Definitions. (*Effective December 31, 2019.*)
49.76.130 Notice to employees—Employment posters—Penalty. (*Effective December 31, 2019.*)

49.76.020 Definitions. (*Effective December 31, 2019.*)

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

(1) "Child," "spouse," "parent," "parent-in-law," "grandparent," and "sick leave and other paid time off" have the same meanings as in RCW 49.12.265.

(2) "Dating relationship" has the same meaning as in RCW 26.50.010.

(3) "Department," "director," "employer," and "employee" have the same meanings as in RCW 49.12.005.

(4) "Domestic violence" has the same meaning as in RCW 26.50.010.

(5) "Family member" means any individual whose relationship to the employee can be classified as a child, spouse, parent, parent-in-law, grandparent, or person with whom the employee has a dating relationship.

(6) "Intermittent leave" is leave taken in separate blocks of time due to a single qualifying reason.

(7) "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(8) "Sexual assault" has the same meaning as in RCW 70.125.030.

(9) "Stalking" has the same meaning as in RCW 9A.46.110. [2017 3rd sp.s. c 5 § 90; 2008 c 286 § 2.]

Effective date—2017 3rd sp.s. c 5 §§ 90-98: See note following RCW 49.77.040.

49.76.130 Notice to employees—Employment posters—Penalty. (*Effective December 31, 2019.*) The department shall include notice of the provisions of this chapter in the next reprinting of employment posters. Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice,

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to be prepared or approved by the director, setting forth excerpts from, or summaries of, the pertinent provisions of this chapter and information pertaining to the filing of a charge. Any employer that willfully violates this section may be subject to a civil penalty of not more than one hundred dollars for each separate offense. Any penalties collected by the department under this section shall be deposited into the family and medical leave enforcement account. [2017 3rd sp.s. c 5 § 91; 2008 c 286 § 13.]

Effective date—2017 3rd sp.s. c 5 §§ 90-98: See note following RCW 49.77.040.

Chapter 49.77 RCW MILITARY FAMILY LEAVE ACT

Sections

49.77.020 Definitions. (*Effective December 31, 2019.*)
49.77.030 Entitlement to leave—Employment protection—Notice requirement—Administration. (*Effective December 31, 2019.*)
49.77.040 Prohibited acts. (*Effective December 31, 2019.*)
49.77.050 Employee complaints. (*Effective December 31, 2019.*)
49.77.060 Civil penalties. (*Effective December 31, 2019.*)
49.77.070 Damages—Equitable relief—Parties to action—Costs. (*Effective December 31, 2019.*)

49.77.020 Definitions. (*Effective December 31, 2019.*)

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

(1) "Department" means the department of labor and industries.

(2) "Employee" means a person who performs service for hire for an employer, for an average of twenty or more hours per week, and includes all individuals employed at any site owned or operated by an employer, but does not include an independent contractor.

(3) "Employer" means: (a) Any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state; (b) the state, state institutions, and state agencies; and (c) any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision.

(4) "Period of military conflict" means a period of war declared by the United States Congress, declared by executive order of the president, or in which a member of a reserve component of the armed forces is ordered to active duty pursuant to either sections 12301 and 12302 of Title 10 of the United States Code or Title 32 of the United States Code.

(5) "Spouse" means a husband or wife, as the case may be, or state registered domestic partner. [2017 3rd sp.s. c 5 § 92; 2008 c 71 § 2.]

Effective date—2017 3rd sp.s. c 5 §§ 90-98: See note following RCW 49.77.040.

49.77.030 Entitlement to leave—Employment protection—Notice requirement—Administration. (*Effective December 31, 2019.*) (1) During a period of military conflict, an employee who is the spouse of a member of the armed forces of the United States, national guard, or reserves who has been notified of an impending call or order to active duty or has been deployed is entitled to a total of fifteen days of

unpaid leave per deployment after the military spouse has been notified of an impending call or order to active duty and before deployment or when the military spouse is on leave from deployment.

(2)(a) Except as provided in (b) of this subsection, any employee who takes leave under this chapter for the intended purpose of the leave is entitled, on return from the leave:

(i) To be restored by the employer to the position of employment held by the employee when the leave commenced; or

(ii) To be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment at a workplace within twenty miles of the employee's workplace when leave commenced.

(b) The taking of leave under this chapter may not result in the loss of any employment benefits accrued before the date on which the leave commenced.

(c) Nothing in this section entitles any restored employee to:

(i) The accrual of any seniority or employment benefits during any period of leave; or

(ii) Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(d) Nothing in this subsection (2) prohibits an employer from requiring an employee on leave to report periodically to the employer on the status and intention of the employee to return to work.

(3) An employer may deny restoration under subsection (2) of this section to any salaried employee who is among the highest paid ten percent of the employees employed by the employer within seventy-five miles of the facility at which the employee is employed if:

(a) Denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;

(b) The employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that the injury would occur; and

(c) The leave has commenced and the employee elects not to return to employment after receiving the notice.

(4) If the employee on leave under this chapter is not eligible for any employer contribution to medical or dental benefits under an applicable collective bargaining agreement or employer policy during any period of leave, an employer shall allow the employee to continue, at the employee's expense, medical or dental insurance coverage, in accordance with state or federal law. The premium to be paid by the employee shall not exceed one hundred two percent of the applicable premium for the leave period.

(5) An employee who seeks to take leave under this chapter must provide the employer with notice, within five business days of receiving official notice of an impending call or order to active duty or of a leave from deployment, of the employee's intention to take leave under this chapter.

(6) An employee who takes leave under this chapter may elect to substitute any of the accrued leave to which the employee may be entitled for any part of the leave provided under this chapter.

(7) The department shall administer the provisions of this chapter, and may adopt rules as necessary to implement this chapter. [2017 3rd sp.s. c 5 § 93; 2008 c 71 § 3.]

Effective date—2017 3rd sp.s. c 5 §§ 90-98: See note following RCW 49.77.040.

49.77.040 Prohibited acts. (Effective December 31, 2019.) (1) It is unlawful for any employer to:

(a) Interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this chapter; or

(b) Discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this chapter.

(2) It is unlawful for any person to discharge or in any other manner discriminate against any individual because the individual has:

(a) Filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this chapter;

(b) Given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this chapter; or

(c) Testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this chapter. [2017 3rd sp.s. c 5 § 94.]

Effective date—2017 3rd sp.s. c 5 §§ 90-98: "Sections 90 through 98 of this act take effect December 31, 2019." [2017 3rd sp.s. c 5 § 103.]

49.77.050 Employee complaints. (Effective December 31, 2019.) Upon complaint by an employee, the director shall investigate to determine if there has been compliance with this chapter and the rules adopted under this chapter. If the investigation indicates that a violation may have occurred, a hearing must be held in accordance with chapter 34.05 RCW. The director must issue a written determination including his or her findings after the hearing. A judicial appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys' fees. [2017 3rd sp.s. c 5 § 95.]

Effective date—2017 3rd sp.s. c 5 §§ 90-98: See note following RCW 49.77.040.

49.77.060 Civil penalties. (Effective December 31, 2019.) An employer who is found, in accordance with RCW 49.77.050, to have violated a requirement of this chapter and the rules adopted under this chapter, is subject to a civil penalty of not less than one thousand dollars for each violation. Civil penalties must be collected by the department and deposited into the family and medical leave enforcement account. [2017 3rd sp.s. c 5 § 96.]

Effective date—2017 3rd sp.s. c 5 §§ 90-98: See note following RCW 49.77.040.

49.77.070 Damages—Equitable relief—Parties to action—Costs. (Effective December 31, 2019.) (1) Any employer who violates RCW 49.77.040 is liable:

(a) For damages equal to:

(i) The amount of:

(A) Any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or

(B) In a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to twelve weeks of wages or salary for the employee;

(ii) The interest on the amount described in (a)(i) of this subsection calculated at the prevailing rate; and

(iii) An additional amount as liquidated damages equal to the sum of the amount described in (a)(i) of this subsection and the interest described in (a)(ii) of this subsection, except that if an employer who has violated RCW 49.77.040 proves to the satisfaction of the court that the act or omission which violated RCW 49.77.040 was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of RCW 49.77.040, the court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under (a)(i) and (ii) of this subsection, respectively; and

(b) For such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(2) An action to recover the damages or equitable relief prescribed in subsection (1) of this section may be maintained against any employer in any court of competent jurisdiction by any one or more employees for and on behalf of:

(a) The employees; or

(b) The employees and other employees similarly situated.

(3) The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow reasonable attorneys' fees, reasonable expert witness fees, and other costs of the action to be paid by the defendant. [2017 3rd sp.s. c 5 § 97.]

Effective date—2017 3rd sp.s. c 5 §§ 90-98: See note following RCW 49.77.040.

Chapter 49.78 RCW FAMILY LEAVE

Sections

49.78.010 through 49.78.904 *zz* Repealed. (Effective December 31, 2019.)

49.78.010 through 49.78.904 Repealed. (Effective December 31, 2019.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 49.86 RCW FAMILY LEAVE INSURANCE

Sections

49.86.005 through 49.86.903 Repealed.

49.86.005 through 49.86.903 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

[2017 RCW Supp—page 652]

Title 50

UNEMPLOYMENT COMPENSATION

Chapters

50.06	Temporary total disability.
50.13	Records and information—Privacy and confidentiality.
50.16	Funds.
50.20	Benefits and claims.
50.22	Extended and additional benefits.
50.29	Employer experience rating.
50.38	Labor market information and economic analysis.
50.60	Shared work compensation plans—Benefits.
50.62	Special employment assistance.
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Chapter 50.06 RCW TEMPORARY TOTAL DISABILITY

Sections

50.06.010 Decodified.

50.06.010 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 50.13 RCW RECORDS AND INFORMATION—PRIVACY AND CONFIDENTIALITY

Sections

50.13.010 Decodified.
50.13.910 Decodified.

50.13.010 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

50.13.910 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 50.16 RCW FUNDS

Sections

50.16.010 Unemployment compensation fund—Administrative contingency fund.

50.16.010 Unemployment compensation fund—Administrative contingency fund. (1) There shall be maintained as special funds, separate and apart from all public moneys or funds of this state an unemployment compensation fund and an administrative contingency fund, which shall be administered by the commissioner exclusively for the purposes of this title, and to which RCW 43.01.050 shall not be applicable.

(2)(a) The unemployment compensation fund shall consist of:

(i) All contributions collected under RCW 50.24.010 and payments in lieu of contributions collected pursuant to the provisions of this title;

(ii) Any property or securities acquired through the use of moneys belonging to the fund;

(iii) All earnings of such property or securities;

(iv) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the social security act, as amended;

(v) All money recovered on official bonds for losses sustained by the fund;

(vi) All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended;

(vii) All money received from the federal government as reimbursement pursuant to section 204 of the federal-state extended compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304);

(viii) The portion of the additional penalties as provided in RCW 50.20.070(2) that is fifteen percent of the amount of benefits overpaid or deemed overpaid; and

(ix) All moneys received for the fund from any other source.

(b) All moneys in the unemployment compensation fund shall be commingled and undivided.

(3)(a) Except as provided in (b) of this subsection, the administrative contingency fund shall consist of:

(i) All interest on delinquent contributions collected pursuant to this title;

(ii) All fines and penalties collected pursuant to the provisions of this title, except the portion of the additional penalties as provided in RCW 50.20.070(2) that is fifteen percent of the amount of benefits overpaid or deemed overpaid;

(iii) All sums recovered on official bonds for losses sustained by the fund; and

(iv) Revenue received under RCW 50.24.014.

(b) All fees, fines, forfeitures, and penalties collected or assessed by a district court because of the violation of this title or rules adopted under this title shall be remitted as provided in chapter 3.62 RCW.

(c) Except as provided in (d) of this subsection, moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014, shall be expended upon the direction of the commissioner, with the approval of the governor, whenever it appears to him or her that such expenditure is necessary solely for:

(i) The proper administration of this title and that insufficient federal funds are available for the specific purpose to which such expenditure is to be made, provided, the moneys are not substituted for appropriations from federal funds which, in the absence of such moneys, would be made available.

(ii) The proper administration of this title for which purpose appropriations from federal funds have been requested but not yet received, provided, the administrative contingency fund will be reimbursed upon receipt of the requested federal appropriation.

(iii) The proper administration of this title for which compliance and audit issues have been identified that establish federal claims requiring the expenditure of state resources in resolution. Claims must be resolved in the following priority: First priority is to provide services to eligible participants within the state; second priority is to provide

substitute services or program support; and last priority is the direct payment of funds to the federal government.

(d)(i) During the 2007-2009 fiscal biennium, moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014(1)(a), shall be expended as appropriated by the legislature for: (A) The cost of the job skills or worker retraining programs at the community and technical colleges and administrative costs at the state board for community and technical colleges; and (B) reemployment services such as business and project development assistance, local economic development capacity building, and local economic development financial assistance at the department of commerce. The remaining appropriation may be expended as specified in (c) of this subsection.

(ii) During the 2015-2017 and 2017-2019 fiscal biennia, moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014(1)(a), shall be expended as appropriated by the legislature: (A) For the department of social and health services for employment and training services and programs in the WorkFirst program; (B) for the administrative costs of state agencies participating in the WorkFirst program; and (C) by the commissioner for the work group on agricultural and agricultural-related issues as provided in the 2013-2015 omnibus operating appropriations act. The remaining appropriation may be expended as specified in (c) of this subsection.

(4) Money in the special account created under RCW 50.24.014(1)(a) may only be expended, after appropriation, for the purposes specified in this section and RCW 50.62.010, 50.62.020, 50.62.030, 50.24.014, 50.44.053, and 50.22.010. [2017 3rd sp.s. c 1 § 977; 2016 sp.s. c 36 § 940; 2014 c 221 § 920; 2013 c 189 § 1; 2012 c 198 § 11; 2009 c 564 § 946; 2009 c 4 § 906; 2008 c 329 § 915; 2007 c 327 § 4; 2006 c 13 § 18. Prior: 2005 c 518 § 933; prior: 2003 2nd sp.s. c 4 § 23; 2003 1st sp.s. c 25 § 925; 2002 c 371 § 914; prior: 1993 c 483 § 7; 1993 c 226 § 10; 1993 c 226 § 9; 1991 sp.s. c 13 § 59; 1987 c 202 § 218; 1985 ex.s. c 5 § 6; 1983 1st ex.s. c 13 § 5; 1980 c 142 § 1; 1977 ex.s. c 292 § 24; 1973 c 73 § 4; 1969 ex.s. c 199 § 27; 1959 c 170 § 1; 1955 c 286 § 2; 1953 ex.s. c 8 § 5; 1945 c 35 § 60; Rem. Supp. 1945 § 9998-198; prior: 1943 c 127 § 6; 1941 c 253 §§ 7, 10; 1939 c 214 § 11; 1937 c 162 § 13.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

Effective date—2014 c 221: See note following RCW 28A.710.260.

Conflict with federal requirements—2013 c 189: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2013 c 189 § 5.]

Effective date—2013 c 189: "This act takes effect October 20, 2013." [2013 c 189 § 7.]

Effective date—2012 c 198: See note following RCW 70.94.6532.

Expiration date—2009 c 564 § 946: "Section *946 of this act expires June 30, 2016." [2009 c 564 § 963.]

***Reviser's note:** During the course of passage of 2009 c 564 the section numbering was changed, but the section reference in section 963 was not changed accordingly. The amendments to RCW 43.325.040 were apparently intended to expire on June 30, 2016. RCW 43.325.040 expired June 30, 2016.

Effective date—2009 c 564: See note following RCW 2.68.020.

Effective date—2009 c 4: See note following RCW 43.79.460.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Severability—Conflict with federal requirements—Effective date—2007 c 327: See notes following RCW 50.24.014.

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

Additional notes found at www.leg.wa.gov

Chapter 50.20 RCW BENEFITS AND CLAIMS

Sections

50.20.250 Self-employment assistance program—Finding—Department provides information to eligible individuals—Rules.

50.20.250 Self-employment assistance program—Finding—Department provides information to eligible individuals—Rules. (1) The legislature finds that the establishment of a self-employment assistance program would assist unemployed individuals and create new businesses and job opportunities in Washington state. The department must inform all individuals eligible under the terms of RCW 50.20.010 of the availability of self-employment assistance and entrepreneurial training programs and of the training provisions of RCW 50.20.043 which would allow them to pursue commissioner-approved training. In addition, when individuals are identified as likely to exhaust benefits under RCW 50.20.011, and when individuals are otherwise eligible for commissioner-approved training under RCW 50.20.043, the department must inform such individuals of the opportunity to enroll in commissioner-approved self-employment assistance programs.

(2) An unemployed individual is eligible to participate in a self-employment assistance program if it has been determined that he or she:

(a) Is otherwise eligible for regular benefits as defined in RCW 50.22.010;

(b) Has been identified as likely to exhaust regular unemployment benefits under a profiling system established by the commissioner as defined in P.L. 103-152 or is otherwise eligible for commissioner-approved training under RCW 50.20.043; and

(c) Is enrolled in a self-employment assistance program that is approved by the commissioner, and includes entrepreneurial training, business counseling, technical assistance, and requirements to engage in activities relating to the establishment of a business and becoming self-employed.

(3) Individuals participating in a self-employment assistance program approved by the commissioner are eligible to receive their regular unemployment benefits.

(a) The requirements of RCW 50.20.010 and 50.20.080 relating to availability for work, active search for work, and refusal to accept suitable work are not applicable to an individual in the self-employment assistance program for the first fifty-two weeks of the individual's participation in the program. However, enrollment in a self-employment assistance

program does not entitle the enrollee to any benefit payments he or she would not be entitled to had he or she not enrolled in the program.

(b) An individual who meets the requirements of this section is considered to be "unemployed" under RCW 50.04.310 and 50.20.010.

(4) An individual who fails to participate in his or her approved self-employment assistance program as prescribed by the commissioner is disqualified from continuation in the program.

(5) The commissioner must take all steps necessary in carrying out this section to assure collaborative involvement of interested parties in program development, and to ensure that the self-employment assistance programs meet all federal criteria for withdrawal from the unemployment fund. The commissioner may approve, as self-employment assistance programs, existing self-employment training programs available through community colleges, workforce development boards, or other organizations and is not obligated by this section to expend any departmental funds for the operation of self-employment assistance programs, unless specific funding is provided to the department for that purpose through federal or state appropriations.

(6) The commissioner may adopt rules as necessary to implement this section. [2017 c 39 § 7; 2012 c 40 § 2; 2007 c 248 § 1.]

Report to legislature—2012 c 40; 2007 c 248: "By December 1, 2015, the employment security department must report to relevant legislative committees on the performance of the self-employment assistance program. The report must include an analysis of the following:

- (1) Self-employment impacts;
- (2) Wage and salary outcomes;
- (3) Benefit payment outcomes; and
- (4) A cost-benefit analysis." [2012 c 40 § 3; 2007 c 248 § 3.]

Effective date—2007 c 248: "This act takes effect January 1, 2008." [2007 c 248 § 4.]

Implementation—2007 c 248: "The commissioner of employment security may take the necessary steps to ensure that this act is implemented on its effective date." [2007 c 248 § 5.]

Chapter 50.22 RCW EXTENDED AND ADDITIONAL BENEFITS

Sections

50.22.150 Training benefits—Claims effective before April 5, 2009—Eligibility—Definitions—Payment—Local workforce development council to identify high-demand occupations and occupations in declining employer demand—Rules.

50.22.155 Training benefits—Claims effective on or after April 5, 2009—Eligibility—Definitions—Role of local workforce development councils—Rules.

50.22.150 Training benefits—Claims effective before April 5, 2009—Eligibility—Definitions—Payment—Local workforce development council to identify high-demand occupations and occupations in declining employer demand—Rules. (1) This section applies to claims with an effective date before April 5, 2009.

(2) Subject to availability of funds, training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits and who:

(a) Is a dislocated worker as defined in RCW 50.04.075;

(b) Except as provided under subsection (3) of this section, has demonstrated, through a work history, sufficient tenure in an occupation or in work with a particular skill set. This screening will take place during the assessment process;

(c) Is, after assessment of demand for the individual's occupation or skills in the individual's labor market, determined to need job-related training to find suitable employment in his or her labor market. Beginning July 1, 2001, the assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets identified in local labor market areas by the local workforce development councils, in cooperation with the employment security department and its labor market information division, under subsection (11) of this section;

(d) Develops an individual training program that is submitted to the commissioner for approval within sixty days after the individual is notified by the employment security department of the requirements of this section;

(e) Enters the approved training program by ninety days after the date of the notification, unless the employment security department determines that the training is not available during the ninety-day period, in which case the individual enters training as soon as it is available; and

(f) Is enrolled in training approved under this section on a full-time basis as determined by the educational institution, and is making satisfactory progress in the training as certified by the educational institution.

(3) Until June 30, 2002, the following individuals who meet the requirements of subsection (2) of this section may, without regard to the tenure requirements under subsection (2)(b) of this section, receive training benefits as provided in this section:

(a) An exhaustee who has base year employment in the aerospace industry assigned the standard industrial classification code "372" or the North American industry classification system code "336411";

(b) An exhaustee who has base year employment in the forest products industry, determined by the department, but including the industries assigned the major group standard industrial classification codes "24" and "26" or any equivalent codes in the North American industry classification system code, and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment; or

(c) An exhaustee who has base year employment in the fishing industry assigned the standard industrial classification code "0912" or any equivalent codes in the North American industry classification system code.

(4) An individual is not eligible for training benefits under this section if he or she:

(a) Is a standby claimant who expects recall to his or her regular employer;

(b) Has a definite recall date that is within six months of the date he or she is laid off; or

(c) Is unemployed due to a regular seasonal layoff which demonstrates a pattern of unemployment consistent with the provisions of *RCW 50.20.015. Regular seasonal layoff does not include layoff due to permanent structural downsizing or structural changes in the individual's labor market.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

(b) "Sufficient tenure" means earning a plurality of wages in a particular occupation or using a particular skill set during the base year and at least two of the four twelve-month periods immediately preceding the base year.

(c) "Training benefits" means additional benefits paid under this section.

(d) "Training program" means:

(i) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

(ii) A vocational training program at an educational institution:

(A) That is targeted to training for a high-demand occupation. Beginning July 1, 2001, the assessment of high-demand occupations authorized for training under this section must be substantially based on labor market and employment information developed by local workforce development councils, in cooperation with the employment security department and its labor market information division, under subsection (11) of this section;

(B) That is likely to enhance the individual's marketable skills and earning power; and

(C) That meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 113-128.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(6) Benefits shall be paid as follows:

(a)(i) Except as provided in (a)(iii) of this subsection, for exhaustees who are eligible under subsection (2) of this section, the total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year; or

(ii) For exhaustees who are eligible under subsection (3) of this section, for claims filed before June 30, 2002, the total training benefit amount shall be seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year; or

(iii) For exhaustees eligible under subsection (2) of this section from industries listed under subsection (3)(a) of this section, for claims filed on or after June 30, 2002, but before January 5, 2003, the total training benefit amount shall be seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year.

(b) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit

year and shall be paid under the same terms and conditions as regular benefits. The training benefits shall be paid before any extended benefits but not before any similar federally funded program.

(c) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim.

(7) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

(8)(a) Except as provided in (b) of this subsection, individuals who receive training benefits under this section or under any previous additional benefits program for training are not eligible for training benefits under this section for five years from the last receipt of training benefits under this section or under any previous additional benefits program for training.

(b) With respect to claims that are filed before January 5, 2003, an individual in the aerospace industry assigned the standard industrial code "372" or the North American industry classification system code "336411" who received training benefits under this section, and who had been making satisfactory progress in a training program but did not complete the program, is eligible, without regard to the five-year limitation of this section and without regard to the requirement of subsection (2)(b) of this section, if applicable, to receive training benefits under this section in order to complete that training program. The total training benefit amount that applies to the individual is seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits paid, or deemed paid, with respect to the benefit year in which the training program resumed and, if applicable, reduced by the amount of training benefits paid, or deemed paid, with respect to the benefit year in which the training program commenced.

(9) An individual eligible to receive a trade readjustment allowance under chapter 2 of Title II of the Trade Act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance. An individual eligible to receive emergency unemployment compensation, so called, under any federal law, shall not be eligible to receive benefits under this section for each week the individual receives such compensation.

(10) All base year employers are interested parties to the approval of training and the granting of training benefits.

(11) By July 1, 2001, each local workforce development council, in cooperation with the employment security department and its labor market information division, must identify high-demand occupations and occupations in declining employer demand. For the purposes of RCW 50.22.130 through 50.22.150 and section 9, chapter 2, Laws of 2000, "high-demand occupation" means an occupation with a substantial number of current or projected employment opportunities. Local workforce development councils must use state and locally developed labor market information. Thereafter,

each local workforce development council shall update this information annually or more frequently if needed.

(12) The commissioner shall adopt rules as necessary to implement this section. [2017 c 39 § 8; 2009 c 353 § 4; 2009 c 3 § 5; 2002 c 149 § 2; 2000 c 2 § 8.]

*Reviser's note: RCW 50.20.015 was repealed by 2003 2nd sp.s. c 4 § 35.

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

Additional notes found at www.leg.wa.gov

50.22.155 Training benefits—Claims effective on or after April 5, 2009—Eligibility—Definitions—Role of local workforce development councils—Rules. (1) With respect to claims with an effective date on or after April 5, 2009, and before July 1, 2012:

(a) Subject to availability of funds, training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits when:

(i) The individual is a dislocated worker as defined in RCW 50.04.075 and, after assessment of the individual's labor market, occupation, or skills, is determined to need job-related training to find suitable employment in the individual's labor market. The assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets and high-demand occupations identified in local labor market areas by the local workforce development councils in cooperation with the employment security department and its labor market information division; or

(ii) For claims with an effective date on or after September 7, 2009, the individual:

(A) Earned an average hourly wage in the individual's base year that is less than one hundred thirty percent of the state minimum wage and, after assessment, it is determined that the individual's earning potential will be enhanced through vocational training. The individual's average hourly wage is calculated by dividing the total wages paid by the total hours worked in the individual's base year;

(B) Served in the United States military or the Washington national guard during the twelve-month period prior to the application date, was honorably discharged from military service or the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market;

(C) Is currently serving in the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market; or

(D) Is disabled due to an injury or illness and, after assessment, is determined to be unable to return to his or her previous occupation and to need job-related training to find suitable employment in the individual's labor market.

(b)(i) The individual must develop an individual training program that is submitted to the commissioner for approval within ninety days after the individual is notified by the employment security department of the requirements of this section;

(ii) The individual must enter the approved training program by one hundred twenty days after the date of the notifi-

cation, unless the employment security department determines that the training is not available during the one hundred twenty days, in which case the individual enters training as soon as it is available;

(iii) The department may waive the deadlines established under this subsection for reasons deemed by the commissioner to be good cause.

(c) The individual must be enrolled in training approved under this section on a full-time basis as determined by the educational institution, except that less than full-time training may be approved when the individual has a physical, mental, or emotional disability that precludes enrollment on a full-time basis.

(d) The individual must make satisfactory progress in the training as defined by the commissioner and certified by the educational institution.

(e) An individual is not eligible for training benefits under this section if he or she:

(i) Is a standby claimant who expects recall to his or her regular employer; or

(ii) Has a definite recall date that is within six months of the date he or she is laid off.

(f) The following definitions apply throughout this subsection (1) unless the context clearly requires otherwise.

(i) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

(ii) "High-demand occupation" means an occupation with a substantial number of current or projected employment opportunities.

(iii) "Training benefits" means additional benefits paid under this section.

(iv) "Training program" means:

(A) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

(B) A vocational training program at an educational institution that:

(I) Is targeted to training for a high-demand occupation;

(II) Is likely to enhance the individual's marketable skills and earning power; and

(III) Meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 113-128.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(g) Benefits shall be paid as follows:

(i) The total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year.

(ii) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits.

(iii) Training benefits shall be paid before any extended benefits but not before any similar federally funded program. Effective July 3, 2011, training benefits shall be paid after any federally funded program.

(iv) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim. However, training benefits are not payable for weeks more than three years beyond the end of the benefit year of the regular claim when individuals are eligible for benefits in accordance with RCW 50.22.010 (2)(b) or (3)(b).

(h) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

(i) Individuals who receive training benefits under RCW 50.22.150 or this section are not eligible for training benefits under this section for five years from the last receipt of training benefits.

(j) An individual eligible to receive a trade readjustment allowance under chapter 2, Title II of the trade act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance.

(k) An individual eligible to receive emergency unemployment compensation under any federal law shall not be eligible to receive benefits under this section for each week the individual receives such compensation.

(l) All base year employers are interested parties to the approval of training and the granting of training benefits.

(m) Each local workforce development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and high-demand occupations and skill sets. Each local workforce development council shall update this information annually or more frequently if needed.

(2) With respect to claims with an effective date on or after July 1, 2012:

(a) Training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits when:

(i) The individual is a dislocated worker as defined in RCW 50.04.075 and, after assessment of the individual's labor market, occupation, or skills, is determined to need job-related training to find suitable employment in the individual's labor market. The assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets and high-demand occupations identified in local labor market areas by the local workforce development councils in cooperation with the employment security department and its labor market information division; or

(ii) Subject to the availability of funds as specified in RCW 50.22.140, the individual:

(A) Earned an average hourly wage in the individual's base year that is less than one hundred thirty percent of the state minimum wage and, after assessment, it is determined that the individual's earning potential will be enhanced

through vocational training. The individual's average hourly wage is calculated by dividing the total wages paid by the total hours worked in the individual's base year;

(B) Served in the United States military or the Washington national guard during the twelve-month period prior to the application date, was honorably discharged from military service or the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market;

(C) Is currently serving in the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market; or

(D) Is disabled due to an injury or illness and, after assessment, is determined to be unable to return to his or her previous occupation and to need job-related training to find suitable employment in the individual's labor market.

(b)(i) Except for an individual eligible under (a)(i) of this subsection, the individual must develop an individual training plan that is submitted to the commissioner for approval within ninety days after the individual is notified by the employment security department of the requirements of this section;

(ii) Except for an individual eligible under (a)(i) of this subsection, the individual must enroll in the approved training program by one hundred twenty days after the date of the notification, unless the employment security department determines that the training is not available during the one hundred twenty days, in which case the individual enters training as soon as it is available;

(iii) An individual eligible under (a)(i) of this subsection must submit an individual training plan and enroll in the approved training program prior to the end of the individual's benefit year;

(iv) The department may waive the deadlines established under (b)(i) and (ii) of this subsection for reasons deemed by the commissioner to be good cause.

(c) Except for an individual eligible under (a)(i) of this subsection, the individual must be enrolled in training approved under this section on a full-time basis as determined by the educational institution, except that less than full-time training may be approved when the individual has a physical, mental, or emotional disability that precludes enrollment on a full-time basis.

(d) The individual must make satisfactory progress in the training as defined by the commissioner and certified by the educational institution.

(e) An individual is not eligible for training benefits under this section if he or she:

(i) Is a standby claimant who expects recall to his or her regular employer; or

(ii) Has a definite recall date that is within six months of the date he or she is laid off.

(f) The following definitions apply throughout this subsection (2) unless the context clearly requires otherwise:

(i) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

(ii) "High-demand occupation" means an occupation with a substantial number of current or projected employment opportunities.

(iii) "Training benefits" means additional benefits paid under this section.

(iv) "Training program" means:

(A) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

(B) A vocational training program at an educational institution that:

(I) Is targeted to training for a high-demand occupation;

(II) Is likely to enhance the individual's marketable skills and earning power; and

(III) Meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 113-128.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(g) Available benefits shall be paid as follows:

(i) The total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits paid, or deemed paid, with respect to the benefit year.

(ii) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits.

(iii) Training benefits shall be paid after any federally funded program.

(iv) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim. However, training benefits are not payable for weeks more than three years beyond the end of the benefit year of the regular claim when individuals are eligible for benefits in accordance with RCW 50.22.010 (2)(b) or (3)(b).

(h) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

(i) Except for individuals eligible under (a)(i) of this subsection, individuals who receive training benefits under RCW 50.22.150 or this section are not eligible for training benefits under this section for five years from the last receipt of training benefits.

(j) An individual eligible to receive a trade readjustment allowance under chapter 2, Title II of the trade act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance.

(k) An individual eligible to receive emergency unemployment compensation under any federal law shall not be

eligible to receive benefits under this section for each week the individual receives such compensation.

(l) All base year employers are interested parties to the approval of training and the granting of training benefits.

(m) Each local workforce development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and high-demand occupations and skill sets. Each local workforce development council shall update this information annually or more frequently if needed.

(3) The commissioner shall adopt rules as necessary to implement this section. [2017 c 39 § 9. Prior: 2011 c 4 § 9; (2011 c 4 § 6 expired July 1, 2012); 2011 c 3 § 2; 2009 c 3 § 4.]

Contingent effective date—2011 c 4 §§ 7-15: See note following RCW 50.20.099.

Contingent expiration date—2011 c 4 §§ 3 and 6: See note following RCW 50.29.021.

Effective date—2011 c 4 §§ 1-6 and 16-21: See note following RCW 50.20.1202.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Conflict with federal requirements—Effective date—2011 c 3: See notes following RCW 50.22.010.

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

Chapter 50.29 RCW

EMPLOYER EXPERIENCE RATING

Sections

50.29.021 Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004.

50.29.021 Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004. (1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after January 4, 2004.

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer, except as provided in subsection (5) of this section.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Benefits paid to an individual who qualifies for benefits under RCW 50.20.050 (1)(b) (iv) or (xi) or (2)(b) (iv) or (xi), as applicable, shall not be charged to the experience rating account of any contribution paying employer.

(f) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer. This subsection (3)(f) does not apply to the calculation of contribution rates under RCW 50.29.025 for rate year 2010 and thereafter.

(g) The forty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1201 and the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1202 shall not be charged to the experience rating account of any contribution paying employer.

(h) With respect to claims where the minimum amount payable weekly is increased to one hundred fifty-five dollars pursuant to RCW 50.20.1201(3), benefits paid that exceed the benefits that would have been paid if the minimum amount payable weekly had been calculated pursuant to RCW 50.20.120 shall not be charged to the experience rating account of any contribution paying employer.

(i) Upon approval of an individual's training benefits plan submitted in accordance with RCW 50.22.155(2), an individual is considered enrolled in training, and regular benefits beginning with the week of approval shall not be charged to the experience rating account of any contribution paying employer.

(j) Training benefits paid to an individual under RCW 50.22.155 shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, except employers as provided in subsection (6) of this section, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, worksite, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster;

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW;

(v) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who qualified for two consecutive unemployment claims where wages were attributable to at least one employer who employed the individual in both base years. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW;

(vi) Was hired to replace an employee who is a member of the military reserves or National Guard and was called to federal active military service by the president of the United States and is subsequently laid off when that employee is reemployed by their employer upon release from active duty within the time provided for reemployment in RCW 73.16.035; or

(vii) Worked for an employer for twenty weeks or less, and was laid off at the end of temporary employment when that employee temporarily replaced a permanent employee receiving family or medical leave benefits under this chapter, and the layoff is due to the return of that permanent employee. This subsection (4)(a)(vii) applies to claims with an effective date on or after January 1, 2020.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investiga-

tion of the request, shall determine whether relief should be granted.

(5) When a benefit claim becomes invalid due to an amendment or adjustment of a report where the employer failed to report or inaccurately reported hours worked or remuneration paid, or both, all benefits paid will be charged to the experience rating account of the contribution paying employer or employers that originally filed the incomplete or inaccurate report or reports. An employer who reimburses the trust fund for benefits paid to workers and who fails to report or inaccurately reported hours worked or remuneration paid, or both, shall reimburse the trust fund for all benefits paid that are based on the originally filed incomplete or inaccurate report or reports.

(6) An employer's experience rating account may not be relieved of charges for a benefit payment and an employer who reimburses the trust fund for benefit payments may not be credited for a benefit payment if a benefit payment was made because the employer or employer's agent failed to respond timely or adequately to a written request of the department for information relating to the claim or claims without establishing good cause for the failure and the employer or employer's agent has a pattern of such failures. The commissioner has the authority to determine whether the employer has good cause under this subsection.

(a) For the purposes of this subsection, "adequately" means providing accurate information of sufficient quantity and quality that would allow a reasonable person to determine eligibility for benefits.

(b)(i) For the purposes of this subsection, "pattern" means a benefit payment was made because the employer or employer's agent failed to respond timely or adequately to a written request of the department for information relating to a claim or claims without establishing good cause for the failure, if the greater of the following calculations for an employer is met:

(A) At least three times in the previous two years; or

(B) Twenty percent of the total current claims against the employer.

(ii) If an employer's agent is utilized, a pattern is established based on each individual client employer that the employer's agent represents. [2017 3rd sp.s. c 5 § 83. Prior: 2013 c 244 § 1; 2013 c 189 § 3; 2011 c 4 § 14; 2010 c 25 § 1; prior: 2009 c 493 § 1; 2009 c 50 § 1; 2009 c 3 § 13; 2008 c 323 § 2; 2007 c 146 § 2; 2006 c 13 § 6; 2005 c 133 § 4; 2003 2nd sp.s. c 4 § 21.]

Conflict with federal requirements—2013 c 244: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2013 c 244 § 2.]

Effective date—2013 c 244: "This act takes effect January 1, 2014." [2013 c 244 § 4.]

Conflict with federal requirements—Effective date—2013 c 189: See notes following RCW 50.16.010.

Contingent effective date—2011 c 4 §§ 7-15: See note following RCW 50.20.099.

Contingent expiration date—2011 c 4 §§ 3 and 6: "Sections 3 and 6 of this act expire July 1, 2012, unless the United States department of labor determines by October 1, 2011, that this act does not meet the requirements of section 2003 of the federal American recovery and reinvestment act of 2009 for unemployment insurance modernization incentive funding." [2011 c 4 § 23.] The United States department of labor determined that this act meets the requirements of section 2003 of the federal American recovery and reinvestment act of 2009.

Notice—2011 c 4: "The employment security department must provide notice of the expiration date of sections 3 and 6 of this act and the effective date of sections 7 through 15 of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department." [2011 c 4 § 25.] The employment security department provided notice to the office of the code reviser on July 11, 2011. See notes following RCW 50.29.021 and 50.20.099.

Effective date—2011 c 4 §§ 1-6 and 16-21: See note following RCW 50.20.1202.

Conflict with federal requirements—2011 c 4: See note following RCW 50.20.1202.

Effective date—2010 c 25 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2010]." [2010 c 25 § 6.]

Conflict with federal requirements—2010 c 25: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2010 c 25 § 4.]

Conflict with federal requirements—2009 c 493: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2009 c 493 § 5.]

Short title—Effective date—Conflict with federal requirements—2009 c 3: See notes following RCW 50.20.120.

Conflict with federal requirements—2008 c 323: See note following RCW 50.20.050.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133: See notes following RCW 50.20.120.

Additional notes found at www.leg.wa.gov

Chapter 50.38 RCW

LABOR MARKET INFORMATION AND ECONOMIC ANALYSIS

Sections

50.38.900 Decodified.
50.38.902 Decodified.

50.38.900 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

50.38.902 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 50.60 RCW SHARED WORK COMPENSATION PLANS— BENEFITS

Sections

50.60.902 Decodified.

50.60.902 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 50.62 RCW SPECIAL EMPLOYMENT ASSISTANCE

Sections

50.62.030 Job service program or activity—Enrollment in self-employment assistance or entrepreneurial training programs.

50.62.030 Job service program or activity—Enrollment in self-employment assistance or entrepreneurial training programs. (1) Job service resources must be used to assist with the reemployment of unemployed workers using the most efficient and effective means of service delivery. The job service program of the employment security department may undertake any program or activity for which funds are available and which furthers the goals of this chapter. These programs and activities must include, but are not limited to:

(a) Giving older unemployed workers and the long-term unemployed the highest priority for all services made available under this section. The employment security department must make the services provided under this chapter available to the older unemployed workers and the long-term unemployed as soon as they register under the employment assistance program;

(b) Supplementing basic employment services, with special job search and claimant placement assistance designed to assist unemployment insurance claimants to obtain employment;

(c) Providing employment services, such as recruitment, screening, and referral of qualified workers, to agricultural areas where these services have in the past contributed to positive economic conditions for the agricultural industry; and

(d) Providing otherwise unobtainable information and analysis to the legislature and program managers about issues related to employment and unemployment.

(2) Individuals who are eligible for services under the federal workforce innovation and opportunity act, P.L. 113-128 or its successor, must be provided the opportunity to enroll in self-employment assistance or entrepreneurial training programs to prepare them for self-employment on the same basis as they are provided the opportunity to enroll in other training programs funded under the federal workforce innovation and opportunity act. The department must work with local workforce development councils to ensure that the contracting process with training providers is efficient and that the number of entrepreneurial training providers on the state's eligible training provider list is sufficient to meet demand. Each local workforce development council must:

(a) Notify all individuals eligible for services under the workforce innovation and opportunity act of the availability of self-employment assistance and entrepreneurial training; and

(b) Establish and implement a plan for expending workforce innovation and opportunity act funds on self-employment assistance and entrepreneurial training at a rate that is commensurate with either the demand for such services or the rate of self-employment within the council's workforce development area. [2017 c 39 § 10; 2012 c 40 § 4; 1995 c 135 § 4. Prior: 1987 c 284 § 3; 1987 c 171 § 2; 1985 ex.s. c 5 § 3.]

Intent—1995 c 135: See note following RCW 29A.08.760.

Additional notes found at www.leg.wa.gov

Chapter 50.65 RCW WASHINGTON SERVICE CORPS

Sections

50.65.905 Decodified.

50.65.905 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 50.70 RCW PROGRAMS FOR DISLOCATED FOREST PRODUCTS WORKERS

Sections

50.70.902 Decodified.

50.70.902 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 50.98 RCW CONSTRUCTION

Sections

50.98.080 Decodified.

50.98.080 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Title 50A FAMILY AND MEDICAL LEAVE

Chapters

50A.04 Family and medical leave program.

Chapter 50A.04 RCW FAMILY AND MEDICAL LEAVE PROGRAM

Sections

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50A.04.015 Employee eligibility.
50A.04.020 Benefit—Amount and duration.
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50A.04.900 Conflict with federal requirements.

50A.04.005 Intent. The legislature finds that the demands of the workplace and of families need to be bal-

anced to promote family stability and economic security. The legislature also finds that families across the state own and operate businesses. Workplace leave policies are desirable to accommodate changes in the workforce such as rising numbers of dual-career couples, working single parents, and an aging population. In addition the impact of significant new requirements should be reasonably balanced to help small businesses thrive.

The legislature also finds that access to paid leave is associated with many important health benefits. Research confirms that paid leave results in decreased infant mortality and more well-baby visits and reductions in maternal postpartum depression and stress. The legislature further finds that paid leave increases the duration of breastfeeding, which supports bonding, stimulates positive neurological and psychological development, strengthens a child's immune system, and reduces the risks of serious or costly health problems such as asthma, acute ear infections, obesity, Type 2 diabetes, leukemia, and sudden infant death syndrome. The legislature also finds that when fathers have access to paid leave they are more directly engaged during the child's first few months, thereby increasing father infant bonding and reducing overall stress on the family.

The legislature declares it to be in the public interest to create a family and medical leave insurance program to provide reasonable paid family leave for the birth or placement of a child with the employee, for the care of a family member who has a serious health condition, and for a qualifying exigency under the federal family and medical leave act, and reasonable paid medical leave for an employee's own serious health condition and to reasonably assist businesses in implementing and maintaining a program to support their employees and family. [2017 3rd sp.s. c 5 § 1.]

50A.04.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Child" includes a biological, adopted, or foster child, a stepchild, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status.

(2) "Commissioner" means the commissioner of the department or the commissioner's designee.

(3) "Department" means the employment security department.

(4)(a) "Employee" means an individual who is in the employment of an employer.

(b) "Employee" does not include employees of the United States of America.

(5) "Employee's average weekly wage" means the quotient derived by dividing the employee's total wages during the two quarters of the employee's qualifying period in which total wages were highest by twenty-six. If the result is not a multiple of one dollar, the department must round the result to the next lower multiple of one dollar.

(6)(a) "Employer" means: (i) Any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in

employment or, having become an employer, has not ceased to be an employer as provided in this chapter; (ii) the state, state institutions, and state agencies; and (iii) any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision.

(b) "Employer" does not include the United States of America.

(7)(a) "Employment" means personal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied. The term "employment" includes an individual's entire service performed within or without or both within and without this state, if:

(i) The service is localized in this state; or

(ii) The service is not localized in any state, but some of the service is performed in this state; and

(A) The base of operations of the employee is in the state, or if there is no base of operations, then the place from which such service is directed or controlled is in this state; or

(B) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) "Employment" does not include:

(i) Self-employed individuals;

(ii) Services for remuneration when it is shown to the satisfaction of the commissioner that:

(A)(I) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(II) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

(III) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service; or

(B) As a separate alternative:

(I) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(II) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and

(III) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or such individual has a principal place of business for the work the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(IV) On the effective date of the contract of service, such individual is responsible for filing at the next applicable fil-

ing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(V) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, such individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(VI) On the effective date of the contract of service, such individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; or

(iii) Services that require registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW rendered by an individual when:

(A) The individual has been and will continue to be free from control or direction over the performance of the service, both under the contract of service and in fact;

(B) The service is either outside the usual course of business for which the service is performed, or the service is performed outside of all the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(C) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes, other than that furnished by the employer for which the business has contracted to furnish services;

(D) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(E) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;

(F) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business that the individual is conducting; and

(G) On the effective date of the contract of service, the individual has a valid contractor registration pursuant to chapter 18.27 RCW or an electrical contractor license pursuant to chapter 19.28 RCW.

(8) "Employment benefits" means all benefits provided or made available to employees by an employer, including

group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions except benefits that are provided by a practice or written policy of an employer or through an employee benefit plan as defined in 29 U.S.C. Sec. 1002(3).

(9) "Family leave" means any leave taken by an employee from work:

(a) To participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member;

(b) To bond with the employee's child during the first twelve months after the child's birth, or the first twelve months after the placement of a child under the age of eighteen with the employee; or

(c) Because of any qualifying exigency as permitted under the federal family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(e) and 29 C.F.R. Sec. 825.126(a)(1) through (8), as they existed on October 19, 2017, for family members as defined in subsection (10) of this section.

(10) "Family member" means a child, grandchild, grandparent, parent, sibling, or spouse of an employee.

(11) "Grandchild" means a child of the employee's child.

(12) "Grandparent" means a parent of the employee's parent.

(13) "Health care provider" means: (a) A person licensed as a physician under chapter 18.71 RCW or an osteopathic physician and surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced registered nurse practitioner under chapter 18.79 RCW; or (c) any other person determined by the commissioner to be capable of providing health care services.

(14) "Medical leave" means any leave taken by an employee from work made necessary by the employee's own serious health condition.

(15) "Parent" means the biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse, or an individual who stood in loco parentis to an employee when the employee was a child.

(16) "Period of incapacity" means an inability to work, attend school, or perform other regular daily activities because of a serious health condition, treatment of that condition or recovery from it, or subsequent treatment in connection with such inpatient care.

(17) "Premium" or "premiums" means the payments required by RCW 50A.04.115 and paid to the department for deposit in the family and medical leave insurance account under RCW 50A.04.220.

(18) "Qualifying period" means the first four of the last five completed calendar quarters or, if eligibility is not established, the last four completed calendar quarters immediately preceding the application for leave.

(19)(a) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

(i) Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity; or

(ii) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(A) A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(I) Treatment two or more times, within thirty days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services, such as a physical therapist, under orders of, or on referral by, a health care provider; or

(II) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider;

(B) Any period of incapacity due to pregnancy, or for prenatal care;

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(I) Requires periodic visits, defined as at least twice a year, for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

(II) Continues over an extended period of time, including recurring episodes of a single underlying condition; and

(III) May cause episodic rather than a continuing period of incapacity, including asthma, diabetes, and epilepsy;

(D) A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider, including Alzheimer's, a severe stroke, or the terminal stages of a disease; or

(E) Any period of absence to receive multiple treatments, including any period of recovery from the treatments, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for: (I) Restorative surgery after an accident or other injury; or (II) a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer, severe arthritis, or kidney disease.

(b) The requirement in (a)(i) and (ii) of this subsection for treatment by a health care provider means an in-person visit to a health care provider. The first, or only, in-person treatment visit must take place within seven days of the first day of incapacity.

(c) Whether additional treatment visits or a regimen of continuing treatment is necessary within the thirty-day period shall be determined by the health care provider.

(d) The term extenuating circumstances in (a)(ii)(A)(I) of this subsection means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. For example, extenuating circumstances exist if a health care provider determines that a second in-person visit is needed within the thirty-day period, but the health care provider does not have any available appointments during that time period.

(e) Treatment for purposes of (a) of this subsection includes, but is not limited to, examinations to determine if a

serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of continuing treatment includes, but is not limited to, a course of prescription medication, such as an antibiotic, or therapy requiring special equipment to resolve or alleviate the health condition, such as oxygen. A regimen of continuing treatment that includes taking over-the-counter medications, such as aspirin, antihistamines, or salves, or bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of this chapter.

(f) Conditions for which cosmetic treatments are administered, such as most treatments for acne or plastic surgery, are not serious health conditions unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraines, routine dental or orthodontia problems, and periodontal disease are examples of conditions that are not serious health conditions and do not qualify for leave under this chapter. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this section are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

(g)(i) Substance abuse may be a serious health condition if the conditions of this section are met. However, leave may only be taken for treatment for substance abuse by a health care provider or by a licensed substance abuse treatment provider. Absence because of the employee's use of the substance, rather than for treatment, does not qualify for leave under this chapter.

(ii) Treatment for substance abuse does not prevent an employer from taking employment action against an employee. The employer may not take action against the employee because the employee has exercised his or her right to take medical leave for treatment. However, if the employer has an established policy, applied in a nondiscriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking medical leave. An employee may also take family leave to care for a covered family member who is receiving treatment for substance abuse. The employer may not take action against an employee who is providing care for a covered family member receiving treatment for substance abuse.

(h) Absences attributable to incapacity under (a)(ii)(B) or (C) of this subsection qualify for leave under this chapter even though the employee or the family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the

pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

(20) "Service is localized in this state" has the same meaning as described in RCW 50.04.120.

(21) "Spouse" means a husband or wife, as the case may be, or state registered domestic partner.

(22) "State average weekly wage" means the most recent average weekly wage calculated under RCW 50.04.355 and available on January 1st of each year.

(23) "Typical workweek hours" means:

(a) For an hourly employee, the average number of hours worked per week by an employee since the beginning of the qualifying period; and

(b) Forty hours for a salaried employee, regardless of the number of hours the salaried employee typically works.

(24) "Wage" means the same as "wages" under RCW 50.04.320(2), except that: (a) The term employment as used in RCW 50.04.320(2) is defined in this chapter; and (b) the maximum wages subject to a premium assessment are those wages as set by the commissioner under RCW 50A.04.115(4). "Wages" for purposes of elective coverage under *RCW 50A.04.120 has the meaning as defined by rule. [2017 3rd sp.s. c 5 § 2.]

*Reviser's note: The reference to RCW 50A.04.120 appears to be erroneous. RCW 50A.04.105 was apparently intended.

50A.04.015 Employee eligibility. Employees are eligible for family and medical leave benefits as provided in this chapter after working for at least eight hundred twenty hours in employment during the qualifying period. [2017 3rd sp.s. c 5 § 3.]

50A.04.020 Benefit—Amount and duration. (1) Beginning January 1, 2020, family and medical leave are available and benefits are payable to a qualified employee under this section. Following a waiting period consisting of the first seven calendar days of leave, benefits are payable when family or medical leave is required. However, no waiting period is required for leave for the birth or placement of a child. Benefits may continue during the continuance of the need for family and medical leave, subject to the maximum and minimum weekly benefits, duration, and other conditions and limitations established in this chapter. Successive periods of family and medical leave caused by the same or related injury or sickness are deemed a single period of family and medical leave only if separated by less than four months.

(2) The weekly benefit shall be prorated by the percentage of hours on leave compared to the number of hours provided as the typical workweek hours as defined in RCW 50A.04.010.

(a) The benefits in this section, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar.

(b) Hours on leave claimed for benefits under this chapter, if not a multiple of one hour, shall be reduced to the next lower multiple of one hour.

(c) The minimum claim duration payment is for eight consecutive hours of leave.

(3)(a) The maximum duration of paid family leave may not exceed twelve times the typical workweek hours during a period of fifty-two consecutive calendar weeks.

(b) The maximum duration of paid medical leave may not exceed twelve times the typical workweek hours during a period of fifty-two consecutive calendar weeks. This leave may be extended an additional two times the typical workweek hours if the employee experiences a serious health condition with a pregnancy that results in incapacity.

(c) An employee is not entitled to paid family and medical leave benefits under this chapter that exceeds a combined total of sixteen times the typical workweek hours. The combined total of family and medical leave may be extended to eighteen times the typical workweek hours if the employee experiences a serious health condition with a pregnancy that results in incapacity.

(4) The weekly benefit for family and medical leave shall be determined as follows: If the employee's average weekly wage is: (a) Fifty percent or less of the state average weekly wage, the employee's weekly benefit is ninety percent of the employee's average weekly wage; or (b) greater than fifty percent of the state average weekly wage, the employee's weekly benefit is the sum of: (i) Ninety percent of the employee's average weekly wage up to fifty percent of the state average weekly wage; and (ii) fifty percent of the employee's average weekly wage that is greater than fifty percent of the state average weekly wage.

(5)(a) The maximum weekly benefit for family and medical leave that occurs on or after January 1, 2020, shall be one thousand dollars. By September 30, 2020, and by each subsequent September 30th, the commissioner shall adjust the maximum weekly benefit amount to ninety percent of the state average weekly wage. The adjusted maximum weekly benefit amount takes effect on the following January 1st.

(b) The minimum weekly benefit shall not be less than one hundred dollars per week except that if the employee's average weekly wage at the time of family and medical leave is less than one hundred dollars per week, the weekly benefit shall be the employee's full wage. [2017 3rd sp.s. c 5 § 6.]

50A.04.025 Employment protection. (1) Except as provided in RCW 50A.04.600(5) and subsection (6) of this section, any employee who takes family or medical leave under this chapter is entitled, on return from the leave:

(a) To be restored by the employer to the position of employment held by the employee when the leave commenced; or

(b) To be restored by the employer to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) The taking of leave under this chapter may not result in the loss of any employment benefits accrued before the date on which the leave commenced.

(3) Nothing in this section shall be construed to entitle any restored employee to:

(a) The accrual of any seniority or employment benefits during any period of leave; or

(b) Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(4) As a condition of restoration under subsection (1) of this section for an employee who has taken medical leave, the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the employee's health care provider that the employee is able to resume work.

(5) Nothing in this section shall be construed to prohibit an employer from requiring an employee on leave to report periodically to the employer on the status and intention of the employee to return to work.

(6)(a) This section does not apply unless the employee: (i) Works for an employer with fifty or more employees; (ii) has been employed by the current employer for twelve months or more; and (iii) has worked for the current employer for at least one thousand two hundred fifty hours during the twelve months immediately preceding the date on which leave will commence. For the purposes of this subsection, an employer shall be considered to employ fifty or more employees if the employer employs fifty or more employees for each working day during each of twenty or more calendar workweeks in the current or preceding calendar year.

(b) An employer may deny restoration under this section to any salaried employee who is among the highest paid ten percent of the employees employed by the employer within seventy-five miles of the facility at which the employee is employed if:

- (i) Denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;
- (ii) The employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that the injury would occur; and
- (iii) The leave has commenced and the employee elects not to return to employment after receiving the notice. [2017 3rd sp.s. c 5 § 31.]

50A.04.030 Employee notice to employer. (1) If the necessity for leave for the birth or placement of a child with the employee is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than thirty days' notice, before the date the leave is to begin, of the employee's intention to take leave for the birth or placement of a child, except that if the date of the birth or placement requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable.

(2) If the necessity for leave for a family member's serious health condition or the employee's serious health condition is foreseeable based on planned medical treatment, the employee:

(a) Must make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the family member, as appropriate; and

(b) Must provide the employer with not less than thirty days' notice, before the date the leave is to begin, of the employee's intention to take leave for a family member's serious health condition or the employee's serious health condition, except that if the date of the treatment requires leave to begin in less than thirty days, the employee must provide such notice as is practicable. [2017 3rd sp.s. c 5 § 12.]

50A.04.035 Application for benefits. (1) Family and medical leave insurance benefits are payable to an employee during a period in which the employee is unable to perform his or her regular or customary work because he or she is on family and medical leave if the employee:

(a) Files an application for benefits as required by rules adopted by the commissioner;

(b) Has met the eligibility requirements of RCW 50A.04.015 or the elective coverage requirements under RCW 50A.04.105;

(c) Consents to the disclosure of information or records deemed private and confidential under state law. Initial disclosure of this information and these records by another state agency to the department is solely for purposes related to the administration of this chapter. Further disclosure of this information or these records is subject to chapter 50.13 RCW and RCW 50A.04.195(3) and 50A.04.080;

(d) Discloses whether or not he or she owes child support obligations as defined in RCW 50.40.050;

(e) Provides his or her social security number;

(f) Provides a document authorizing the family member's or employee's health care provider, as applicable, to disclose the family member's or employee's health care information in the form of the certification of a serious health condition;

(g) Provides the employer from whom family and medical leave is to be taken with written notice of the employee's intention to take family leave in the same manner as an employee is required to provide notice in RCW 50A.04.030 and, in the employee's initial application for benefits, attests that written notice has been provided; and

(h) If requested by the employer, provides documentation of a military exigency.

(2) An employee who is not in employment for an employer at the time of filing an application for benefits is exempt from subsection (1)(g) and (h) of this section. [2017 3rd sp.s. c 5 § 13.]

50A.04.040 Timing of benefit payments—Employer contest of application. (1) Benefits provided under this chapter shall be paid periodically and promptly, except when an employer contests a period of family or medical leave. The department must send the first benefit payment to the employee within fourteen calendar days after the first properly completed weekly application is received by the department. Subsequent payments must be sent at least biweekly thereafter. If the employer contests an initial application for family or medical leave benefits, the employer must notify the employee and the department in a manner prescribed by the commissioner within eighteen days of receipt of notice from the department of the employee's filing of an application for benefits, as provided under RCW 50A.04.195. Failure to timely contest an initial application shall constitute a waiver of objection to the family or medical leave application. Any inquiry which requires the employee's response in order to continue benefits uninterrupted or unmodified shall provide a reasonable time period in which to respond and include a clear and prominent statement of the deadline for responding and consequences of failing to respond.

(2) If an employee has received one or more benefit payments under this chapter, is in continued claim status, and his or her eligibility for benefits is questioned by the department

or contested by the employer, the employee will be conditionally paid benefits without delay for any periods for which the employee files a claim for benefits, until and unless the employee has been provided adequate notice and an opportunity to be heard. The employee's right to retain such payments is conditioned upon the department's finding the employee to be eligible for such payments.

(a) At the employee's request, the department may hold conditional payments until the question of eligibility has been resolved.

(b) Payments will be issued for any benefits withheld under (a) of this subsection if the department determines the employee is eligible for benefits.

(c) If it is determined that the employee is ineligible for the weeks paid conditionally, the overpayment cannot be waived and must be repaid.

(3) The department must develop, in rule, a process by which an employer may contest an initial application for family or medical leave benefits. [2017 3rd sp.s. c 5 § 7.]

50A.04.045 Benefit exclusions and disqualifications—Employee penalties. (1) An employee is not entitled to paid family or medical leave benefits under this chapter:

(a) For any absence occasioned by the willful intention of the employee to bring about injury to or the sickness of the employee or another, or resulting from any injury or sickness sustained in the perpetration by the employee of an illegal act;

(b) For any family or medical leave commencing before the employee becomes qualified for benefits under this chapter;

(c) For an employee who is on suspension from his or her employment; or

(d) For any day in which a family or medical leave care recipient works at least part of that day for remuneration or profit during the same or substantially similar working hours as those of the employer from which family or medical leave benefits are claimed, except that occasional scheduling adjustments with respect to secondary employments shall not prevent receipt of family or medical leave benefits.

(2) An employer may allow an employee who has accrued vacation, sick, or other paid time off to choose whether: (a) To take such leave; or (b) not to take such leave and receive paid family or medical leave benefits, as provided in RCW 50A.04.020.

(3) An individual is disqualified for benefits for any week he or she has knowingly and willfully made a false statement or representation involving a material fact or knowingly and willfully failed to report a material fact and, as a result, has obtained or attempted to obtain any benefits under the provisions of this chapter. An individual disqualified for benefits under this subsection (3) for the:

(a) First time is disqualified for an additional twenty-six weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of fifteen percent of the amount of benefits overpaid or deemed overpaid;

(b) Second time is also disqualified for an additional fifty-two weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject

to an additional penalty of twenty-five percent of the amount of benefits overpaid or deemed overpaid;

(c) Third time and any time thereafter is also disqualified for an additional one hundred four weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of fifty percent of the amount of benefits overpaid or deemed overpaid.

(4) All penalties collected under this section must be deposited in the family and medical leave enforcement account created under RCW 50A.04.225. [2017 3rd sp.s. c 5 § 5.]

50A.04.050 Expiration of leave entitlement. (1) The entitlement to family leave benefits for the birth or placement of a child expires at the end of the twelve-month period beginning on the date of such birth or placement.

(2) The entitlement to family leave benefits for a family member's serious health condition, or leave for qualifying exigency, expires at the end of the twelve-month period beginning on the date of which the employee filed an application for the benefits.

(3) The entitlement to medical leave benefits for the employee's own serious health condition expires at the end of the twelve-month period beginning on the date on which the employee filed an application for medical leave benefits. [2017 3rd sp.s. c 5 § 4.]

50A.04.055 Federal income taxes—Withholding. (1) If the internal revenue service determines that family or medical leave benefits under this chapter are subject to federal income tax, the department must advise an employee filing a new application for benefits, at the time of filing such application, that:

(a) The internal revenue service has determined that benefits are subject to federal income tax;

(b) Requirements exist pertaining to estimated tax payments;

(c) The employee may elect to have federal income tax deducted and withheld from the employee's payment of benefits at the amount specified in the federal internal revenue code; and

(d) The employee is permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from benefits must remain in the family and medical leave insurance account until transferred to the federal taxing authority as a payment of income tax.

(3) The commissioner shall follow all procedures specified by the federal internal revenue service pertaining to the deducting and withholding of income tax. [2017 3rd sp.s. c 5 § 80.]

50A.04.060 Child support obligations—Withholding. If an employee discloses that he or she owes child support obligations under RCW 50A.04.035 and the department determines that the employee is qualified for benefits, the department shall notify the applicable state or local child support enforcement agency and deduct and withhold an amount from benefits in a manner consistent with RCW 50.40.050. Consistent with RCW 50A.04.035(1)(c), the department may

verify delinquent child support obligations with the department of social and health services. [2017 3rd sp.s. c 5 § 30.]

50A.04.065 Repayment and recovery of benefit overpayments. (1) An individual who is paid any amount as benefits under this chapter to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: PROVIDED, That in the absence of a back pay award, a settlement affecting the allowance of benefits, fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of or final payment made on the individual's applicable eligibility period for which the purported overpayment was made, whichever is later, unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

(2) The commissioner may waive an overpayment if the commissioner finds that the overpayment was not the result of fraud, misrepresentation, willful nondisclosure, conditional payment, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience. An overpayment waived under this subsection shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: PROVIDED, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, the determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days' notice, using a method by which the mailing can be tracked or the delivery can be confirmed, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee under RCW 36.18.012(10). The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of

determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed within five days of its filing with the clerk to the person(s) mentioned in the warrant using a method by which the mailing can be tracked or the delivery can be confirmed.

(4) Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For premium purposes, the back pay award or settlement shall constitute wages paid in the period in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of paid family or medical leave benefits received by the recipient of the award or settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the paid family and medical leave fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any premiums due for paid family and medical leave insurance purposes on the entire amount of the back pay award or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an assessment of liability against the employer that shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50A.04.155.

(5) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent per month of the outstanding balance. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50A.04.045 and shall be imposed when the assessment becomes final. For any other overpayment, interest shall accrue when the individual has missed two or more of the individual's monthly payments either partially or in full.

(6) Any penalties and interest collected pursuant to this section must be deposited into the family and medical leave enforcement account.

(7) The department shall: (a) Conduct social security number cross-match audits or engage in other more effective activities that ensure that individuals are entitled to all amounts of benefits that they are paid; and (b) engage in other detection and recovery of overpayment and collection activities. [2017 3rd sp.s. c 5 § 32.]

50A.04.070 Employee notice of rights. Whenever an employee of an employer who is qualified for benefits under this chapter is absent from work to provide family leave, or take medical leave for more than seven consecutive days, the employer shall provide the employee with a written statement of the employee's rights under this chapter in a form prescribed by the commissioner. The statement must be provided to the employee within five business days after the employee's seventh consecutive day of absence due to family or medical leave, or within five business days after the employer has received notice that the employee's absence is due to family or medical leave, whichever is later. [2017 3rd sp.s. c 5 § 71.]

50A.04.075 Posting of notice regarding chapter—Penalties. Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the commissioner, setting forth excerpts from, or summaries of, the pertinent provisions of this chapter and information pertaining to the filing of a complaint. Any employer that willfully violates this section may be subject to a civil penalty of not more than one hundred dollars for each separate offense. Any penalties collected by the department under this section shall be deposited into the family and medical leave enforcement account. [2017 3rd sp.s. c 5 § 75.]

50A.04.080 Employer requirements. (1) In the form and at the times specified in this chapter and by the commissioner, an employer shall make reports, furnish information, and collect and remit premiums as required by this chapter to the department. If the employer is a temporary help company that provides employees on a temporary basis to its customers, the temporary help company is considered the employer for purposes of this section.

(2)(a) An employer must keep at the employer's place of business a record of employment, for a period of six years, from which the information needed by the department for purposes of this chapter may be obtained. This record shall at all times be open to the inspection of the commissioner.

(b) Information obtained under this chapter from employer records is confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, an interested party shall be supplied with information from employer records to the extent necessary for the proper presentation of the case in question. An employer may authorize inspection of the employer's records by written consent.

(3) The requirements relating to the collection of family and medical leave premiums are as provided in this chapter.

Before issuing a warning letter, the department shall enforce the collection of premiums through conference and conciliation. These requirements apply to:

(a) An employer that fails under this chapter to make the required reports, or fails to remit the full amount of the premiums when due;

(b) An employer that willfully makes a false statement or misrepresentation regarding a material fact, or willfully fails to report a material fact, to avoid making the required reports or remitting the full amount of the premiums when due under this chapter;

(c) A successor in the manner specified in RCW 50A.04.125; and

(d) An officer, member, or owner having control or supervision of payment and/or reporting of family and medical leave premiums, or who is charged with the responsibility for the filing of returns, in the manner specified in RCW 50A.04.090.

(4) Notwithstanding subsection (3) of this section, appeals are governed by RCW 50A.04.500. [2017 3rd sp.s. c 5 § 33.]

50A.04.085 Unlawful acts—Employers. (1) It is unlawful for any employer to:

(a) Interfere with, restrain, or deny the exercise of, or the attempt to exercise, any valid right provided under this chapter; or

(b) Discharge or in any other manner discriminate against any employee for opposing any practice made unlawful by this chapter.

(2) It is unlawful for any person to discharge or in any other manner discriminate against any employee because the employee has:

(a) Filed any complaint, or has instituted or caused to be instituted any proceeding, under or related to this chapter;

(b) Given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this chapter; or

(c) Testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this chapter. [2017 3rd sp.s. c 5 § 72.]

50A.04.090 Employer penalties. (1) An employer who willfully fails to make the required reports is subject to penalties as follows: (a) For the second occurrence, the penalty is seventy-five dollars; (b) for the third occurrence, the penalty is one hundred fifty dollars; and (c) for the fourth occurrence and for each occurrence thereafter, the penalty is two hundred fifty dollars.

(2) An employer who willfully fails to remit the full amount of the premiums when due is liable, in addition to the full amount of premiums due and amounts assessed as interest under RCW 50A.04.140, to a penalty equal to the premiums and interest.

(3) Any penalties under this section shall be deposited into the family and medical leave enforcement account.

(4) For the purposes of this section, "willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute.

(5) The department shall enforce the collection of penalties through conference and conciliation.

(6) These penalties may be appealed as provided in RCW 50A.04.500 through 50A.04.595. [2017 3rd sp.s. c 5 § 68.]

50A.04.095 Employee complaints. Upon complaint by an employee, the commissioner shall investigate to determine if there has been compliance with this chapter and the rules adopted under this chapter. If the investigation indicates that a violation may have occurred, a hearing must be held in accordance with chapter 34.05 RCW. The commissioner must issue a written determination including the commissioner's findings after the hearing. A judicial appeal from the commissioner's determination may be taken in accordance with chapter 34.05 RCW. [2017 3rd sp.s. c 5 § 73.]

50A.04.100 Damages. Any employer who violates RCW 50A.04.085 is liable for damages equal to:

(1) The amount of:

(a) Any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or

(b) In a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to wages or salary for the employee for up to sixteen weeks, or eighteen weeks if the employee experiences a serious health condition with a pregnancy that results in incapacity.

(2)(a) The interest on the amount described in subsection (1) of this section calculated at the prevailing rate; and

(b) For a willful violation, an additional amount as liquidated damages equal to the sum of the amount described in subsection (1) of this section and the interest described in this subsection (2). For purposes of this section, "willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute. [2017 3rd sp.s. c 5 § 74.]

50A.04.105 Elective coverage—Self-employed. (1) For benefits payable beginning January 1, 2020, any self-employed person, including a sole proprietor, independent contractor, partner, or joint venturer, may elect coverage under this chapter for an initial period of not less than three years and subsequent periods of not less than one year immediately following a period of coverage. Those electing coverage under this section must elect coverage for both family leave and medical leave and are responsible for payment of one hundred percent of all premiums assessed to an employee under RCW 50A.04.115. The self-employed person must file a notice of election in writing with the department, in a manner as required by the department in rule. The self-employed person is eligible for family and medical leave benefits after working eight hundred twenty hours in the state during the qualifying period following the date of filing the notice.

(2) A self-employed person who has elected coverage may withdraw from coverage within thirty days after the end of each period of coverage, or at such other times as the commissioner may adopt by rule, by filing a notice of withdrawal in writing with the commissioner, such withdrawal to take effect not sooner than thirty days after filing the notice with the commissioner.

(3) The department may cancel elective coverage if the self-employed person fails to make required payments or file reports. The department may collect due and unpaid premiums and may levy an additional premium for the remainder of the period of coverage. The cancellation shall be effective no later than thirty days from the date of the notice in writing advising the self-employed person of the cancellation.

(4) Those electing coverage are considered employers or employees where the context so dictates.

(5) For the purposes of this section, "independent contractor" means an individual excluded from employment under RCW 50A.04.010(7)(b) (ii) and (iii).

(6) In developing and implementing the requirements of this section, the department shall adopt government efficiencies to improve administration and reduce costs. These efficiencies may include, but are not limited to, requiring that payments be made in a manner and at intervals unique to the elective coverage program.

(7) The department shall adopt rules for determining the hours worked and the wages of individuals who elect coverage under this section and rules for enforcement of this section. [2017 3rd sp.s. c 5 § 10.]

50A.04.110 Elective coverage—Tribes. A federally recognized tribe may elect coverage under *RCW 50A.04.120. The department shall adopt rules to implement this section. [2017 3rd sp.s. c 5 § 11.]

**Reviser's note:* The reference to RCW 50A.04.120 appears to be erroneous. RCW 50A.04.105 was apparently intended.

50A.04.115 Premiums—Solvency surcharge—Pre-emption. (1)(a) Beginning January 1, 2019, the department shall assess for each individual in employment with an employer and for each individual electing coverage a premium based on the amount of the individual's wages subject to subsection (4) of this section.

(b) The premium rate for family leave benefits shall be equal to one-third of the total premium rate.

(c) The premium rate for medical leave benefits shall be equal to two-thirds of the total premium rate.

(2) For calendar year 2022 and thereafter, the commissioner shall determine the percentage of paid claims related to family leave benefits and the percentage of paid claims related to medical leave benefits and adjust the premium rates set in subsection (1)(b) and (c) of this section by the proportional share of paid claims.

(3)(a) Beginning January 1, 2019, and ending December 31, 2020, the total premium rate shall be four-tenths of one percent of the individual's wages subject to subsection (4) of this section.

(b) For family leave premiums, an employer may deduct from the wages of each employee up to the full amount of the premium required.

(c) For medical leave premiums, an employer may deduct from the wages of each employee up to forty-five percent of the full amount of the premium required.

(d) An employer may elect to pay all or any portion of the employee's share of the premium for family leave or medical leave benefits, or both.

(4) The commissioner must annually set a maximum limit on the amount of wages that is subject to a premium

assessment under this section that is equal to the maximum wages subject to taxation for social security as determined by the social security administration.

(5)(a) Employers with fewer than fifty employees employed in the state are not required to pay the employer portion of premiums for family and medical leave.

(b) If an employer with fewer than fifty employees elects to pay the premiums, the employer is then eligible for assistance under RCW 50A.04.230.

(6) For calendar year 2021 and thereafter, the total premium rate shall be based on the family and medical leave insurance account balance ratio as of September 30th of the previous year. The commissioner shall calculate the account balance ratio by dividing the balance of the family and medical leave insurance account by total covered wages paid by employers and those electing coverage. The division shall be carried to the fourth decimal place with the remaining fraction disregarded unless it amounts to five hundred-thousandths or more, in which case the fourth decimal place shall be rounded to the next higher digit. If the account balance ratio is:

(a) Zero to nine hundredths of one percent, the premium is six tenths of one percent of the individual's wages;

(b) One tenth of one percent to nineteen hundredths of one percent, the premium is five tenths of one percent of the individual's wages;

(c) Two tenths of one percent to twenty-nine hundredths of one percent, the premium is four tenths of one percent of the individual's wages;

(d) Three tenths of one percent to thirty-nine hundredths of one percent, the premium is three tenths of one percent of the individual's wages;

(e) Four tenths of one percent to forty-nine hundredths of one percent, the premium is two tenths of one percent of the individual's wages; or

(f) Five tenths of one percent or greater, the premium is one tenth of one percent of the individual's wages.

(7) Beginning January 1, 2021, if the account balance ratio calculated in subsection (6) of this section is below five hundredths of one percent, the commissioner must assess a solvency surcharge at the lowest rate necessary to provide revenue to pay for the administrative and benefit costs of family and medical leave, for the calendar year, as determined by the commissioner. The solvency surcharge shall be at least one-tenth of one percent and no more than six-tenths of one percent and be added to the total premium rate for family and medical leave benefits.

(8)(a) The employer must collect from the employees the premiums and any surcharges provided under this section through payroll deductions and remit the amounts collected to the department.

(b) In collecting employee premiums through payroll deductions, the employer shall act as the agent of the employees and shall remit the amounts to the department as required by this chapter.

(c) On September 30th of each year, the department shall average the number of employees reported by an employer over the last four completed calendar quarters to determine the size of the employer for the next calendar year for the purposes of this section and RCW 50A.04.230.

(9) Premiums shall be collected in the manner and at such intervals as provided in this chapter and directed by the department.

(10) Premiums collected under this section are placed in trust for the employees and employers that the program is intended to assist.

(11) A city, code city, town, county, or political subdivision may not enact a charter, ordinance, regulation, rule, or resolution:

(a) Creating a paid family or medical leave insurance program that alters or amends the requirements of this chapter for any private employer;

(b) Providing for local enforcement of the provisions of this chapter; or

(c) Requiring private employers to supplement duration of leave or amount of wage replacement benefits provided under this chapter. [2017 3rd sp.s. c 5 § 8.]

50A.04.120 Out-of-state employees—Premium waiver. (1) An employer may file an application with the department for a conditional waiver for the payment of family and medical leave premiums, assessed under RCW 50A.04.115, for any employee who is:

(a) Physically based outside of the state;

(b) Employed in the state on a limited or temporary work schedule; and

(c) Not expected to be employed in the state for eight hundred twenty hours or more in a qualifying period.

(2) The department must approve an application that has been signed by both the employee and employer verifying their belief that the conditions in this subsection will be met during the qualifying period.

(3) If the employee exceeds the eight hundred twenty hours or more in a qualifying period, the conditional waiver expires and the employer and employee will be responsible for their shares of all premiums that would have been paid during the qualifying period in which the employee exceeded the eight hundred twenty hours had the waiver not been granted. Upon payment of the missed premiums, the employee will be credited for the hours worked and will be eligible for benefits under this chapter as if the premiums were originally paid. [2017 3rd sp.s. c 5 § 9.]

50A.04.125 Termination or disposal of business—Premium payment—Successor liability. Whenever any employer quits business, or sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any premiums payable under this chapter shall become immediately due and payable, and the employer shall, within ten days, make a return and pay the premiums due; and any person who becomes a successor to such business shall become liable for the full amount of the premiums and withhold from the purchase price a sum sufficient to pay any premiums due from the employer until such time as the employer produces a receipt from the employment security department showing payment in full of any premiums due or a certificate that no premium is due and, if such premium is not paid by the employer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of premiums, and the payment thereof by such successor shall, to the extent thereof, be

deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the employer. A successor may not be liable for any premiums due from the person from whom that person has acquired a business or stock of goods if that person gives written notice to the employment security department of such acquisition and no assessment is issued by the department within one hundred eighty days of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor. [2017 3rd sp.s. c 5 § 67.]

50A.04.130 Delinquency—Order and notice of assessment. At any time after the commissioner shall find that any premiums, interest, or penalties have become delinquent, the commissioner may issue an order and notice of assessment specifying the amount due, which order and notice of assessment shall be served upon the delinquent employer in the manner prescribed for the service of a summons in a civil action, or using a method by which the mailing can be tracked or the delivery can be confirmed. Failure of the employer to receive such notice or order whether served or mailed shall not release the employer from any tax, or any interest or penalties thereon. [2017 3rd sp.s. c 5 § 58.]

50A.04.135 Jeopardized collection—Immediate assessment. If the commissioner has reason to believe that an employer is insolvent or if any reason exists why the collection of any premiums accrued will be jeopardized by delaying collection, he or she may make an immediate assessment thereof and may proceed to enforce collection immediately, but interest and penalties shall not begin to accrue upon any premiums until the date when such premiums would normally have become delinquent. [2017 3rd sp.s. c 5 § 59.]

50A.04.140 Delinquency—Accrual of interest. If premiums are not paid on the date on which they are due and payable as prescribed by the commissioner, the whole or part thereof remaining unpaid shall bear interest at the rate of one percent per month or fraction thereof from and after such date until payment plus accrued interest is received by him or her. The date as of which payment of premiums, if mailed, is deemed to have been received may be determined by such regulations as the commissioner may prescribe. Interest collected pursuant to this section shall be paid into the family and medical leave enforcement account. Interest shall not accrue on premiums from any estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer qualifies as such, but premiums accruing with respect to employment of persons by any receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer shall become due and shall draw interest in the same manner as premiums due from other employers. Where adequate information has been furnished to the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, interest may be waived. [2017 3rd sp.s. c 5 § 55.]

50A.04.145 Collection by distraint, seizure, and sale.

If the amount of premiums, interest, or penalties assessed by the commissioner by order and notice of assessment provided in this chapter is not paid within ten days after the service or mailing of the order and notice of assessment, the commissioner or his or her duly authorized representative may collect the amount stated in said assessment by the distraint, seizure, and sale of the property, goods, chattels, and effects of said delinquent employer. There shall be exempt from distraint and sale under this section such goods and property as are exempt from execution under the laws of this state. [2017 3rd sp.s. c 5 § 60.]

50A.04.150 Collection by distraint, seizure, and sale—Procedure.

The commissioner, upon making a distraint, shall seize the property and shall make an inventory of the property distrained, a copy of which shall be mailed to the owner of such property or personally delivered to him or her, and shall specify the time and place when said property shall be sold. A notice specifying the property to be sold and the time and place of sale shall be posted in at least two public places in the county wherein the seizure has been made. The time of sale shall be not less than ten nor more than twenty days from the date of posting of such notices. Said sale may be adjourned from time to time at the discretion of the commissioner, but not for a time to exceed in all sixty days. Said sale shall be conducted by the commissioner or his or her authorized representative who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the commissioner or his or her representative may declare such property to be purchased by the employment security department for such minimum price. In such event the delinquent account shall be credited with the amount for which the property has been sold. Property acquired by the employment security department as herein prescribed may be sold by the commissioner or his or her representative at public or private sale, and the amount realized shall be placed in the family and medical leave account. In all cases of sale, as aforesaid, the commissioner shall issue a bill of sale or a deed to the purchaser and said bill of sale or deed shall be prima facie evidence of the right of the commissioner to make such sale and conclusive evidence of the regularity of his or her proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the delinquent employer in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the employment security department, shall be first applied by the commissioner in satisfaction of the delinquent account, and out of any sum received in excess of the amount of delinquent premiums, interest, and penalties the administration fund shall be reimbursed for the costs of distraint and sale. Any excess which shall thereafter remain in the hands of the commissioner shall be refunded to the delinquent employer. Sums so refundable to a delinquent employer may be subject to seizure or distraint in the hands of the commissioner by any other taxing authority of the state or its political subdivisions. [2017 3rd sp.s. c 5 § 61.]

50A.04.155 Notice and order to withhold and deliver.

The commissioner is hereby authorized to issue to any person, firm, corporation, political subdivision, or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when the commissioner has reason to believe that there is in the possession of such person, firm, corporation, political subdivision, or department, property which is due, owing, or belonging to any person, firm, or corporation upon whom the department has served a benefit overpayment assessment or a notice and order of assessment for premiums, interest, or penalties. The effect of a notice to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability is satisfied or becomes unenforceable because of a lapse of time. The notice and order to withhold and deliver shall be served by the sheriff or the sheriff's deputy of the county wherein the service is made, using a method by which the mailing can be tracked or the delivery can be confirmed, or by any duly authorized representative of the commissioner. Any person, firm, corporation, political subdivision, or department upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice. In the event there is in the possession of any such person, firm, corporation, political subdivision, or department, any property which may be subject to the claim of the employment security department of the state, such property shall be delivered forthwith to the commissioner or the commissioner's duly authorized representative upon demand to be held in trust by the commissioner for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability, or in the alternative, there shall be furnished a good and sufficient bond satisfactory to the commissioner conditioned upon final determination of liability. Should any person, firm, or corporation fail to make answer to an order to withhold and deliver within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against such person, firm, or corporation for the full amount claimed by the commissioner in the notice to withhold and deliver, together with costs. [2017 3rd sp.s. c 5 § 62.]

50A.04.160 Warrant for assessment. Whenever any order and notice of assessment or jeopardy assessment has become final in accordance with the provisions of this chapter the commissioner may file with the clerk of any county within the state a warrant in the amount of the notice of assessment plus interest, penalties, and a filing fee under RCW 36.18.012(10). The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the employer mentioned in the warrant, the amount of the tax, interest, penalties, and filing fee and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly

docketed in the office of such clerk. Such warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant, and charged by the commissioner to the employer or employing unit. A copy of the warrant shall be mailed to the employer or employing unit using a method by which the mailing can be tracked or the delivery can be confirmed within five days of filing with the clerk. [2017 3rd sp.s. c 5 § 63.]

50A.04.165 Liens. The claim of the employment security department for any premiums, interest, or penalties not paid when due, shall be a lien prior to all other liens or claims and on a parity with prior tax liens against all property and rights to property, whether real or personal, belonging to the employer. In order to avail itself of the lien hereby created, the department shall file with any county auditor where property of the employer is located a statement and claim of lien specifying the amount of delinquent premiums, interest, and penalties claimed by the department. From the time of filing for record, the amount required to be paid shall constitute a lien upon all property and rights to property, whether real or personal, in the county, owned by the employer or acquired by him or her. The lien shall not be valid against any purchaser, holder of a security interest, mechanic's lien, or judgment lien creditor until notice thereof has been filed with the county auditor. This lien shall be separate and apart from, and in addition to, any other lien or claim created by, or provided for in, this chapter. When any such notice of lien has been so filed, the commissioner may release the same by filing a certificate of release when it shall appear that the amount of delinquent premiums, interest, and penalties have been paid, or when such assurance of payment shall be made as the commissioner may deem to be adequate. Fees for filing and releasing the lien provided herein may be charged to the employer and may be collected from the employer utilizing the remedies provided in this chapter for the collection of premiums. [2017 3rd sp.s. c 5 § 56.]

50A.04.170 Liens—Insolvency, dissolution, or distribution of assets. In the event of any distribution of an employer's assets pursuant to an order of any court, including any receivership, probate, legal dissolution, or similar proceeding, or in case of any assignment for the benefit of creditors, composition, or similar proceeding, premiums, interest, or penalties then or thereafter due shall be a lien upon all the assets of such employer. Said lien is prior to all other liens or claims except prior tax liens, other liens provided by this chapter, and claims for remuneration for services of not more than two hundred fifty dollars to each claimant earned within six months of the commencement of the proceeding. The mere existence of a condition of insolvency or the institution of any judicial proceeding for legal dissolution or of any proceeding for distribution of assets shall cause such a lien to attach without action on behalf of the commissioner or the state. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act of 1898, as amended,

premiums, interest, or penalties then or thereafter due shall be entitled to such priority as provided in that act, as amended. [2017 3rd sp.s. c 5 § 57.]

50A.04.175 Civil actions—Service of process. (1) If after due notice, any employer defaults in any payment of premiums, interest, or penalties, the amount due may be collected by civil action in the name of the state, and the employer adjudged in default shall pay the cost of such action. Any lien created by this chapter may be foreclosed by decree of the court in any such action. Civil actions brought under this chapter to collect premiums, interest, or penalties from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter, cases arising under the unemployment compensation laws of this state, and cases arising under the industrial insurance laws of this state.

(2) Any employing unit that is not a resident of this state and that exercises the privilege of having one or more individuals perform service for it within this state, and any resident employing unit that exercises that privilege and thereafter removes from this state, shall be deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance of process in any action under this chapter. In instituting such an action against any such employing unit the commissioner shall cause such process or notice to be filed with the secretary of state and such service shall be sufficient service upon such employing unit, and shall be of the same force and validity as if served upon it personally within this state: PROVIDED, That the commissioner shall forthwith send notice of the service of such process or notice, together with a copy thereof, by registered mail, return receipt requested, to such employing unit at its last known address and such return receipt, the commissioner's affidavit of compliance with the provisions of this section, and a copy of the notice of service shall be appended to the original of the process filed in the court in which such action is pending. [2017 3rd sp.s. c 5 § 64.]

50A.04.180 Injunction from continuing in business. Any employer who is delinquent in the payment of premiums, interest, or penalties may be enjoined upon the suit of the state of Washington from continuing in business in this state or employing persons herein until the delinquent premiums, interest, and penalties have been paid, or until the employer has furnished a good and sufficient bond in a sum equal to double the amount of premiums, interest, and penalties already delinquent, plus such further sum as the court deems adequate to protect the department in the collection of premiums, interest, and penalties which will become due from such employer during the next ensuing calendar year, said bond to be conditioned upon payment of all premiums, interest, and penalties due and owing within thirty days after the expiration of the next ensuing calendar year or at such earlier date as the court may fix. Action under this section may be instituted in the superior court of any county of the state wherein the employer resides, has its principal place of business, or where it has anyone performing services for it, whether or not such services constitute employment. [2017 3rd sp.s. c 5 § 65.]

50A.04.185 Compromise of claims. The commissioner may compromise any claim for premiums, interest, or penalties due and owing from an employer, and any amount owed by an individual because of benefit overpayments existing or arising under this chapter in any case where collection of the full amount due and owing, whether reduced to judgment or otherwise, would be against equity and good conscience. Whenever a compromise is made by the commissioner in the case of a claim for premiums, interest, or penalties, whether reduced to judgment or otherwise, there shall be placed on file in the department a statement of the amount of premiums, interest, and penalties imposed by law and claimed due, attorneys' fees and costs, if any, a complete record of the compromise agreement, and the amount actually paid in accordance with the terms of the compromise agreement. Whenever a compromise is made by the commissioner in the case of a claim of a benefit overpayment, whether reduced to judgment or otherwise, there shall be placed on file in the department a statement of the amount of the benefit overpayment, attorneys' fees and costs, if any, a complete record of the compromise agreement, and the amount actually paid in accordance with the terms of the compromise agreement. If any such compromise is accepted by the commissioner, within such time as may be stated in the compromise or agreed to, such compromise shall be final and conclusive and except upon showing of fraud or malfeasance or misrepresentation of a material fact the case shall not be reopened as to the matters agreed upon. In any suit, action, or proceeding, such agreement or any determination, collection, payment, adjustment, refund, or credit made in accordance therewith shall not be annulled, modified, set aside, or disregarded. [2017 3rd sp.s. c 5 § 54.]

50A.04.190 Uncollectible accounts. The commissioner may charge off as uncollectible and no longer an asset of the family and medical leave account, any delinquent premiums, interest, penalties, credits, or benefit overpayments if the commissioner is satisfied that there are no cost-effective means of collecting the premiums, interest, penalties, credits, or benefit overpayments. [2017 3rd sp.s. c 5 § 66.]

50A.04.195 Program administration—Information disclosure—Outreach. (1) The department shall establish and administer the family and medical leave program and pay family and medical leave benefits as specified in this chapter. The department shall adopt government efficiencies to improve administration and reduce costs. These efficiencies shall include, to the extent feasible, combined reporting and payment, with a single return, of premiums under this chapter and contributions under chapter 50.24 RCW.

(2) The department shall establish procedures and forms for filing applications for benefits under this chapter. The department shall notify the employer within five business days of an application being filed.

(3) The department shall use information sharing and integration technology to facilitate the disclosure of relevant information or records by the department, so long as an employee consents to the disclosure as required under RCW 50A.04.035.

(4) Information contained in the files and records pertaining to an employee under this chapter are confidential and

not open to public inspection, other than to public employees in the performance of their official duties. However, the employee or an authorized representative of an employee may review the records or receive specific information from the records on the presentation of the signed authorization of the employee. An employer or the employer's duly authorized representative may review the records of an employee employed by the employer in connection with a pending application. At the department's discretion, other persons may review records when such persons are rendering assistance to the department at any stage of the proceedings on any matter pertaining to the administration of this chapter.

(5) The department shall develop and implement an outreach program to ensure that employees who may be qualified to receive family and medical leave benefits under this chapter are made aware of these benefits. Outreach information shall explain, in an easy to understand format, eligibility requirements, the application process, weekly benefit amounts, maximum benefits payable, notice and certification requirements, reinstatement and nondiscrimination rights, confidentiality, voluntary plans, and the relationship between employment protection, leave from employment, and wage replacement benefits under this chapter and other laws, collective bargaining agreements, and employer policies. Outreach information shall be available in English and other primary languages as defined in RCW 74.04.025.

(6) The department is authorized to inspect and audit employer files and records relating to the family and medical leave program, including employer voluntary plans. [2017 3rd sp.s. c 5 § 29.]

50A.04.200 Advisory committee. (1) The commissioner shall appoint an advisory committee to review issues and topics of interest related to this chapter.

(2) The committee is composed of ten members: (a) Four members representing employees' interests in paid family and medical leave, each of whom shall be appointed from a list of at least four names submitted by a recognized statewide organization of employees; (b) four members representing employers, each of whom shall be appointed from a list of at least four names submitted by a recognized statewide organization of employers; and (c) two ex officio members, without a vote, one of whom shall represent the department and the other shall be the ombuds for the family and medical leave program. The member representing the department shall be the chair.

(3) The committee shall provide comment on department rule making, policies, implementation of this chapter, utilization of benefits, and other initiatives, and study issues the committee determines to require its consideration.

(4) The members shall serve without compensation, but are entitled to reimbursement for travel expenses as provided in RCW 43.03.050 and 43.03.060. The committee may utilize such personnel and facilities of the department as it needs, without charge. All expenses of the committee must be paid by the family and medical leave insurance account. [2017 3rd sp.s. c 5 § 28.]

50A.04.205 Ombuds. (1) The commissioner shall establish an ombuds office for family and medical leave within the department. The ombuds shall be appointed by the

governor and report directly to the commissioner of the department. The ombuds is available to all employers and employees in the state.

(2) The person appointed ombuds shall hold office for a term of six years and shall continue to hold office until reappointed or until his or her successor is appointed. The governor may remove the ombuds only for neglect of duty, misconduct, or inability to perform duties. Any vacancy shall be filled by similar appointment for the remainder of the unexpired term.

(3) The ombuds shall:

(a) Offer and provide information on family and medical leave to employers and employees;

(b) Act as an advocate for employers and employees in their dealings with the department;

(c) Identify, investigate, and facilitate resolution of disputes and complaints under this chapter; and

(d) Refer complaints to the department when appropriate.

(4) The ombuds may conduct surveys of employees. Survey questions and results are confidential and not subject to public disclosure.

(5) The ombuds is not liable for the good faith performance of responsibilities under this chapter. [2017 3rd sp.s. c 5 § 88.]

50A.04.210 Reports to legislature. Beginning December 1, 2020, and annually thereafter, the department shall report to the legislature on the entire program, including:

(1) Projected and actual program participation;

(2) Premium rates;

(3) Fund balances;

(4) Benefits paid;

(5) Demographic information on program participants, including income, gender, race, ethnicity, geographic distribution by county and legislative district, and employment sector;

(6) Costs of providing benefits;

(7) Elective coverage participation;

(8) Voluntary plan participation;

(9) Outreach efforts; and

(10) Small business assistance. [2017 3rd sp.s. c 5 § 86.]

50A.04.215 Rules. The commissioner shall adopt rules as necessary to implement this chapter. [2017 3rd sp.s. c 5 § 85.]

50A.04.220 Family and medical leave insurance account. (1) The family and medical leave insurance account is created in the custody of the state treasurer. All receipts from premiums imposed under this chapter must be deposited in the account. Expenditures from the account may be used only for the purposes of the family and medical leave program. Only the commissioner or the commissioner's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW. An appropriation is required for administrative expenses, but not for benefit payments.

(2) Money deposited in the account shall remain a part of the account until expended pursuant to the requirements of this chapter or transferred in accordance with subsection (3)

of this section. The commissioner shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriations act or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the family and medical leave insurance account.

(3) Money shall be transferred from the family and medical leave insurance account and deposited in the unemployment trust fund solely for the repayment of benefits not charged to employers as defined in RCW 50.29.021(4)(a)(vii). The commissioner shall direct the transfer, which must occur on or before the cut-off date as defined in RCW 50.29.010.

(4) Money transferred as provided in subsection (3) of this section for the repayment of benefits not charged to employers shall be deposited in the unemployment compensation fund and shall remain a part of the unemployment compensation fund until expended pursuant to RCW 50.16.030. The commissioner shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund. [2017 3rd sp.s. c 5 § 82.]

50A.04.225 Family and medical leave enforcement account. The family and medical leave enforcement account is created in the custody of the state treasurer. Any money in the family leave insurance account created in section 19, chapter 357, Laws of 2007 is transferred to the account created in this section. Any penalties and interest collected under RCW 50A.04.045, 50A.04.065, 50A.04.075, 50A.04.080, 50A.04.090, 50A.04.140, and 50A.04.655 shall be deposited into the account and shall be used only for the purposes of administering and enforcing this chapter. Only the commissioner may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2017 3rd sp.s. c 5 § 76.]

50A.04.230 Small business assistance—Grants. (1) The legislature recognizes that while family leave and medical leave benefit both employees and employers, there may be costs that disproportionately impact small businesses. To equitably balance the risks among employers, the legislature intends to assist small businesses with the costs of an employee's use of family or medical leave.

(2) Employers with one hundred fifty or fewer employees and employers with fifty or fewer employees who are assessed all premiums under RCW 50A.04.115(5)(b) may apply to the department for a grant under this section.

(3)(a) An employer may receive a grant of three thousand dollars if the employer hires a temporary worker to replace an employee on family or medical leave for a period of seven days or more.

(b) For an employee's family or medical leave, an employer may receive a grant of up to one thousand dollars as reimbursement for significant additional wage-related costs due to the employee's leave.

(c) An employer may receive a grant under (a) or (b) of this subsection, but not both, except that an employer who received a grant under (b) of this subsection may receive a grant of the difference between the grant awarded under (b) of this subsection and three thousand dollars if the employee on leave extended the leave beyond the leave initially planned and the employer hired a temporary worker for the employee on leave.

(4) An employer may apply for a grant no more than ten times per calendar year and no more than once for each employee on leave.

(5) To be eligible for a grant, the employer must provide the department written documentation showing the temporary worker hired or significant wage-related costs incurred are due to an employee's use of family or medical leave.

(6) The department must assess an employer with fewer than fifty employees who receives a grant under this section for all premiums for three years from the date of receipt of a grant.

(7) The grants under this section shall be funded from the family and medical leave insurance account.

(8) The commissioner shall adopt rules as necessary to implement this section.

(9) For the purposes of this section, the number of employees must be calculated as provided in RCW 50A.04.115.

(10) An employer who has an approved voluntary plan is not eligible to receive a grant under this section. [2017 3rd sp.s. c 5 § 84.]

50A.04.235 Collective bargaining agreements. Nothing in this chapter requires any party to a collective bargaining agreement in existence on October 19, 2017, to reopen negotiations of the agreement or to apply any of the rights and responsibilities under this chapter unless and until the existing agreement is reopened or renegotiated by the parties or expires. [2017 3rd sp.s. c 5 § 87.]

50A.04.240 Unemployment compensation, industrial insurance, and disability insurance laws—Effect on chapter. (1) Leave from employment under this chapter is in addition to leave from employment during which benefits are paid or are payable under Title 51 RCW or other applicable federal or state industrial insurance laws.

(2) In any week in which an employee is eligible to receive benefits under Title 50 or 51 RCW, or other applicable federal or state unemployment compensation, industrial insurance, or disability insurance laws, the employee is disqualified from receiving family or medical leave benefits under this chapter. [2017 3rd sp.s. c 5 § 69.]

50A.04.245 Continuation of health benefits. If required by the federal family and medical leave act, as it existed on October 19, 2017, during any period of family or medical leave taken under this chapter, the employer shall maintain any existing health benefits of the employee in force for the duration of such leave as if the employee had contin-

ued to work from the date the employee commenced family or medical leave until the date the employee returns to employment. If the employer and employee share the cost of the existing health benefits, the employee remains responsible for the employee's share of the cost. This section does not apply to an employee who is not in employment for an employer at the time of filing an application for benefits. [2017 3rd sp.s. c 5 § 70.]

50A.04.250 Leave available under other laws—Coordination. (1) Leave under this chapter and leave under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on October 19, 2017) is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth.

(2) Unless otherwise expressly permitted by the employer, leave taken under this chapter must be taken concurrently with any leave taken under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on October 19, 2017). [2017 3rd sp.s. c 5 § 79.]

50A.04.255 Discrimination laws not affected. Nothing in this chapter shall be construed to modify or affect any state or local law prohibiting discrimination on the basis of race, creed, religion, color, national origin, families with children, sex, marital status, sexual orientation including gender expression or identity, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability. [2017 3rd sp.s. c 5 § 77.]

50A.04.260 Employer supplementation—Rights not subject to waiver or diminishment. (1) Nothing in this chapter shall be construed to discourage employers from:

(a) Adopting or retaining leave policies more generous than any policies that comply with the requirements under this chapter; or

(b) Making payments to supplement the benefit payments provided under RCW 50A.04.020 to an employee on family or medical leave.

(2) Any agreement by an individual to waive his or her rights under this chapter is void as against public policy.

(3) After January 1, 2020, subject to RCW 50A.04.235, an employee's rights under this chapter may not be diminished by a collective bargaining agreement or employer policy. [2017 3rd sp.s. c 5 § 78.]

50A.04.265 No continuing entitlement or contractual right. This chapter does not create a continuing entitlement or contractual right. The legislature reserves the right to amend or repeal all or part of this chapter at any time, and a benefit or other right granted under this chapter exists subject to the legislature's power to amend or repeal this chapter. There is no vested private right of any kind against such amendment or repeal. [2017 3rd sp.s. c 5 § 81.]

50A.04.500 Appeals—Generally. (1) Any aggrieved person may file an appeal from any determination or redetermination with the commissioner within thirty days after the date of notification or mailing, whichever is earlier, of such

determination or redetermination to the person's last known address. If an appeal with respect to any determination is pending as of the date when a redetermination is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

(2) Any appeal from a determination of denial of benefits shall be deemed to be an appeal as to all weeks subsequent to the effective date of the denial for which benefits have already been denied. If no appeal is taken from any determination, or redetermination, within the time allowed by the provisions of this section for appeal, the determination or redetermination, as the case may be, shall be conclusively deemed to be correct except as provided in respect to reconsideration by the commissioner of any determination.

(3) Upon receipt of a notice of appeal, the commissioner shall request the assignment of an administrative law judge in accordance with chapter 34.12 RCW to conduct a hearing and issue a proposed order. [2017 3rd sp.s. c 5 § 34.]

50A.04.505 Appeals—Assessments. (1) When an order and notice of assessment has been served upon or mailed to a delinquent employer, the employer may within thirty days file an appeal with the department, stating that the assessment is unjust or incorrect and requesting a hearing. The appeal must set forth the reasons why the assessment is objected to and the amount of premiums, if any, which the employer admits to be due. If no appeal is filed, the assessment shall be conclusively deemed to be just and correct except that in such case, and in cases where payment of premiums, interest, or penalties has been made pursuant to a jeopardy assessment, the commissioner may properly entertain a subsequent application for refund. The filing of an appeal on a disputed assessment with the administrative law judge stays the distraint and sale proceeding provided for in this chapter until a final decision has been made, but the filing of an appeal shall not affect the right of the commissioner to perfect a lien, as provided by this chapter, upon the property of the employer. The filing of a petition on a disputed assessment stays the accrual of interest and penalties on the disputed premiums until a final decision is made.

(2) Within thirty days after notice of denial of refund or adjustment has been mailed or delivered, whichever is the earlier, to an employer, the employer may file an appeal with the department for a hearing unless assessments have been appealed from and have become final. The employer shall set forth the reasons why such hearing should be granted and the amount which the employer believes should be adjusted or refunded. If no appeal is filed within said thirty days, the determination of the commissioner as stated in the notice shall be final. [2017 3rd sp.s. c 5 § 36.]

50A.04.510 Appeals—Benefit redeterminations. (1) A determination of amount of benefits potentially payable under this chapter is not a basis for appeal. However, the determination is subject to request by the employee on family and medical leave for redetermination by the commissioner at any time within one year from the date of delivery or mailing of such determination, or any redetermination thereof. A redetermination shall be furnished to the employee in writing and provide the basis for appeal.

(2) A determination of denial of benefits becomes final, in the absence of timely appeal therefrom. The commissioner may redetermine such determinations at any time within one year from delivery or mailing to correct an error in identity, omission of fact, or misapplication of law with respect to the facts.

(3) A determination of allowance of benefits becomes final, in the absence of a timely appeal therefrom. The commissioner may redetermine such allowance at any time within two years following the eligibility period in which such allowance was made in order to recover any benefits for which recovery is provided under this chapter.

(4) A redetermination may be made at any time: (a) To conform to a final court decision applicable to either an initial determination or a determination of denial or allowance of benefits; (b) in the event of a back pay award or settlement affecting the allowance of benefits; or (c) in the case of misrepresentation or willful failure to report a material fact. Written notice of any such redetermination shall be promptly given by mail or delivered to such interested parties as were notified of the initial determination or determination of denial or allowance of benefits and any new interested party or parties who, pursuant to such rule as the commissioner may adopt, would be an interested party. [2017 3rd sp.s. c 5 § 53.]

50A.04.515 Appeals—When deemed filed and received. The appeal or petition from a determination, redetermination, order and notice of assessment, appeals decision, or commissioner's decision is deemed filed and received if properly addressed and with sufficient postage:

(1) If transmitted through the United States mail, on the date shown by the United States postal service cancellation mark;

(2) If mailed but not received by the addressee, or where received and the United States postal service cancellation mark is illegible, erroneous, or omitted, on the date it was mailed, if the sender establishes by competent evidence that the appeal or petition was deposited in the United States mail on or before the date due for filing; or

(3) In the case of a metered cancellation mark by the sender and a United States postal service cancellation mark on the same envelope or other wrapper, the latter shall control. [2017 3rd sp.s. c 5 § 35.]

50A.04.520 Appeals—Assessments—Procedure. In any proceeding before an administrative law judge involving an appeal from a disputed order and notice of assessment or a disputed denial of refund or adjustment, the administrative law judge, after affording the parties a reasonable opportunity for hearing, shall affirm, modify, or set aside the notice of assessment or denial of refund. The parties shall be duly notified of such decision together with the reasons, which shall be deemed to be the final decision unless within thirty days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is perfected pursuant to the provisions of this chapter relating to review by the commissioner. [2017 3rd sp.s. c 5 § 38.]

50A.04.525 Appeals—Benefits—Procedure. (1) In any proceeding before an administrative law judge involving a dispute of an employee's initial determination, claim for

waiting period credit or claim for benefits, all matters and provisions of this chapter relating to the employee's initial determination, or right to receive such credit or benefits for the period in question, shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal in single employee cases.

(2) In any proceeding before an administrative law judge involving an employee's right to benefits, all parties shall be afforded an opportunity for hearing after not less than seven days' notice in accordance with RCW 34.05.434.

(3) In any proceeding involving an appeal relating to benefit determinations or benefit claims, the administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall render its decision affirming, modifying, or setting aside the determination or decisions of the department. The parties shall be duly notified of such decision together with the reasons, which shall be deemed to be the final decision unless, within thirty days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is perfected pursuant to *RCW 50A.04.530. [2017 3rd sp.s. c 5 § 37.]

**Reviser's note:* The reference to RCW 50A.04.530 appears to be erroneous. RCW 50A.04.535 was apparently intended.

50A.04.530 Appeals—Hearing procedures. The manner in which any dispute is presented to the administrative law judge, and the conduct of hearings and appeals, shall be in accordance with rules adopted by the commissioner. A full and complete record shall be kept of all administrative law judge proceedings. All testimony at any appeal hearing shall be recorded, but need not be transcribed unless further appeal is taken. [2017 3rd sp.s. c 5 § 39.]

50A.04.535 Appeals—Commissioner review—Initiation. Within thirty days from the date of notification or mailing, whichever is the earlier, of any decision of an administrative law judge, the commissioner on the commissioner's own order may, or upon petition of any interested party shall, take jurisdiction of the proceedings for the purpose of review. Appeal from any decision of an administrative law judge may be perfected so as to prevent finality of such decision if, within thirty days from the date of notification or mailing of the decision, whichever is the earlier, a petition in writing for review by the commissioner is received by the commissioner or by such representative of the commissioner as the commissioner by rule shall prescribe. The commissioner may also prevent finality of any decision of an administrative law judge and take jurisdiction of the proceedings for his or her review by entering an order so providing on his or her own motion and mailing a copy thereof to the interested parties within the same period allowed for receipt of a petition for review. The time limit provided for the commissioner's assumption of jurisdiction on his or her own motion for review shall be deemed to be jurisdictional. [2017 3rd sp.s. c 5 § 40.]

50A.04.540 Appeals—Commissioner review—Procedure. After having acquired jurisdiction for review, the commissioner shall review the proceedings in question. Prior to rendering a decision, the commissioner may order the taking of additional evidence by an administrative law judge to be

made a part of the record in the case. Upon the basis of evidence submitted to the administrative law judge and such additional evidence as the commissioner may order to be taken, the commissioner shall render a decision in writing affirming, modifying, or setting aside the decision of the administrative law judge. Alternatively, the commissioner may order further proceedings to be held before the administrative law judge, upon completion of which the administrative law judge shall issue a decision in writing affirming, modifying, or setting aside its previous decision. The new decision may be appealed as provided under *RCW 50A.04.530. The commissioner shall mail the decision to the interested parties at their last known addresses. [2017 3rd sp.s. c 5 § 42.]

***Reviser's note:** The reference to RCW 50A.04.530 appears to be erroneous. RCW 50A.04.535 was apparently intended.

50A.04.545 Appeals—Commissioner review—When final—Commissioner as party. Any decision of the commissioner involving a review of an administrative law judge decision, in the absence of a petition as provided in chapter 34.05 RCW, becomes final thirty days after notification or mailing, whichever is earlier. The commissioner shall be deemed to be a party to any judicial action involving any such decision and shall be represented in any such judicial action by the attorney general. [2017 3rd sp.s. c 5 § 43.]

50A.04.550 Appeals—Applicability of findings, determinations, etc. to other actions. Any finding, determination, conclusion, declaration, or final order made by the commissioner, or his or her representative or delegate, or by an appeal tribunal, administrative law judge, reviewing officer, or other agent of the department for the purposes of this chapter, shall not be conclusive, nor binding, nor admissible as evidence in any separate action outside the scope of this chapter between an employee and the employee's present or prior employer before an arbitrator, court, or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts or was reviewed pursuant to RCW 50A.04.565. [2017 3rd sp.s. c 5 § 48.]

50A.04.555 Appeals—Waiver of time limitations. For good cause shown the administrative law judge or the commissioner may waive the time limitations for administrative appeals or petitions set forth in this chapter. [2017 3rd sp.s. c 5 § 41.]

50A.04.560 Appeals—Judicial review. (1) In all court proceedings under or pursuant to this chapter the decision of the commissioner shall be prima facie correct, and the burden of proof shall be upon the party attacking the decision.

(2) If the court determines that the commissioner has acted within the commissioner's power and has correctly construed the law, the decision of the commissioner shall be confirmed; otherwise, the decision shall be reversed or modified. In case of a modification or reversal the superior court shall refer the decision to the commissioner with an order directing the commissioner to proceed in accordance with the findings of the court.

(3) Whenever any order and notice of assessment shall have become final in accordance with the provisions of this chapter, the court shall upon application of the commissioner enter a judgment in the amount provided for in the order and notice of assessment, and the judgment shall have and be given the same effect as if entered pursuant to a civil action instituted in the court. [2017 3rd sp.s. c 5 § 47.]

50A.04.565 Appeals—Judicial review—Procedure. Judicial review of a decision of the commissioner involving the review of a decision of an administrative law judge under this chapter may be had only in accordance with the procedural requirements of RCW 34.05.570. [2017 3rd sp.s. c 5 § 44.]

50A.04.570 Appeals—Judicial review—Bond—Stay. (1) A bond of any kind shall not be required of any employee seeking judicial review from a commissioner's decision affecting such employee's application for initial determination or claim for waiting period credit or for benefits.

(2) A commissioner's decision shall not be stayed by a petition for judicial review unless the petitioning employer shall first deposit an undertaking in an amount deemed by the commissioner to be due, if any, from the petitioning employer, together with interest thereon, if any, with the commissioner or in the registry of the court.

(3) This section does not authorize a stay in the payment of benefits to an employee when such employee has been held entitled thereto by a decision of the commissioner which decision either affirms, reverses, or modifies a decision of an appeals tribunal. [2017 3rd sp.s. c 5 § 45.]

50A.04.575 Appeals—Judicial review—Interstate petitions. RCW 34.05.514 to the contrary notwithstanding, petitions to the superior court from decisions of the commissioner dealing with the applications or claims relating to benefit payments that were filed outside of this state with an authorized representative of the commissioner shall be filed with the superior court of Thurston county that shall have the original venue of such appeals. [2017 3rd sp.s. c 5 § 46.]

50A.04.580 Appeals—Fees. An individual shall not be charged fees of any kind in any proceeding involving the employee's application for initial determination, or claim for waiting period credit, or claim for benefits, under this chapter by the commissioner or his or her representatives, or by an appeal tribunal, or any court, or any officer thereof. Any employee in any such proceeding before the commissioner or any appeal tribunal may be represented by counsel or other duly authorized agent who shall neither charge nor receive a fee for such services in excess of an amount found reasonable by the officer conducting such proceeding. [2017 3rd sp.s. c 5 § 49.]

50A.04.585 Appeals—Attorneys' fees—Court. It shall be unlawful for any attorney engaged in any appeal to the courts on behalf of an employee involving the employee's application for initial determination or claim for benefits to charge or receive any fee in excess of a reasonable fee to be fixed by the superior court in respect to the services performed in connection with the appeal taken and to be fixed by

the supreme court or the court of appeals in the event of appellate review, and if the decision of the commissioner shall be reversed or modified, such fee and the costs shall be payable out of the family and medical leave enforcement account. [2017 3rd sp.s. c 5 § 50.]

50A.04.590 Appeals—Commissioner's expenses. (1) Whenever any appeal is taken from any decision of the commissioner to any court, all expenses and costs incurred by the commissioner, including court reporter costs and attorneys' fees and all costs taxed against such commissioner, shall be paid out of the family and medical leave enforcement account.

(2) Neither the commissioner nor the state shall be charged any fee for any service rendered in connection with litigation under this chapter by the clerk of any court. [2017 3rd sp.s. c 5 § 52.]

50A.04.595 Appeals—Remedies exclusive. The remedies provided in this chapter for determining the justness or correctness of assessments, refunds, adjustments, or claims shall be exclusive and no court shall entertain any action to enjoin an assessment or require a refund or adjustment except in accordance with the provisions of this chapter. Matters which may be determined by the procedures set out in this chapter shall not be the subject of any declaratory judgment. [2017 3rd sp.s. c 5 § 51.]

50A.04.600 Voluntary plans—Generally. (1) An employer may apply to the commissioner for approval of a voluntary plan for the payment of either family leave benefits or medical leave benefits, or both. The application must be submitted on a form and in the manner as prescribed by the commissioner in rule. The fee for the department's review of each application for approval of a voluntary plan is two hundred fifty dollars.

(2) The benefits payable as indemnification for loss of wages under any voluntary plan must be separately stated and designated separately and distinctly in the plan from other benefits, if any.

(3) Neither an employee nor his or her employer are liable for any premiums for benefits covered by an approved voluntary plan.

(4) Except as provided in this section, an employee covered by an approved voluntary plan at the commencement of a period of family leave or a medical leave benefit period is not entitled to benefits from the state program. Benefits payable to that employee is the liability of the approved voluntary plan under which the employee was covered at the commencement of the family leave or medical leave benefit period, regardless of any subsequent serious health condition or family leave which may occur during the benefit period. The commissioner must adopt rules to allow benefits or prevent duplication of benefits to employees simultaneously covered by one or more approved voluntary plans and the state program.

(5) The commissioner must approve any voluntary plan as to which the commissioner finds that there is at least one employee in employment and all of the following exist:

(a) The benefits afforded to the employees must be at least equivalent to the benefits the employees are entitled to

as part of the state's family and medical leave program, including but not limited to the duration of leave. The employer must offer at least one-half of the length of leave as provided in RCW 50A.04.020(2) with pay and provide a monetary payment in an amount equal to or higher than the total amount of monetary benefits the employee would be entitled to receive as part of the state-run program. The employer may offer the same duration of leave and monetary benefits as offered under the state program.

(b) The sick leave an employee is entitled to under RCW 49.46.210 is in addition to the employer's provided benefits and is in addition to any family and medical leave benefits.

(c) The plan is available to all of the eligible employees of the employer employed in this state, including future employees.

(d) The employer has agreed to make the payroll deductions required, if any, and transmit the proceeds to the department for any portions not collected for the voluntary plan.

(e) The plan will be in effect for a period of not less than one year and, thereafter, continuously unless the commissioner finds that the employer has given notice of withdrawal from the plan in a manner specified by the commissioner in rule. The plan may be withdrawn by the employer on the date of any law increasing the benefit amounts or the date of any change in the rate of employee premiums, if notice of the withdrawal from the plan is transmitted to the commissioner not less than thirty days prior to the date of that law or change. If the plan is not withdrawn, it must be amended to conform to provide the increased benefit amount or change in the rate of the employee's premium on the date of the increase or change.

(f) The amount of payroll deductions from the wages of an employee in effect for any voluntary plan may not exceed the maximum payroll deduction for that employee as authorized under RCW 50A.04.115. The deductions may not be increased on other than an anniversary of the effective date of the plan, except to the extent that any increase in the deductions from the wages of an employee do not exceed the maximum rate authorized under the state program.

(g) The voluntary plan provides that an employee of an employer with a voluntary plan for either family leave or medical leave, or both, is eligible for the plan benefits if the employee meets the requirements of RCW 50A.04.015 and has worked at least three hundred forty hours for the employer during the twelve months immediately preceding the date leave will commence.

(h) The voluntary plan provides that an employee of an employer with a voluntary plan for either family leave or medical leave, or both, who takes leave under the voluntary plan is entitled to the employment protection provisions contained in RCW 50A.04.025 if the employee has worked for the employer for at least nine months and nine hundred sixty-five hours during the twelve months immediately preceding the date leave will commence.

(i) The voluntary plan provides that the employer maintains the employee's existing health benefits as provided under RCW 50A.04.245.

(6)(a) The department must conduct a review of the expenses incurred in association with the administration of the voluntary plans during the first three years after implementation and report its findings to the legislature.

(b) The review must include an analysis of the adequacy of the fee in subsection (1) of this section to cover the department's administrative expenses related to reviewing and approving or denying the applications and administering appeals related to voluntary plans. The review must include an estimate of the next year's projected administrative costs related to the voluntary plans. The legislature shall adjust the fee in subsection (1) of this section as needed to ensure the department's administrative expenses related to the voluntary plans are covered by the fee.

(c) If the current receipts from the fee in subsection (1) of this section are inadequate to cover the department's administrative expenses related to the voluntary plans, the department may use funds from the family and medical leave insurance account under RCW 50A.04.220 to pay for these expenses. [2017 3rd sp.s. c 5 § 14.]

50A.04.605 Voluntary plans—Reapproval. The employer must have the voluntary plan approved by the commissioner annually for the first three years. After the first three years, the employer is only required to have the approval if the employer makes changes to the plan that were not mandated by changes to state law. [2017 3rd sp.s. c 5 § 16.]

50A.04.610 Voluntary plans—Employee eligibility. (1) To be eligible for any family and medical leave, an employee must be in employment for eight hundred twenty hours during the qualifying period, by an employer with a voluntary plan or an employer utilizing the state family and medical leave plan. An employee qualifies for benefits under an employer's voluntary plan only after the employee works at least three hundred forty hours for the current employer.

(2) An employee who had coverage under the state plan retains coverage under the state plan until such time as the employee is qualified for coverage under the new employer's voluntary plan.

(3) An employee who was eligible for benefits under a voluntary plan is immediately eligible for benefits under a new employer's voluntary plan. [2017 3rd sp.s. c 5 § 22.]

50A.04.615 Voluntary plans—Employees no longer covered. (1) An employee is no longer covered by an approved voluntary plan if family leave or the employee's medical leave occurred after the employment relationship with the voluntary plan employer ends, or if the commissioner terminates a voluntary plan.

(2) An employee who has ceased to be covered by an approved voluntary plan is, if otherwise eligible, immediately entitled to benefits from the state program to the same extent as though there had been no exemption as provided in this chapter. [2017 3rd sp.s. c 5 § 23.]

50A.04.620 Voluntary plans—Posting of notice regarding plan. An employer with a voluntary plan must provide a notice prepared by or approved by the commissioner regarding the voluntary plan consistent with the provisions of RCW 50A.04.075. [2017 3rd sp.s. c 5 § 25.]

50A.04.625 Voluntary plans—Employee costs. An employer may assume all or a greater part of the cost of the

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voluntary plan than required under the state program. An employer may deduct from the wages of an employee covered by the voluntary plan, for the purpose of providing the benefits specified in this chapter, an amount not in excess of that which would be required if the employee was not covered by the plan. [2017 3rd sp.s. c 5 § 17.]

50A.04.630 Voluntary plans—Remaining wage deductions upon withdrawal of plan. All deductions from the wages of an employee remaining in the possession of the employer upon the employer's withdrawal of the voluntary plan as a result of plan contributions being in excess of plan costs, that are not disposed of in conformity with the department's rules, must be remitted to the department and deposited in the family and medical leave insurance account. [2017 3rd sp.s. c 5 § 18.]

50A.04.635 Voluntary plans—Employee contributions and income held in trust. Any employee contributions to and income arising from an approved voluntary plan received or retained by an employer under an approved voluntary plan are trust funds that are not considered to be part of an employer's assets. An employer must maintain a separate, specifically identifiable account for voluntary plan trust funds in a financial institution. [2017 3rd sp.s. c 5 § 19.]

50A.04.640 Voluntary plans—Successor employer. A voluntary plan in force and effect at the time a successor acquires the organization, trade, or business, or substantially all the assets thereof, or a distinct and severable portion of the organization, trade, or business, and continues its operation without substantial reduction of personnel resulting from the acquisition, must continue the voluntary plan and may not withdraw the plan without a specific request for withdrawal in a manner and at a time specified by the commissioner. A successor may terminate a voluntary plan with notice to the commissioner and without a request to withdraw the plan within ninety days from the date of the acquisition. [2017 3rd sp.s. c 5 § 15.]

50A.04.645 Voluntary plans—Amendment. (1) The commissioner must approve any amendment to a voluntary plan adjusting the provisions thereof, as to periods after the effective date of the amendment, when the commissioner finds: (a) That the plan, as amended, will conform to the standards set forth in this chapter; and (b) that notice of the amendment has been delivered to the employees at least ten days prior to the approval.

(2) Nothing contained in this section is intended to deny or limit the right of the commissioner to adopt supplementary rules regarding voluntary plans. [2017 3rd sp.s. c 5 § 27.]

50A.04.650 Voluntary plans—Termination by commissioner. (1) The commissioner may terminate any voluntary plan if the commissioner finds that there is risk that the benefits accrued or that will accrue will not be paid or for other good cause shown.

(2) The commissioner must give notice of the commissioner's intention to terminate a plan to the employer at least ten days before taking any final action. The notice must state the effective date and the reason for the termination.

(3) On the effective date of the termination of a plan by the commissioner, all moneys in the plan, including moneys paid by the employer, moneys paid by the employees, moneys owed to the voluntary plan by the employer but not yet paid to the plan, and any interest accrued on all these moneys, must be remitted to the department and deposited into the family and medical leave insurance account.

(4) The employer may, within ten days from mailing or personal service of the notice, file an appeal in the time, manner, method, and procedure provided in RCW 50A.04.500.

(5) The payment of benefits and the transfer of moneys in the voluntary plan may not be delayed during an employer's appeal of the termination of a voluntary plan.

(6) If an employer's voluntary plan has been terminated by the commissioner the employer is not eligible to apply for approval of another voluntary plan for a period of three years. [2017 3rd sp.s. c 5 § 21.]

50A.04.655 Voluntary plans—Employer penalties.

(1) An employer of a voluntary plan found to have violated this chapter shall be assessed the following monetary penalties:

- (a) One thousand dollars for the first violation; and
- (b) Two thousand dollars for the second and subsequent violations.

(2) The commissioner shall waive collection of the penalty if the employer corrects the violation within thirty days of receiving a notice of the violation and the notice is for a first violation.

(3) The commissioner may waive collection of any penalties if the commissioner determines the violation to be an inadvertent error by the employer.

(4) Monetary penalties collected under this section shall be deposited in the family and medical leave enforcement account.

(5) The department shall enforce the collection of penalties through conference and conciliation.

(6) These penalties may be appealed as provided in RCW 50A.04.500 through 50A.04.595. [2017 3rd sp.s. c 5 § 20.]

50A.04.660 Voluntary plans—Appeals. An employer may appeal any adverse decision by the department regarding the voluntary plan and an employee may appeal an employer's denial of liability upon the claim of an employee for family or medical leave benefits under an approved plan, in the manner specified under RCW 50A.04.500. [2017 3rd sp.s. c 5 § 24.]

50A.04.665 Voluntary plans—Reports, information, and records. Employers whose employees are participating in an approved voluntary plan must maintain all reports, information, and records as relating to the voluntary plan and claims for six years and furnish for the commissioner upon request. [2017 3rd sp.s. c 5 § 26.]

50A.04.900 Conflict with federal requirements. If any part of this chapter is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflict-

ing part of this chapter is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this chapter. Rules adopted under this chapter must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state. [2017 3rd sp.s. c 5 § 101.]

Title 51

INDUSTRIAL INSURANCE

Chapters

- 51.24** **Actions at law for injury or death.**
- 51.44** **Funds.**

Chapter 51.24 RCW

ACTIONS AT LAW FOR INJURY OR DEATH

Sections

- 51.24.090 **Compromise or settlement less than benefits.**

51.24.090 Compromise or settlement less than benefits. (1) Any compromise or settlement of the third party cause of action by the injured worker or beneficiary which results in less than the entitlement under this title is void unless made with the written approval of the department or self-insurer. For a state fund claim, the department shall provide reasonable ongoing notice to the employer of the status of any compromise or settlement negotiations between the injured worker or beneficiary and the department, for the employer's information. For a state fund claim, notice to the employer is not required if the costs of the claim or claims are no longer included in the calculation of the employer's experience factor used to determine premiums; or if the employer cannot be located, is no longer in business, or requests that they not receive ongoing notice after the department provides timely notice of the settlement process to the employer. For the purposes of this chapter, "entitlement" means benefits and compensation paid and estimated by the department to be paid in the future.

(2) If a compromise or settlement is void because of subsection (1) of this section, the department or self-insurer may petition the court in which the action was filed for an order assigning the cause of action to the department or self-insurer. If an action has not been filed, the department or self-insurer may proceed as provided in chapter 7.24 RCW. [2017 c 145 § 1; 1995 c 199 § 5; 1984 c 218 § 7; 1977 ex.s. c 85 § 7.]

Additional notes found at www.leg.wa.gov

Chapter 51.44 RCW

FUNDS

Sections

- 51.44.190 **Construction registration inspection account—Fee levels—Transfers.**

51.44.190 Construction registration inspection account—Fee levels—Transfers. (1) The construction registration inspection account is created in the state treasury. All moneys, except fines and penalties, received or collected

under the terms of chapters 18.27 and 70.87 RCW and under the terms of RCW 43.22.335 through 43.22.430 and 43.22.432 through 43.22.495 must be deposited into the account. Moneys in the account may only be spent after appropriation. Expenditures from the account, not including moneys transferred to the general fund, may be used only to carry out the purposes of chapters 18.27 and 70.87 RCW and RCW 43.22.335 through 43.22.430 and 43.22.432 through 43.22.495.

(2) The department shall set the fees deposited in the account at a level that generates revenue that is as near as practicable to the amount of the appropriation to carry out the duties specified in this section.

(3) Until June 30, 2023, on the last working day of the first month following each quarterly period, seven percent of all revenues received into the account during the previous quarter from licenses, permits, and registrations, net of refunds paid to customers, must be transferred into the general fund. [2017 3rd sp.s. c 11 § 4.]

Effective date—2017 3rd sp.s. c 11: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2017." [2017 3rd sp.s. c 11 § 5.]

Title 52

FIRE PROTECTION DISTRICTS

Chapters

- 52.02 Formation.**
- 52.04 Annexation.**
- 52.06 Merger.**
- 52.14 Commissioners.**
- 52.16 Finances.**
- 52.18 Benefit charges.**
- 52.26 Regional fire protection service authorities.**

Chapter 52.02 RCW

FORMATION

Sections

- 52.02.160 Petition alternative, resolution—Adoption requirements—Public hearing—Voter approval—General fund reduction.
- 52.02.170 Ambulance service as public utility—Limitations—Definition.
- 52.02.180 Transfer of fire protection and emergency services from fire department to fire protection district—Procedure.

52.02.160 Petition alternative, resolution—Adoption requirements—Public hearing—Voter approval—General fund reduction. (1) As an alternative to the petition method of formation for fire protection districts provided in this chapter, the legislative authority of a city or town may by resolution, subject to the approval of the voters, establish a fire protection district with boundaries that are the same as the corporate boundaries of the city or town for the provision of fire prevention services, fire suppression services, and emergency medical services, and for the protection of life and property within the city or town.

(a) Any resolution adopted by a city or town under this section to establish a fire protection district must, at a minimum:

(i) Contain a financing plan for the fire protection district. As part of the financing plan, the city or town may pro-

pose the imposition of revenue sources authorized by this title for fire protection districts, such as property taxes, as provided in chapter 52.16 RCW, or benefit charges, as provided in chapter 52.18 RCW; and

(ii) Set a date for a public hearing on the resolution.

(b) The financing plan in the resolution adopted by the city or town must contain the following information regarding property taxes that will be imposed by the fire protection district and city or town subsequent to the formation of the district:

(i) The dollar amount the fire protection district will levy in the first year in which the fire protection district imposes any of the regular property taxes in RCW 52.16.130, 52.16.140, or 52.16.160;

(ii) The city's or town's highest lawful levy for the purposes of RCW 84.55.092, reduced by the fire protection district's levy amount from (b)(i) of this subsection. This reduced highest lawful levy becomes the city's or town's highest lawful levy since 1986 for subsequent levy limit calculations under chapter 84.55 RCW; and

(iii) The estimated aggregate net dollar amount impact on property owners within the city or town based on the changes described in (b)(i) and (ii) of this subsection (1).

(c) If a city or town proposes the initial imposition of a benefit charge as a revenue source for the fire protection district under (a) of this subsection, the resolution adopted by the city or town must comply with the requirements of RCW 52.18.030.

(d) Notice of public hearing on a resolution adopted by a city or town must be published for three consecutive weeks in a newspaper of general circulation in the city or town, and must be posted for at least fifteen days prior to the date of the hearing in three public places within the boundaries of the proposed fire protection district. All notices must contain the time, date, and place of the public hearing.

(2)(a) A resolution adopted under this section is not effective unless approved by the voters of the city or town at a general election. The resolution must be approved:

(i) By a simple majority of the voters of the city or town; or

(ii) If the resolution proposes the initial imposition of a benefit charge, by sixty percent of the voters of the city or town.

(b) An election to approve or reject a resolution forming a fire protection district, including the proposed financial plan and any imposition of revenue sources for the fire protection district, must be conducted by the election officials of the county or counties in which the proposed district is located in accordance with the general election laws of the state. If a resolution forming a fire protection district provides that the fire protection district will be governed by a board of fire commissioners, as permitted under RCW 52.14.140, then the initial fire commissioners must be elected at the same election where the resolution is submitted to the voters authorizing the creation of the fire protection district. The election must be held at the next general election date, according to RCW 29A.04.321 and 29A.04.330, occurring after the date of the public hearing on the resolution adopted by the city or town legislative authority. The ballot title must include the information regarding property taxes that is required to be in

the financing plan of the resolution under subsection (1)(b) of this section.

(c) If a ballot proposition on the resolution is approved by voters, as provided in (a) of this subsection, the county legislative authority shall by resolution declare the fire protection district organized under the name designated in the ballot proposition.

(d) Nothing contained in this chapter may be construed to alter a municipal airport fire department or affect any powers authorized under RCW 14.08.120(2). If a question arises as to whether this chapter modifies the affairs of municipal airports in any way, the answer is no.

(3) A city or town must reduce its general fund regular property tax levy by the total combined levy of the fire protection district as proposed by the district in accordance with subsection (1)(b)(i) of this section. The reduced levy amount of the city or town must occur in the first year in which the fire protection district imposes any of the property taxes in RCW 52.16.130, 52.16.140, or 52.16.160 and must be specified in the financing plan and ballot proposition as provided in this section. If the fire protection district does not impose all three levies under RCW 52.16.130, 52.16.140, and 52.16.160 when it begins operations, the city must further reduce its general fund regular property tax levy if the district initially imposes any of the levies in subsequent years, by the amount of such levy or levies initially imposed in a subsequent year. [2017 c 328 § 1.]

52.02.170 Ambulance service as public utility—Limitations—Definition. (1) A fire protection district may establish an ambulance service to be operated as a public utility. However, the fire protection district may not provide for the establishment of an ambulance service utility that would compete with any existing private ambulance service unless the fire protection district determines that the area served by the fire protection district, or a substantial portion of that area, is not adequately served by an existing private ambulance service.

(2) In determining the adequacy of an existing private ambulance service, the fire protection district must take into consideration objective generally accepted medical standards and reasonable levels of service, which must be published by the fire protection district. If a fire protection district makes a preliminary conclusion that an existing private ambulance service is inadequate, the fire protection district must allow a minimum of sixty days for the private ambulance service to meet the generally accepted medical standards and accepted levels of service. If the fire protection district makes a second preliminary conclusion of inadequacy within a twenty-four month period, the fire protection district may immediately issue a call for bids or establish its own ambulance service utility and is not required to afford the private ambulance service another sixty-day period to meet the generally accepted medical standards and reasonable levels of service.

(3) A private ambulance service that is not licensed by the department of health, or has had its license denied, suspended, or revoked, is not entitled to a sixty-day period to demonstrate adequacy, and the fire protection district may immediately issue a call for bids or establish an ambulance service utility.

(4) A private ambulance service that abandons service in the area served by the fire protection district, or a substantial portion of the area served by the fire protection district, is not entitled to a sixty-day period to demonstrate adequacy, and the fire protection district may immediately issue a call for bids or establish an ambulance service utility. If a fire protection district becomes aware of an intent to abandon service at a future date, the fire protection district may immediately issue a call for bids or establish an ambulance service utility to avoid an interruption in service.

(5) For purposes of this section, "fire protection district" means a fire protection district established by the legislative authority of a city or town pursuant to RCW 52.02.160. [2017 c 328 § 2.]

52.02.180 Transfer of fire protection and emergency services from fire department to fire protection district—

Procedure. (1) Except as provided otherwise in the resolution adopted by the legislative authority of a city or town establishing a fire protection district under RCW 52.02.160, all powers, duties, and functions of the city or town fire department pertaining to fire protection and emergency services of the city or town are transferred to the fire protection district on its creation date.

(2)(a) The city or town fire department must transfer or deliver to the fire protection district:

(i) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the city or town fire department pertaining to fire protection and emergency services powers, functions, and duties;

(ii) All real property and personal property including cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the city or town fire department in carrying out the fire protection and emergency services powers, functions, and duties; and

(iii) All funds, credits, or other assets held by the city or town fire department in connection with fire protection and emergency services powers, functions, and duties.

(b) Any appropriations made to the city or town fire department for carrying out the fire protection and emergency services powers, functions, and duties of the city or town must be transferred and credited to the fire protection district.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred to the fire protection district, the legislative authority of the city or town must make a determination as to the proper allocation.

(3) All rules and all pending business before the city or town fire department pertaining to the fire protection and emergency services powers, functions, and duties transferred must be continued and acted upon by the fire protection district, and all existing contracts and obligations remain in full force and must be performed by the fire protection district.

(4) The transfer of powers, duties, functions, and personnel of the city or town fire department do not affect the validity of any act performed before creation of the fire protection district.

(5) If apportionments of budgeted funds are required because of the transfers, the treasurer for the city or town fire department must certify the apportionments.

(6)(a) Subject to (c) of this subsection, all employees of the city or town fire department are transferred to the fire protection district on its creation date. Upon transfer, unless an agreement for different terms of transfer is reached between the collective bargaining representatives of the transferring employees and the fire protection district, an employee is entitled to the employee rights, benefits, and privileges to which he or she would have been entitled as an employee of the city or town fire department, including rights to:

- (i) Compensation at least equal to the level at the time of transfer;
- (ii) Retirement, vacation, sick leave, and any other accrued benefit;
- (iii) Promotion and service time accrual; and
- (iv) The length or terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.

(b) If a city or town provides for civil service in its fire department, the collective bargaining representatives of the transferring employees and the fire protection district must negotiate regarding the establishment of a civil service system within the fire protection district.

(c) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified as provided by law. [2017 c 328 § 5.]

(2) For the purposes of this section, "reasonable proximity" means geographical areas near enough to each other so that governance, management, and services can be delivered effectively. [2017 c 326 § 1; 2010 c 136 § 2; 2009 c 115 § 1; 1999 c 105 § 3; 1985 c 313 § 1; 1979 ex.s. c 179 § 1. Formerly RCW 52.04.170.]

52.04.071 Annexation of proximate city or town—Election. The county legislative authority or authorities shall by resolution call a special election to be held in the city or town and in the fire protection district at the next date according to RCW 29A.04.321, and shall cause notice of the election to be given as provided for in RCW 29A.52.355.

The election on the annexation of the city or town into the fire protection district shall be conducted by the auditor of the county or counties in which the city or town and the fire protection district are located in accordance with the general election laws of the state. The results thereof shall be canvassed by the canvassing board of the county or counties. No person is entitled to vote at the election unless he or she is a qualified elector in the city or town or unless he or she is a qualified elector within the boundaries of the fire protection district. The ballot proposition shall be in substantially the following form:

"Shall the city or town of be annexed to and be a part of fire protection district?"

YES
NO "

If a majority of the persons voting on the proposition in the city or town and a majority of the persons voting on the proposition in the fire protection district vote in favor thereof, the city or town shall be annexed and shall be a part of the fire protection district. [2017 c 326 § 2; 2011 c 10 § 82; 2009 c 115 § 2; 2006 c 344 § 34; 1984 c 230 § 16; 1979 ex.s. c 179 § 2. Formerly RCW 52.04.180.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Elections: Title 29A RCW.

Additional notes found at www.leg.wa.gov

52.04.081 Annexation of proximate city or town—Annual tax levies—Limitations. The annual tax levies authorized by chapter 52.16 RCW shall be imposed throughout the fire protection district, including any city or town annexed thereto. Any city or town annexed to a fire protection district is entitled to levy up to three dollars and sixty cents per thousand dollars of assessed valuation less any regular levy made by the fire protection district or by a library district under RCW 27.12.390 in the incorporated area: PROVIDED, That the limitations upon regular property taxes imposed by chapter 84.55 RCW apply. [2017 c 326 § 3; 2009 c 115 § 3; 1984 c 230 § 17; 1979 ex.s. c 179 § 4. Formerly RCW 52.04.190.]

52.04.091 Additional territory annexed by city to be part of district. When any city, code city, or town is annexed to a fire protection district under RCW 52.04.061 and 52.04.071, thereafter, any territory annexed by the city

**Chapter 52.04 RCW
ANNEXATION**

Sections

52.04.061	Annexation of proximate city or town—Procedure—Definition.
52.04.071	Annexation of proximate city or town—Election.
52.04.081	Annexation of proximate city or town—Annual tax levies—Limitations.
52.04.091	Additional territory annexed by city to be part of district.
52.04.101	Withdrawal by annexed city or town—Election.
52.04.111	Annexation of city, code city, or town—Transfer of employees.
52.04.121	Annexation of city, code city, or town—Transfer of employees—Rights and benefits.
52.04.131	Annexation of city, code city, or town—Transfer of employees—Notice—Time limitation.
52.04.171	Annexation of property subject to excess levy—Repayment of voter-approved indebtedness.

52.04.061 Annexation of proximate city or town—Procedure—Definition. (1) A city or town located within reasonable proximity to a fire protection district may be annexed to such district if at the time of the initiation of annexation the population of the city or town is 300,000 or less. The legislative authority of the city or town may initiate annexation by the adoption of an ordinance stating an intent to join the fire protection district and finding that the public interest will be served thereby. If the board of fire commissioners of the fire protection district shall concur in the annexation, notification thereof shall be transmitted to the legislative authority or authorities of the counties in which the city or town and the district are situated.

shall also be annexed and be a part of the fire protection district. [2017 c 326 § 4; 2009 c 115 § 4; 1989 c 76 § 1.]

52.04.101 Withdrawal by annexed city or town—Election. The legislative body of such a city or town which has annexed to such a fire protection district may, by resolution, present to the voters of such city or town a proposition to withdraw from said fire protection district at any general election held at least three years following the annexation to the fire protection district. If the voters approve such a proposition to withdraw from said fire protection district, the city or town shall have a vested right in the capital assets of the district proportionate to the taxes levied within the corporate boundaries of the city or town and utilized by the fire protection district to acquire such assets. [2017 c 326 § 5; 2009 c 115 § 5; 1979 ex.s. c 179 § 3. Formerly RCW 52.04.200.]

52.04.111 Annexation of city, code city, or town—Transfer of employees. (1) When any city, code city, or town is annexed to a fire protection district under RCW 52.04.061 and 52.04.071, any employee of the fire department of such city, code city, or town who: (a) Was at the time of annexation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the fire protection district; (b) will, as a direct consequence of annexation, be separated from the employ of the city, code city, or town; and (c) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer his or her employment to the fire protection district as provided in this section and RCW 52.04.121 and 52.04.131.

(2) For purposes of this section and RCW 52.04.121 and 52.04.131, employee means an individual whose employment with a city, code city, or town has been terminated because the city, code city, or town was annexed by a fire protection district for purposes of fire protection. [2017 c 326 § 6; 2010 c 8 § 15001; 2009 c 115 § 6; 1986 c 254 § 10.]

52.04.121 Annexation of city, code city, or town—Transfer of employees—Rights and benefits. (1) An eligible employee may transfer into the fire protection district civil service system, if any, or if none, then may request transfer of employment under this section by filing a written request with the board of fire commissioners of the fire protection district and by giving written notice to the legislative authority of the city, code city, or town. Upon receipt of such request by the board of fire commissioners the transfer of employment shall be made. The employee so transferring will: (a) Be on probation for the same period as are new employees of the fire protection district in the position filled, but if the transferring employee has already completed a probationary period as a firefighter prior to the transfer, then the employee may only be terminated during the probationary period for failure to adequately perform assigned duties, not meeting the minimum qualifications of the position, or behavior that would otherwise be subject to disciplinary action; (b) be eligible for promotion no later than after completion of the probationary period; (c) receive a salary at least equal to that of other new employees of the fire protection district in the position filled; and (d) in all other matters, such as retirement, vacation, and sick leave, have all the rights,

benefits, and privileges to which he or she would have been entitled as an employee of the fire protection district from the beginning of employment with the city, code city, or town fire department: PROVIDED, That for purposes of layoffs by the annexing fire agency, only the time of service accrued with the annexing agency shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. The city, code city, or town shall, upon receipt of such notice, transmit to the board of fire commissioners a record of the employee's service with the city, code city, or town which shall be credited to such employee as a part of the period of employment in the fire protection district. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the fire protection district as the district determines are needed to provide services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 52.04.111 and 52.04.131 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the fire protection district when appropriate positions become available: PROVIDED, That employees who are not immediately hired by the fire protection district shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. [2017 c 326 § 7; 2009 c 115 § 7; 1994 c 73 § 4; 1986 c 254 § 11.]

Additional notes found at www.leg.wa.gov

52.04.131 Annexation of city, code city, or town—Transfer of employees—Notice—Time limitation. When a city, code city, or town is annexed to a fire protection district and as a result any employee is laid off who is eligible to transfer to the fire protection district pursuant to this section and RCW 52.04.111 and 52.04.121, the city, code city, or town shall notify the employee of the right to transfer and the employee shall have ninety days to transfer employment to the fire protection district. [2017 c 326 § 8; 2009 c 115 § 8; 1986 c 254 § 12.]

52.04.171 Annexation of property subject to excess levy—Repayment of voter-approved indebtedness. All property located within the boundaries of a city, or town annexing into a fire protection district, which property is subject to an excess levy by the city or town for the repayment of voter-approved indebtedness for fire protection related capital improvements incurred prior to the effective date of the annexation, is exempt from voter-approved excess property taxes levied by the annexing fire protection district for the repayment of indebtedness issued prior to the effective date of the annexation. [2017 c 326 § 9; 2010 c 63 § 1.]

Effective date—2010 c 63: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [March 15, 2010]." [2010 c 63 § 2.]

Chapter 52.06 RCW MERGER

Sections

52.06.010 Merger of districts authorized—Review—Definition.

52.06.010 Merger of districts authorized—Review—

Definition. (1) A fire protection district may merge with another fire protection district located within a reasonable proximity, on such terms and conditions as they agree upon, in the manner provided in this title. The fire protection districts may be located in different counties. The district desiring to merge with another district, or the district from which it is proposed that a portion of the district be merged with another district, shall be called the "merging district." The district into which the merger is to be made shall be called the "merger district." The merger of any districts under chapter 52.06 RCW is subject to potential review by the boundary review board or boards of the county in which the merging district, or the portion of the merging district that is proposed to be merged with another district, is located.

(2) For the purposes of this section, "reasonable proximity" means geographical areas near enough to each other so that governance, management, and services can be delivered effectively. [2017 c 326 § 10; 1989 c 63 § 13; 1984 c 230 § 57; 1947 c 254 § 12; Rem. Supp. 1947 § 5654-151a. Formerly RCW 52.24.010.]

Chapter 52.14 RCW COMMISSIONERS

Sections

52.14.010 Number—Qualifications—Insurance—Compensation and expenses—Service as volunteer firefighter.
52.14.020 Number of commissioners in district—Terms of first appointees.
52.14.140 Governance authority of fire protection district.

52.14.010 Number—Qualifications—Insurance—Compensation and expenses—Service as volunteer firefighter. (1) The affairs of the district shall be managed by a board of fire commissioners composed initially of three registered voters residing in the district, except as provided otherwise in RCW 52.14.015, 52.14.020, and 52.14.140.

(2)(a) Each member of an elected board of fire commissioners shall each receive one hundred four dollars per day or portion thereof, not to exceed nine thousand nine hundred eighty-four dollars per year, for time spent in actual attendance at official meetings of the board or in performance of other services or duties on behalf of the district. Members serving in an ex officio capacity on a board of fire commissioners may not receive compensation, but shall receive necessary expenses in accordance with (b) of this subsection.

(b) Each member of a board of fire commissioners shall receive necessary expenses incurred in attending meetings of the board or when otherwise engaged in district business, and shall be entitled to receive the same insurance available to all firefighters of the district: PROVIDED, That the premiums

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for such insurance, except liability insurance, shall be paid by the individual commissioners who elect to receive it.

(c) Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

(3) The board shall fix the compensation to be paid the secretary and all other agents and employees of the district. The board may, by resolution adopted by unanimous vote, authorize any of its members to serve as volunteer firefighters without compensation. A commissioner actually serving as a volunteer firefighter may enjoy the rights and benefits of a volunteer firefighter.

(4) The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning January 1, 2019, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

(5) A person holding office as commissioner for two or more special purpose districts or serving ex officio as commissioner as a member of the legislative authority of a city or town shall receive only that per diem compensation authorized for one of his or her official positions as compensation for attending an official meeting or conducting official services or duties while representing more than one district or representing a municipality and a district. However, such commissioner may receive additional per diem compensation if approved by resolution of the boards of an affected commission, city, or town. [2017 c 328 § 7; 2017 c 58 § 1; 2012 c 174 § 1; 2007 c 469 § 2; 1998 c 121 § 2; 1994 c 223 § 48; 1985 c 330 § 2; 1980 c 27 § 1; 1979 ex.s. c 126 § 31; 1973 c 86 § 1; 1971 ex.s. c 242 § 2; 1969 ex.s. c 67 § 1; 1967 c 51 § 1; 1965 c 112 § 1; 1959 c 237 § 4; 1957 c 238 § 1; 1945 c 162 § 3; 1939 c 34 § 22; Rem. Supp. 1945 § 5654-122. Formerly RCW 52.12.010.]

Reviser's note: This section was amended by 2017 c 58 § 1 and by 2017 c 328 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—1979 ex.s. c 126: See RCW 29A.60.280(1).

Terms of commissioners: RCW 52.14.060.

52.14.020 Number of commissioners in district—Terms of first appointees. (1) In a fire protection district

with elected commissioners that maintains a fire department consisting wholly of personnel employed on a full-time, fully-paid basis, there shall be five fire commissioners. A fire protection district with an annual budget of ten million dollars or more may have seven fire commissioners.

(2)(a) If two positions are created on boards of fire commissioners by this section, such positions shall be filled initially as for a vacancy, except that the appointees shall draw lots, one appointee to serve until the next general fire district election after the appointment, at which two commissioners shall be elected for six-year terms, and the other appointee to serve until the second general fire district election after the appointment, at which two commissioners shall be elected for six-year terms.

(b) If four positions are created on boards of fire commissioners by this section, such positions shall be filled initially as for a vacancy, except that the appointees shall draw lots, three appointees to serve until the next general fire district election after the appointment, at which three commissioners shall be elected for six-year terms and two commissioners shall be elected for four-year terms, and the other appointee to serve until the second general fire district election after the appointment, at which two commissioners shall be elected for six-year terms. [2017 c 328 § 8; 2012 c 174 § 2; 1984 c 230 § 29; 1971 ex.s. c 242 § 3. Formerly RCW 52.12.015.]

52.14.140 Governance authority of fire protection district. (1) The members of the legislative authority of a city or town shall serve ex officio, by virtue of their office, as the fire commissioners of a fire protection district created under RCW 52.02.160.

(2) The legislative authority of a city or town may, within the initial resolution establishing the district's formation, relinquish governance authority of a fire protection district created under chapter 328, Laws of 2017 to an independently elected board of commissioners to be elected in accordance with RCW 52.14.060.

(3)(a) The legislative authority of a city or town may, by a majority vote of its members in an open public meeting, relinquish governance authority of a fire protection district created under chapter 328, Laws of 2017 to an appointed board of three fire commissioners at any time after formation. Each appointed commissioner serves until successors are elected at the next qualified election.

At the next qualified election, the person who receives the greatest number of votes for each commissioner position is elected to that position. The terms of office for the initial elected fire commissioners are staggered as follows:

(i) The person who is elected receiving the greatest number of votes is elected to a six-year term of office if the election is held in an odd-numbered year, or a five-year term of office if the election is held in an even-numbered year;

(ii) The person who is elected receiving the next greatest number of votes is elected to a four-year term of office if the election is held in an odd-numbered year, or a three-year term of office if the election is held in an even-numbered year; and

(iii) The other person who is elected is elected to a two-year term of office if the election is held in an odd-numbered year, or a one-year term of office if the election is held in an

even-numbered year. The term of office for each subsequent commissioner is six years.

(b) If the legislative authority of a city or town relinquishes governance authority of a fire protection district after formation under this section, and that fire protection district maintains a fire department consisting wholly of personnel employed on a full-time, fully paid basis, that district shall have five fire commissioners. The terms of office for the initial elected fire commissioners are staggered as follows:

(i) The two people elected receiving the two greatest number of votes are elected to six-year terms of office if the election is held in an odd-numbered year, or five-year terms of office if the election is held in an even-numbered year;

(ii) The two people who are elected receiving the next two greatest number of votes are elected to four-year terms of office if the election is held in an odd-numbered year, or three-year terms of office if the election is held in an even-numbered year; and

(iii) The other person who is elected is elected to a two-year term of office if the election is held in an odd-numbered year, or a one-year term of office if the election is held in an even-numbered year. The term of office for each subsequent commissioner is six years.

(c) If the legislative authority of a city or town relinquishes governance authority of a fire protection district after formation under this section, and that fire protection district has an annual budget of ten million dollars or more, that district must have seven fire commissioners. The terms of office for the initial elected fire commissioners are staggered as follows:

(i) The three people who are elected receiving the three greatest number of votes are elected to six-year terms of office if the election is held in an odd-numbered year, or five-year terms of office if the election is held in an even-numbered year;

(ii) The two people who are elected receiving the next two greatest number of votes are elected to four-year terms of office if the election is held in an odd-numbered year, or three-year terms of office if the election is held in an even-numbered year; and

(iii) The other two people who are elected are elected to two-year terms of office if the election is held in an odd-numbered year, or one-year terms of office if the election is held in an even-numbered year. The term of office for each subsequent commissioner is six years. [2017 c 328 § 6.]

Chapter 52.16 RCW FINANCES

Sections

52.16.160 Tax levy authorized.

52.16.160 Tax levy authorized. Notwithstanding the limitation of dollar rates contained in RCW 52.16.130, and in addition to any levy for the payment of the principal and interest of any outstanding general obligation bonds and in addition to any levy authorized by RCW 52.16.130, 52.16.140 or any other statute, the board of fire commissioners of any fire protection district within such county is hereby authorized to levy each year an ad valorem tax on all taxable property within such district of not to exceed fifty cents per

thousand dollars of assessed value, which levy may be made only if it will not affect dollar rates which other taxing districts may lawfully claim nor cause the combined levies to exceed the constitutional and/or statutory limitations. [2017 c 107 § 1; 2002 c 84 § 1; 1985 c 112 § 1; 1983 c 167 § 128; 1973 1st ex.s. c 195 § 54; 1969 ex.s. c 243 § 2; 1961 c 53 § 9.]

Protection from levy prorationing: RCW 84.52.120.

Additional notes found at www.leg.wa.gov

Chapter 52.18 RCW BENEFIT CHARGES

Sections

52.18.010	Benefit charges authorized—Exemptions—Amounts—Limitations—Annual review.
52.18.050	Voter approval of benefit charges required—Election—Ballot.

52.18.010 Benefit charges authorized—Exemptions—Amounts—Limitations—Annual review. (1) Pursuant to an approved initial or continued benefit charge authorized under RCW 52.18.050, the board of fire commissioners of a fire protection district may by resolution, for fire protection district purposes authorized by law, fix and impose a benefit charge on personal property and improvements to real property which are located within the fire protection district on the date specified and which have or will receive the benefits provided by the fire protection district, to be paid by the owners of the properties.

(2) A benefit charge does not apply to:

(a) Personal property and improvements to real property owned or used by any recognized religious denomination or religious organization as, or including, a sanctuary or for purposes related to the bona fide religious ministries of the denomination or religious organization, including schools and educational facilities used for kindergarten, primary, or secondary educational purposes or for institutions of higher education and all grounds and buildings related thereto, but not including personal property and improvements to real property owned or used by any recognized religious denomination or religious organization for business operations, profit-making enterprises, or activities not including use of a sanctuary or related to kindergarten, primary, or secondary educational purposes or for institutions of higher education; and

(b) Any of the following tax-exempt properties, provided such entity is not required to pay a fire protection charge under subsection (8) of this section:

(i) Property of housing authorities that is exempt from property taxes under RCW 35.82.210;

(ii) Property of nonprofit entities providing rental housing for very low-income households or providing space for the placement of a mobile home for a very low-income household that is exempt from property taxes under RCW 84.36.560;

(iii) Property of nonprofit homes for the aging that is exempt from property taxes under RCW 84.36.041;

(iv) Property of nonprofit organizations, corporations, or associations providing housing for eligible persons with developmental disabilities that is exempt from property taxes under RCW 84.36.042;

(v) Property of nonprofit organizations providing emergency or transitional housing for low-income homeless persons or victims of domestic violence who are homeless for personal safety reasons that is exempt from property taxes under RCW 84.36.043;

(vi) Property of the state housing finance commission that is exempt from property taxes under RCW 84.36.135; and

(vii) Property of nonprofit corporations operating sheltered workshops for persons with disabilities that is exempt from property taxes under RCW 84.36.350.

(3) A benefit charge may apply to a tax-exempt property included in subsection (2)(b) of this section if the tax-exempt property is located in a fire protection district that:

(a) Is less than four square miles in size;

(b) Has approved a benefit charge prior to May 5, 2017; and

(c) Has a population exceeding nineteen thousand people as of May 5, 2017, as determined by the office of financial management.

(4) A limited benefit charge may apply to property or improvements owned by a Christmas tree grower as defined in RCW 15.13.250(4) so long as the property or improvement is located on land that has been approved as farm and agricultural land with standing crops under chapter 84.34 RCW. For such property or improvement, a benefit charge may not exceed the reduction in property tax that results from the imposition of a benefit charge, as required under RCW 52.18.065.

(5) The aggregate amount of such benefit charges in any one year shall not exceed an amount equal to sixty percent of the operating budget for the year in which the benefit charge is to be collected: PROVIDED, That it shall be the duty of the county legislative authority or authorities of the county or counties in which the fire protection district is located to make any necessary adjustments to assure compliance with such limitation and to immediately notify the board of fire commissioners of any changes thereof.

(6) A benefit charge imposed shall be reasonably proportioned to the measurable benefits to property resulting from the services afforded by the district. It is acceptable to apportion the benefit charge to the values of the properties as found by the county assessor or assessors modified generally in the proportion that fire insurance rates are reduced or entitled to be reduced as the result of providing the services. Any other method that reasonably apportions the benefit charges to the actual benefits resulting from the degree of protection, which may include but is not limited to the distance from regularly maintained fire protection equipment, the level of fire prevention services provided to the properties, or the need of the properties for specialized services, may be specified in the resolution and shall be subject to contest on the ground of unreasonable or capricious action or action in excess of the measurable benefits to the property resulting from services afforded by the district. The board of fire commissioners may determine that certain properties or types or classes of properties are not receiving measurable benefits based on criteria they establish by resolution. A benefit charge authorized by this chapter shall not be applicable to the personal property or improvements to real property of any individual, corporation, partnership, firm, organization, or association maintaining a

fire department and whose fire protection and training system has been accepted by a fire insurance underwriter maintaining a fire protection engineering and inspection service authorized by the state insurance commissioner to do business in this state, but such property may be protected by the fire protection district under a contractual agreement.

(7) For administrative purposes, the benefit charge imposed on any individual property may be compiled into a single charge, provided that the district, upon request of the property owner, provide an itemized list of charges for each measurable benefit included in the charge.

(8)(a) At the annual review of the fire benefit charge mandated by RCW 52.18.060(2), if a fire service agency has identified:

(i) A tax-exempt property under subsection (2)(b) of this section as having a substantial increase in requested emergency services over the previous year; or

(ii) A new tax-exempt property that is similar in size, population, and geographic location as another such tax-exempt property as having an increase in requested emergency services;

then the tax-exempt property and the fire service agency must work together, in good faith, to address the problem by implementing community risk reduction efforts. The community risk reduction plan may include but is not limited to wellness programs and community action plans.

(b) At the subsequent annual review, if the heightened service requirements have not been reasonably addressed by the joint mitigation efforts, and the tax-exempt property owner has not acted in good faith:

(i) The property is subject to assessment of the fire benefit charge in the subsequent year, subject to approval by the board of fire commissioners as outlined in RCW 52.18.060(2); or

(ii) The respective tax-exempt property shall pay the fire service agency a fire protection charge payment in lieu of a benefit charge. The fire protection charge shall be an amount equivalent to the benefit rates for similarly situated properties for that year.

(c) All tax-exempt properties identified under subsection (2)(b) of this section and all local fire service agencies are encouraged to work collaboratively to develop and implement programs to address proper usage of fire service resources for residents of the housing properties. [2017 c 196 § 5; 1998 c 16 § 1; 1990 c 294 § 1; 1989 c 63 § 28; 1987 c 325 § 1; 1985 c 7 § 122; 1974 ex.s. c 126 § 1.]

Application—2017 c 196 §§ 5 and 6: "Sections 5 and 6 of this act apply to benefit charges approved after May 5, 2017." [2017 c 196 § 15.]

Effective date—2017 c 196 §§ 1-9, 11, 13, and 14: See note following RCW 52.26.220.

52.18.050 Voter approval of benefit charges required—Election—Ballot. (1)(a) The initial imposition of a benefit charge authorized by this chapter must be approved by not less than sixty percent of the voters of the district voting at a general election or at a special election called by the district for that purpose.

(b) An election held for the initial imposition of a benefit charge must be held not more than twelve months prior to the date on which the first charge is to be assessed.

(c) A benefit charge approved at an election expires in six or fewer years as authorized by the voters unless subsequently reapproved by the voters.

(2) Ballot measures calling for the initial imposition of a benefit charge must be submitted so as to enable voters favoring the authorization of a benefit charge to vote "Yes" and those opposed to vote "No," and the ballot question must be as follows:

"Shall county fire protection district No. . . . be authorized to impose benefit charges each year for . . . (insert number of years not to exceed six) years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.16.160?"

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

(3)(a) The continued imposition of a benefit charge authorized by this chapter may be approved for six consecutive years.

A ballot measure calling for the continued imposition of a benefit charge for six consecutive years must be approved by a majority of the voters of the district voting at a general election or at a special election called by the district for that purpose.

(b) Ballot measures calling for the continued imposition of a benefit charge must be submitted so as to enable voters favoring the continued imposition of the benefit charge to vote "Yes" and those opposed to vote "No." The ballot question must be substantially in the following form:

"Shall county fire protection district No. . . . be authorized to continue voter-authorized benefit charges each year for six consecutive years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.16.160?"

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

[2017 c 196 § 4; 2013 c 49 § 1; 1998 c 16 § 2; 1990 c 294 § 5; 1989 c 27 § 1; 1987 c 325 § 5; 1974 ex.s. c 126 § 5.]

Effective date—2017 c 196 §§ 1-9, 11, 13, and 14: See note following RCW 52.26.220.

Chapter 52.26 RCW

REGIONAL FIRE PROTECTION SERVICE AUTHORITIES

Sections

52.26.020	Definitions.
52.26.030	Planning committee—Formation—Powers.
52.26.070	Service authority—Formation—Challenges.
52.26.180	Benefit charges—Exemptions—Annual review—Definitions.
52.26.220	Benefit charges—Submission to voters—Renewal.
52.26.230	Benefit charges—Establishment—Public hearings—Notice to property owners.

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

(1) "Board" means the governing body of a regional fire protection service authority.

(2) "Elected official" means an elected official of a participating fire protection jurisdiction or a regional fire protection district commissioner created under RCW 52.26.080.

(3) "Fire protection jurisdiction" means a fire district, regional fire protection service authority, city, town, port district, municipal airport, or Indian tribe.

(4) "Participating fire protection jurisdiction" means a fire protection jurisdiction participating in the formation or operation of a regional fire protection service authority.

(5) "Regional fire protection service authority" or "authority" means a municipal corporation, an independent taxing authority within the meaning of Article VII, section 1 of the state Constitution, and a taxing district within the meaning of Article VII, section 2 of the state Constitution, whose boundaries are coextensive with two or more adjacent fire protection jurisdictions and that has been created by a vote of the people under this chapter to implement a regional fire protection service authority plan.

(6) "Regional fire protection service authority plan" or "plan" means a plan to develop and finance a regional fire protection service authority project or projects including, but not limited to, specific capital projects, fire operations and emergency service operations pursuant to RCW 52.26.040(3)(b), and preservation and maintenance of existing or future facilities.

(7) "Regional fire protection service authority planning committee" or "planning committee" means the advisory committee created under RCW 52.26.030 to create and propose to fire protection jurisdictions a regional fire protection service authority plan to design, finance, and develop fire protection and emergency service projects.

(8) "Regular property taxes" has the same meaning as in RCW 84.04.140. [2017 c 196 § 7. Prior: 2011 c 141 § 1; 2006 c 200 § 1; 2004 c 129 § 2.]

Effective date—2017 c 196 §§ 1-9, 11, 13, and 14: See note following RCW 52.26.220.

52.26.030 Planning committee—Formation—Powers. Regional fire protection service authority planning committees are advisory entities that are created, convened, and empowered as follows:

(1) Any two or more adjacent fire protection jurisdictions may create a regional fire protection service authority and convene a regional fire protection service authority planning committee. No fire protection jurisdiction may participate in more than one created authority.

(2) Each governing body of the fire protection jurisdictions participating in planning under this chapter shall appoint three elected officials to the authority planning committee. Members of the planning committee may receive compensation of seventy dollars per day, or portion thereof, not to exceed seven hundred dollars per year, for attendance at planning committee meetings and for performance of other services in behalf of the authority, and may be reimbursed for travel and incidental expenses at the discretion of their respective governing body.

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(3) A regional fire protection service authority planning committee may receive state funding, as appropriated by the legislature, or county funding provided by the affected counties for start-up funding to pay for salaries, expenses, overhead, supplies, and similar expenses ordinarily and necessarily incurred. Upon creation of a regional fire protection service authority, the authority shall within one year reimburse the state or county for any sums advanced for these start-up costs from the state or county.

(4) The planning committee shall conduct its affairs and formulate a regional fire protection service authority plan as provided under RCW 52.26.040.

(5) At its first meeting, a regional fire protection service authority planning committee may elect officers and provide for the adoption of rules and other operating procedures.

(6) The planning committee may dissolve itself at any time by a majority vote of the total membership of the planning committee. Any participating fire protection jurisdiction may withdraw upon thirty calendar days' written notice to the other jurisdictions. [2017 c 196 § 8; 2004 c 129 § 3.]

Effective date—2017 c 196 §§ 1-9, 11, 13, and 14: See note following RCW 52.26.220.

52.26.070 Service authority—Formation—Challenges. If the voters approve the plan, including creation of a regional fire protection service authority and imposition of taxes and benefit charges, if any, and the election results are certified, the authority is formed on the effective date as set forth in the plan or the next January 1st or July 1st, whichever occurs first. A party challenging the procedure or the formation of a voter-approved authority must file the challenge in writing by serving the prosecuting attorney of each county within, or partially within, the regional fire protection service authority and the attorney general within thirty days after the final certification of the election. Failure to challenge within that time forever bars further challenge of the authority's valid formation. [2017 c 196 § 14; 2017 c 37 § 4; 2006 c 200 § 5; 2004 c 129 § 7.]

Reviser's note: This section was amended by 2017 c 37 § 4 and by 2017 c 196 § 14, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2017 c 196 §§ 1-9, 11, 13, and 14: See note following RCW 52.26.220.

52.26.180 Benefit charges—Exemptions—Annual review—Definitions. (1) The governing board of a regional fire protection service authority may by resolution, as authorized in the plan and approved by the voters, for authority purposes authorized by law, fix and impose a benefit charge on personal property and improvements to real property which are located within the authority on the date specified and which have received or will receive the benefits provided by the authority, to be paid by the owners of the properties.

(2) A benefit charge does not apply to:

(a) Personal property and improvements to real property owned or used by any recognized religious denomination or religious organization as, or including, a sanctuary or for purposes related to the bona fide religious ministries of the denomination or religious organization, including schools and educational facilities used for kindergarten, primary, or secondary educational purposes or for institutions of higher

education and all grounds and buildings related thereto. However, a benefit charge does apply to personal property and improvements to real property owned or used by any recognized religious denomination or religious organization for business operations, profit-making enterprises, or activities not including use of a sanctuary or related to kindergarten, primary, or secondary educational purposes or for institutions of higher education;

(b) Property of housing authorities that is exempt from property taxes under RCW 35.82.210;

(c) Property of nonprofit entities providing rental housing for very low-income households or providing space for the placement of a mobile home for a very low-income household that is exempt from property taxes under RCW 84.36.560;

(d) Property of nonprofit homes for the aging that is exempt from property taxes under RCW 84.36.041;

(e) Property of nonprofit organizations, corporations, or associations providing housing for eligible persons with developmental disabilities that is exempt from property taxes under RCW 84.36.042;

(f) Property of nonprofit organizations providing emergency or transitional housing for low-income homeless persons or victims of domestic violence who are homeless for personal safety reasons that is exempt from property taxes under RCW 84.36.043;

(g) Property of the state housing finance commission that is exempt from property taxes under RCW 84.36.135; and

(h) Property of nonprofit corporations operating sheltered workshops for persons with disabilities that is exempt from property taxes under RCW 84.36.350.

(3) A limited benefit charge may apply to property or improvements owned by a Christmas tree grower as defined in RCW 15.13.250(4) so long as the property or improvement is located on land that has been approved as farm and agricultural land with standing crops under chapter 84.34 RCW. For such property or improvement, a benefit charge may not exceed the reduction in property tax that results from the imposition of a benefit charge, as required under RCW 52.26.240.

(4) The aggregate amount of these benefit charges in any one year may not exceed an amount equal to sixty percent of the operating budget for the year in which the benefit charge is to be collected. It is the duty of the county legislative authority or authorities of the county or counties in which the regional fire protection service authority is located to make any necessary adjustments to assure compliance with this limitation and to immediately notify the governing board of an authority of any changes thereof.

(5) A benefit charge imposed must be reasonably proportioned to the measurable benefits to property resulting from the services afforded by the authority. It is acceptable to apportion the benefit charge to the values of the properties as found by the county assessor or assessors modified generally in the proportion that fire insurance rates are reduced or entitled to be reduced as the result of providing the services. Any other method that reasonably apportions the benefit charges to the actual benefits resulting from the degree of protection, which may include but is not limited to the distance from regularly maintained fire protection equipment, the level of fire prevention services provided to the properties, or the need of

the properties for specialized services, may be specified in the resolution and is subject to contest on the grounds of unreasonable or capricious action or action in excess of the measurable benefits to the property resulting from services afforded by the authority. The governing board of an authority may determine that certain properties or types or classes of properties are not receiving measurable benefits based on criteria they establish by resolution. A benefit charge authorized by this chapter is not applicable to the personal property or improvements to real property of any individual, corporation, partnership, firm, organization, or association maintaining a fire department and whose fire protection and training system has been accepted by a fire insurance underwriter maintaining a fire protection engineering and inspection service authorized by the state insurance commissioner to do business in this state, but the property may be protected by the authority under a contractual agreement.

(6) For administrative purposes, the benefit charge imposed on any individual property may be compiled into a single charge, provided that the authority, upon request of the property owner, provide an itemized list of charges for each measurable benefit included in the charge.

(7)(a) At the annual review of the fire benefit charge mandated by RCW 52.26.230(2), if a fire service agency has identified:

(i) A tax-exempt property under subsection (2)(b) of this section as having a substantial increase in requested emergency services over the previous year; or

(ii) A new tax-exempt property that is similar in size, population, and geographic location as another such tax-exempt property as having an increase in requested emergency services;

then the tax-exempt property and the fire service agency must work together, in good faith, to address the problem by implementing community risk reduction efforts. The community risk reduction plan may include but is not limited to wellness programs and community action plans.

(b) At the subsequent annual review, if the heightened service requirements have not been reasonably addressed by the joint mitigation efforts, and the tax-exempt property owner has not acted in good faith:

(i) The property is subject to assessment of the fire benefit charge in the subsequent year, subject to approval by the governing board of the authority as outlined in RCW 52.26.230(2); or

(ii) The respective tax-exempt property shall pay the fire service agency a fire protection charge payment in lieu of a benefit charge. The fire protection charge shall be an amount equivalent to the benefit rates for similarly situated properties for that year.

(c) All tax-exempt properties identified under subsection (2)(b) of this section and all local fire service agencies are encouraged to work collaboratively to develop and implement programs to address proper usage of fire service resources for residents of the housing properties.

(8) For the purposes of this section and RCW 52.26.190 through 52.26.270, the following definitions apply:

(a)(i) "Personal property" includes every form of tangible personal property including, but not limited to, all goods, chattels, stock in trade, estates, or crops.

(ii) "Personal property" does not include any personal property used for farming, field crops, farm equipment, or livestock.

(b) "Improvements to real property" does not include permanent growing crops, field improvements installed for the purpose of aiding the growth of permanent crops, or other field improvements normally not subject to damage by fire. [2017 c 196 § 6; 2004 c 129 § 24.]

Application—2017 c 196 §§ 5 and 6: See note following RCW 52.18.010.

Effective date—2017 c 196 §§ 1-9, 11, 13, and 14: See note following RCW 52.26.220.

52.26.220 Benefit charges—Submission to voters—

Renewal. (1)(a) The initial imposition of a benefit charge authorized by this chapter must be approved by not less than sixty percent majority of the voters of the regional fire protection service authority voting at a general election or at a special election called by the authority for that purpose. Ballot measures containing an authorization to impose benefit charges that are approved by the voters pursuant to RCW 52.26.060 satisfy the proposition approval requirement of this subsection and subsection (2) of this section.

(b) An election held for the initial imposition of a benefit charge must be held not more than twelve months prior to the date on which the first charge is to be assessed.

(c) A benefit charge approved at an election expires in six or fewer years as authorized by the voters, unless subsequently reapproved by the voters.

(2) Ballot measures calling for the initial imposition of a benefit charge must be submitted so as to enable voters favoring the authorization of a benefit charge to vote "Yes" and those opposed to vote "No." The ballot question is as follows:

"Shall the regional fire protection service authority composed of (insert the participating fire protection jurisdictions) be authorized to impose benefit charges each year for (insert number of years not to exceed six) years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.26.140(1)(c)?

YES NO

(3)(a) The continued imposition of a benefit charge authorized by this chapter may be approved for six consecutive years. A ballot measure calling for the continued imposition of a benefit charge for six consecutive years must be approved by a majority of the voters of the regional fire protection service authority voting at a general election or at a special election called by the authority for that purpose.

(b) Ballot measures calling for the continued imposition of a benefit charge must be submitted so as to enable voters favoring the continued imposition of the benefit charge to vote "Yes" and those opposed to vote "No." The ballot question must be substantially in the following form:

"Shall the regional fire protection service authority composed of (insert the participating fire

protection jurisdictions) be authorized to continue voter-authorized benefit charges each year for six consecutive years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.26.140(1)(c)?

YES NO

[2017 c 196 § 1; 2006 c 200 § 12; 2004 c 129 § 28.]

Effective date—2017 c 196 §§ 1-9, 11, 13, and 14: "Except for sections 10 and 12 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 2017]." [2017 c 196 § 21.]

52.26.230 Benefit charges—Establishment—Public hearings—Notice to property owners.

(1) Not fewer than ten days nor more than six months before the election at which the proposition to impose the benefit charge is submitted as provided in this chapter, the governing board of the regional fire protection service authority, or the planning committee if the benefit charge is proposed as part of the initial formation of the authority, shall hold a public hearing specifically setting forth its proposal to impose benefit charges for the support of its legally authorized activities that will maintain or improve the services afforded in the authority. A report of the public hearing shall be filed with the county treasurer of each county in which the property is located and be available for public inspection.

(2) Prior to November 15th of each year the governing board of the authority shall hold a public hearing to review and establish the regional fire protection service authority benefit charges for the subsequent year.

(3) All resolutions imposing or changing the benefit charges must be filed with the county treasurer or treasurers of each county in which the property is located, together with the record of each public hearing, before November 30th immediately preceding the year in which the benefit charges are to be collected on behalf of the authority.

(4) After the benefit charges have been established, the owners of the property subject to the charge must be notified of the amount of the charge. [2017 c 196 § 2; 2004 c 129 § 29.]

Effective date—2017 c 196 §§ 1-9, 11, 13, and 14: See note following RCW 52.26.220.

Title 54

PUBLIC UTILITY DISTRICTS

Chapters

- 54.04** General provisions.
- 54.28** Privilege taxes.

**Chapter 54.04 RCW
GENERAL PROVISIONS**

Sections

- 54.04.070 Contracts for work or materials—Notice—Exemptions—Unit priced contracts.

54.04.070 Contracts for work or materials—Notice—Exemptions—Unit priced contracts. (1) Any item, or items of the same kind of materials, equipment, or supplies purchased, the estimated cost of which is in excess of fifteen thousand dollars, exclusive of sales tax, shall be by contract. However, a district may make purchases of the same kind of items of materials, equipment, and supplies not exceeding seven thousand five hundred dollars in any calendar month without a contract, purchasing any excess thereof over seven thousand five hundred dollars by contract.

(2) Any work ordered by a district commission, the estimated cost of which is in excess of twenty-five thousand dollars, exclusive of sales tax, shall be by contract. However, a district commission may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract. For purposes of this section, "prudent utility management" means performing work with regularly employed personnel utilizing material of a worth not exceeding one hundred fifty thousand dollars in value without a contract. This limit on the value of material being utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment purchased or acquired and used as one unit of a project.

(3) Before awarding a contract required under subsection (1) or (2) of this section, the commission shall publish a notice once or more in a newspaper of general circulation in the district at least thirteen days before the last date upon which bids will be received, inviting sealed proposals for the work or materials. Plans and specifications for the work or materials shall at the time of publication be on file at the office of the district and subject to public inspection. Any published notice ordering work to be performed for the district shall be mailed at the time of publication to any established trade association which files a written request with the district to receive such notices. The commission may, at the same time and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by the bidders.

(4) As an alternative to the competitive bidding requirements of this section and RCW 54.04.080, a district may let contracts using the small works roster process under RCW 39.04.155.

(5) Whenever equipment or materials required by a district are held by a governmental agency and are available for sale but such agency is unwilling to submit a proposal, the commission may ascertain the price of such items and file a statement of such price supported by the sworn affidavit of one member of the commission, and may consider such price as a bid without a deposit or bond.

(6) Pursuant to RCW 39.04.280, the commission may waive the competitive bidding requirements of this section and RCW 54.04.080 if an exemption contained within RCW 39.04.280 applies to the purchase or public work.

(7)(a) A district may procure public works with a unit priced contract under this section, RCW 54.04.080, or 54.04.085 for the purpose of completing anticipated types of work based on hourly rates or unit pricing for one or more categories of work or trades.

(b) For the purposes of this section, unit priced contract means a competitively bid contract in which public works are

anticipated on a recurring basis to meet the business or operational needs of a district, under which the contractor agrees to a fixed period indefinite quantity delivery of work, at a defined unit price, for each category of work.

(c) Unit priced contracts must be executed for an initial contract term not to exceed three years, with the district having the option of extending or renewing the unit priced contract for one additional year.

(d) Invitations for unit price bids shall include, for purposes of the bid evaluation, estimated quantities of the anticipated types of work or trades, and specify how the district will issue or release work assignments, work orders, or task authorizations pursuant to a unit priced contract for projects, tasks, or other work based on the hourly rates or unit prices bid by the contractor. Where electrical facility construction or improvement work is anticipated, contractors on a unit priced contract shall comply with the requirements under RCW 54.04.085 (1) through (5). Contracts must be awarded to the lowest responsible bidder as per RCW 39.04.010.

(e) Unit price contractors shall pay prevailing wages for all work that would otherwise be subject to the requirements of chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each work order must be the rates in effect at the time the individual work order is issued. [2017 c 85 § 1; 2008 c 216 § 2; 2002 c 72 § 2; 2000 c 138 § 211; 1998 c 278 § 7; 1993 c 198 § 14; 1990 c 251 § 1; 1971 ex.s. c 220 § 4; 1955 c 124 § 2. Prior: 1951 c 207 § 2; 1931 c 1 § 8, part; RRS § 11612, part.]

Findings—Intent—2008 c 216: "The legislature finds that public utility districts provide customer-owned, nonprofit utility services throughout Washington state. The legislature further finds that statutory bid limits for public utility districts have not been increased to address inflation and dramatic cost increases in construction materials. The legislature further finds that existing bid limits and high construction material costs often preclude public utility districts from maintaining and repairing their utility infrastructure, providing training and experience to utility workers, and accommodating high contract administrative costs. The legislature further finds that existing bid limits result in increased costs to both public utility districts and utility customers. Therefore, it is the intent of the legislature to amend the bid limits for public utility districts to address inflation and increased material costs." [2008 c 216 § 1.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

Contracts with state department of transportation: RCW 47.01.210.

Emergency public works: Chapter 39.28 RCW.

Prevailing wages on public works: Chapter 39.12 RCW.

Public purchase preferences: Chapter 39.24 RCW.

Chapter 54.28 RCW

PRIVILEGE TAXES

Sections

54.28.030	Repealed. (<i>Effective April 1, 2018.</i>)
54.28.040	Tax computed—Payment—Penalties—Disposition. (<i>Effective January 1, 2018.</i>)
54.28.050	Distribution of tax. (<i>Effective January 1, 2018.</i>)
54.28.055	Distribution of tax proceeds from thermal electric generating facilities. (<i>Effective until January 1, 2018.</i>)
54.28.055	Distribution of tax proceeds from thermal electric generating facilities. (<i>Effective January 1, 2018.</i>)
54.28.125	Public utility district privilege tax—Tools for administration. (<i>Effective January 1, 2018.</i>)

54.28.030 Repealed. (Effective April 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

54.28.040 Tax computed—Payment—Penalties—Disposition. (Effective January 1, 2018.) (1) Before May 1st of each calendar year through calendar year 2018, the department of revenue must compute the tax imposed by this chapter for the last preceding calendar year and notify the district of the amount thereof, which shall be payable on or before the following June 1st.

(2) For tax reporting periods beginning on or after January 1, 2018, taxpayers must report the taxes due under RCW 54.28.020 and 54.28.025 on returns as prescribed by the department of revenue. Except as otherwise provided in this subsection (2), taxes imposed in RCW 54.28.020 and 54.28.025 are due for a taxpayer at the same time as the taxpayer's payment of taxes imposed under chapters 82.04 and 82.16 RCW. The department of revenue may allow taxpayers to report and pay the taxes due under RCW 54.28.020 and 54.28.025 on an annual basis, even if they report taxes imposed under chapters 82.04 and 82.16 RCW more frequently than annually. In such cases, the taxes imposed in RCW 54.28.020 and 54.28.025 are due at the same time as the taxes under chapters 82.04 and 82.16 RCW for the taxpayer's final reporting period for the calendar year.

(3) The department of revenue may require persons to report such information as needed by the department to administer this chapter.

(4) Upon receipt of the amount of each tax imposed the department of revenue shall deposit the same with the state treasurer, who must deposit four percent of the revenues received under RCW 54.28.020(1) and 54.28.025(1) and all revenues received under RCW 54.28.020(2) and 54.28.025(2) in the general fund of the state and must distribute the remainder in the manner hereinafter set forth. The state treasurer must send a duplicate copy of each transmittal to the department of revenue. [2017 c 323 § 103; 1996 c 149 § 16; 1982 1st ex.s. c 35 § 20; 1975 1st ex.s. c 278 § 31; 1957 c 278 § 4. Prior: 1949 c 227 § 1(c); 1947 c 259 § 1(c); 1941 c 245 § 2(c); Rem. Supp. 1949 § 11616-2(c).]

Existing rights—Affect of repeal—2017 c 323: "The repeal in section 102 of this act and the amendments in section 103 of this act do not affect any existing right acquired or liability or obligation incurred under the sections repealed or amended or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2017 c 323 § 109.]

Repeal of RCW 54.28.030—Application—2017 c 323: "Section 102 of this act does not apply with respect to reports due under RCW 54.28.030 in calendar year 2018 or any preceding calendar year." [2017 c 323 § 108.]

Effective dates—2017 c 323 §§ 101-109: See note following RCW 54.28.125.

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Additional notes found at www.leg.wa.gov

54.28.050 Distribution of tax. (Effective January 1, 2018.) (1) Except as provided in subsection (2) of this section, the department of revenue must instruct the state treasurer, after placing thirty-seven and six-tenths percent of the

taxes collected under RCW 54.28.020(1) in the state general fund to be dedicated for the benefit of the public schools, to distribute the balance collected under RCW 54.28.020(1)(a) to each county in proportion to the gross revenue from sales made within each county; and to distribute the balance collected under RCW 54.28.020(1) (b) and (c) as follows:

(a) If the entire generating facility, including reservoir, if any, is in a single county then all of the balance to the county where such generating facility is located;

(b) If any reservoir is in more than one county, then to each county in which the reservoir or any portion thereof is located a percentage equal to the percentage determined by dividing the total cost of the generating facilities, including adjacent switching facilities, into twice the cost of land and land rights acquired for any reservoir within each county, land and land rights to be defined the same as used by the federal energy regulatory commission;

(c) If the powerhouse and dam, if any, in connection with such reservoir are in more than one county, the balance must be divided sixty percent to the county in which the owning district is located and forty percent to the other county or counties or if the powerhouse and dam, if any, are owned by a joint operating agency organized under chapter 43.52 RCW, or by more than one district or are outside the county of the owning district, then to be divided equally between the counties in which such facilities are located. If all of the powerhouse and dam, if any, are in one county, then the balance must be distributed to the county in which the facilities are located.

(2) The department of revenue must instruct the state treasurer to adjust distributions under this section, in whole or in part, to account for each county's proportionate share of amounts previously distributed under this section and subsequently refunded to a public utility district under RCW 82.32.060.

(3) The provisions of this section do not apply to the distribution of taxes collected under RCW 54.28.025. [2017 c 323 § 104; 1982 1st ex.s. c 35 § 21; 1980 c 154 § 8; 1977 ex.s. c 366 § 4; 1975 1st ex.s. c 278 § 32; 1959 c 274 § 4; 1957 c 278 § 5. Prior: 1949 c 227 § 1(d); 1947 c 259 § 1(d); 1941 c 245 § 2(d); Rem. Supp. 1949 § 11616-2(d).]

Effective dates—2017 c 323 §§ 101-109: See note following RCW 54.28.125.

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter 82.45 RCW digest.

Additional notes found at www.leg.wa.gov

54.28.055 Distribution of tax proceeds from thermal electric generating facilities. (Effective until January 1, 2018.) (1) After computing the tax imposed by RCW 54.28.025(1), the department of revenue must instruct the state treasurer to distribute the amount collected on the first business day of July as follows:

(a) Fifty percent to the state general fund for the support of schools; and

(b) Twenty-two percent to the counties, twenty-three percent to the cities, three percent to the fire protection districts, and two percent to the library districts.

(2) Each county, city, fire protection district and library district must receive a percentage of the amount for distribution to counties, cities, fire protection districts and library districts, respectively, in the proportion that the population of such district residing within the impacted area bears to the total population of all such districts residing within the impacted area. For the purposes of this chapter, the term "library district" includes only regional libraries, rural county library districts, intercounty rural library districts, and island library districts. The population of a library district, for purposes of such a distribution, does not include any population within the library district and the impact area that also is located within a city or town.

(3) If any distribution pursuant to subsection (1)(b) of this section cannot be made, then that share must be prorated among the state and remaining local districts.

(4) All distributions directed by this section to be made on the basis of population must be calculated in accordance with data to be provided by the office of financial management. [2017 3rd sp.s. c 28 § 501; 1986 c 189 § 1; 1982 1st ex.s. c 35 § 22; 1979 c 151 § 165; 1977 ex.s. c 366 § 7.]

Expiration date—2017 3rd sp.s. c 28 § 501: "Section 501 of this act expires January 1, 2018." [2017 3rd sp.s. c 28 § 607.]

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

Additional notes found at www.leg.wa.gov

54.28.055 Distribution of tax proceeds from thermal electric generating facilities. (Effective January 1, 2018.)

(1) Except as provided in subsection (3) of this section, the department of revenue must instruct the state treasurer to distribute the amount collected under RCW 54.28.025(1) on the first business day of July as follows:

(a) Fifty percent to the state general fund for the support of schools; and

(b) Twenty-two percent to the counties, twenty-three percent to the cities, three percent to the fire protection districts, and two percent to the library districts.

(2) Each county, city, fire protection district, and library district must receive a percentage of the amount for distribution to counties, cities, fire protection districts, and library districts, respectively, in the proportion that the population of such district residing within the impacted area bears to the total population of all such districts residing within the impacted area. For the purposes of this chapter, the term "library district" includes only regional libraries, rural county library districts, intercounty rural library districts, and island library districts as those terms are defined in RCW 27.12.010. The population of a library district, for purposes of such a distribution, does not include any population within the library district and the impact area that also is located within a city or town.

(3) Distributions under this section must be adjusted as follows:

(a) If any distribution pursuant to subsection (1)(b) of this section cannot be made, then that share must be prorated among the state and remaining local districts.

(b) The department of revenue must instruct the state treasurer to adjust distributions under this section, in whole or

in part, to account for each county's, city's, fire protection district's, and library district's proportionate share of amounts previously distributed under this section and subsequently refunded to a public utility district under RCW 82.32.060.

(4) All distributions directed by this section to be made on the basis of population must be calculated in accordance with population data as last determined by the office of financial management. [2017 3rd sp.s. c 28 § 502; 2017 c 323 § 105; 1986 c 189 § 1; 1982 1st ex.s. c 35 § 22; 1979 c 151 § 165; 1977 ex.s. c 366 § 7.]

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

Effective dates—2017 c 323 §§ 101-109: See note following RCW 54.28.125.

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Additional notes found at www.leg.wa.gov

54.28.125 Public utility district privilege tax—Tools for administration. (Effective January 1, 2018.)

(1) The following provisions of chapter 82.32 RCW apply with respect to the state taxes administered by the department of revenue under this chapter, unless the context clearly requires otherwise: RCW 82.32.050, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090, 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130, 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190, 82.32.200, 82.32.210, 82.32.235, 82.32.237, 82.32.240, 82.32.270, 82.32.310, 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.410, and any other provision of chapter 82.32 RCW specifically referenced in the statutes listed in this subsection (1).

(2) Chapter 82.32 RCW also applies with respect to the state taxes administered by the department of revenue under this chapter to the extent provided in any other provision of law.

(3) The definitions in this chapter have full force and application with respect to the application of chapter 82.32 RCW to this chapter unless the context clearly requires otherwise. [2017 c 323 § 101.]

Effective dates—2017 c 323 §§ 101-109: "(1) Except as otherwise provided in this section, part I of this act takes effect January 1, 2018.

(2) Section 102 of this act takes effect April 1, 2018." [2017 c 323 § 1102.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Title 57

WATER-SEWER DISTRICTS

Chapters

57.08 Powers.

57.20 Finances.

Chapter 57.08 RCW POWERS

Sections

57.08.041 Contracting for management of water storage assets—
Notice—Procedure—Definitions.

57.08.041 Contracting for management of water storage assets—Notice—Procedure—Definitions. (1) Any water-sewer district may elect to contract for asset management service of its water storage assets in accordance with this section. If a water-sewer district elects to contract under this subsection for all, some, or one component of water storage asset management services for its water storage assets, each water-sewer district shall publish notice of its requirements to procure asset management service of its water storage assets. The announcement must concisely state the scope and nature of the water storage asset management service for which a contract is required and encourage firms to submit proposals to meet these requirements. If a water-sewer district chooses to negotiate a water storage asset management service contract under this section, no otherwise applicable statutory procurement requirement applies.

(2) The water-sewer district may negotiate a fair and reasonable water storage asset management service contract with the firm that submits the best proposal based on criteria that is established by the water-sewer district.

(3) If the water-sewer district is unable to negotiate a satisfactory water storage asset management service contract with the firm that submits the best proposal, negotiations with that firm must formally be terminated and the water-sewer district may select another firm in accordance with this section and continue negotiation until a water storage asset management service contract is reached or the selection process is terminated.

(4) For the purposes of this section:

(a) "Water storage asset management services" means the financing, designing, improving, operating, maintaining, repairing, testing, inspecting, cleaning, administering, or managing, or any combination thereof, of a water storage asset.

(b) "Water storage asset" means water storage structures and associated distribution systems, such as the water tank, tower, well, meter, or water filter. [2017 c 314 § 2.]

Chapter 57.20 RCW FINANCES

Sections

57.20.028 Warrants, when authorized—Procedure.

57.20.028 Warrants, when authorized—Procedure. (1) The board of commissioners of a district with revenues of five million dollars or more in each of the preceding three years that were audited in accordance with RCW 43.09.260 may by resolution adopt a policy to issue its own warrants for payment of claims or other obligations of the district. The board of commissioners, after auditing all payrolls and bills, may authorize the issuing of one general certificate to the county treasurer, to be signed by the president of the board of commissioners, authorizing the county treasurer to pay all the warrants specified by date, number, name, and amount, and

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the accounting funds on which the warrants are drawn. The district may then issue the warrants specified in the general certificate.

(2) The board of commissioners of a district with revenues greater than two hundred fifty thousand dollars and less than five million dollars in each of the preceding three years that were audited in accordance with RCW 43.09.260 may upon agreement between the county treasurer and the district commission, with approval of the district commission by resolution, adopt a policy to issue its own warrants for payment of claims or other obligations of the district. The board of commissioners, after auditing all payrolls and bills, may authorize the issuing of one general certificate to the county treasurer, to be signed by the president of the board of commissioners, authorizing the county treasurer to pay all the warrants specified by date, number, name, and amount, and the accounting funds on which the warrants are drawn. The district may then issue the warrants specified in the general certificate. [2017 c 314 § 1.]

Title 58 BOUNDARIES AND PLATS

Chapters

58.08 Plats—Recording.

58.17 Plats—Subdivisions—Dedications.

Chapter 58.08 RCW PLATS—RECORDING

Sections

58.08.040 Repealed.

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

Chapter 58.17 RCW PLATS—SUBDIVISIONS—DEDICATIONS

Sections

58.17.100 Review of preliminary plats by planning commission or agency—Recommendation—Change by legislative body—Procedure—Approval.

58.17.170 Written approval of subdivision—Original of final plat to be filed—Copies—Periods of validity, governance.

58.17.190 Approval of plat required before filing—Procedure when unapproved plat filed.

58.17.100 Review of preliminary plats by planning commission or agency—Recommendation—Change by legislative body—Procedure—Approval. If a city, town or county has established a planning commission or planning agency in accordance with state law or local charter, such commission or agency shall review all preliminary plats and make recommendations thereon to the city, town or county legislative body to assure conformance of the proposed subdivision to the general purposes of the comprehensive plan and to planning standards and specifications as adopted by the city, town or county. Reports of the planning commission or agency shall be advisory only: PROVIDED, That the legislative body of the city, town or county may, by ordinance, assign to such commission or agency, or any department offi-

cial or group of officials, such administrative functions, powers and duties as may be appropriate, including the holding of hearings, and recommendations for approval or disapproval of preliminary plats of proposed subdivisions.

Such recommendation shall be submitted to the legislative body not later than fourteen days following action by the hearing body. Upon receipt of the recommendation on any preliminary plat the legislative body shall at its next public meeting set the date for the public meeting where it shall consider the recommendations of the hearing body and may adopt or reject the recommendations of such hearing body based on the record established at the public hearing. If, after considering the matter at a public meeting, the legislative body deems a change in the planning commission's or planning agency's recommendation approving or disapproving any preliminary plat is necessary, the legislative body shall adopt its own recommendations and approve or disapprove the preliminary plat.

Every decision or recommendation made under this section shall be in writing and shall include findings of fact and conclusions to support the decision or recommendation.

A record of all public meetings and public hearings shall be kept by the appropriate city, town or county authority and shall be open to public inspection.

Sole authority to adopt or amend platting ordinances shall reside in the legislative bodies. The legislative authorities of cities, towns, and counties may by ordinance delegate final plat approval to an established planning commission or agency, or to such other administrative personnel in accordance with state law or local charter. [2017 c 161 § 1; 1995 c 347 § 428; 1981 c 293 § 6; 1969 ex.s. c 271 § 10.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

58.17.170 Written approval of subdivision—Original of final plat to be filed—Copies—Periods of validity, governance. (1) When the legislative body of the city, town, or county, or such other agency as authorized by RCW 58.17.100, finds that the subdivision proposed for final plat approval conforms to all terms of the preliminary plat approval, and that said subdivision meets the requirements of this chapter, other applicable state laws, and any local ordinances adopted under this chapter which were in effect at the time of preliminary plat approval, it shall suitably inscribe and execute its written approval on the face of the plat. The original of said final plat shall be filed for record with the county auditor. One reproducible copy shall be furnished to the city, town, or county engineer. One paper copy shall be filed with the county assessor. Paper copies shall be provided to such other agencies as may be required by ordinance.

(2)(a) Except as provided by (b) of this subsection, any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of seven years from the date of filing if the date of filing is on or before December 31, 2014, and for a period of five years from the date of filing if the date of filing is on or after January 1, 2015.

(b) Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of ten years from the date of filing if the project is not

subject to requirements adopted under chapter 90.58 RCW and the date of filing is on or before December 31, 2007.

(3)(a) Except as provided by (b) of this subsection, a subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of seven years after final plat approval if the date of final plat approval is on or before December 31, 2014, and for a period of five years after final plat approval if the date of final plat approval is on or after January 1, 2015, unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision.

(b) A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of ten years after final plat approval if the project is not subject to requirements adopted under chapter 90.58 RCW and the date of final plat approval is on or before December 31, 2007, unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision. [2017 c 161 § 2; 2013 c 16 § 2; 2012 c 92 § 2; 2010 c 79 § 2; 1981 c 293 § 10; 1969 ex.s. c 271 § 17.]

Additional notes found at www.leg.wa.gov

58.17.190 Approval of plat required before filing—Procedure when unapproved plat filed. The county auditor shall refuse to accept any plat for filing until approval of the plat has been given by the appropriate legislative body, or such other agency as authorized by RCW 58.17.100. Should a plat or dedication be filed without such approval, the prosecuting attorney of the county in which the plat is filed shall apply for a writ of mandate in the name of and on behalf of the legislative body required to approve same, directing the auditor and assessor to remove from their files or records the unapproved plat, or dedication of record. [2017 c 161 § 3; 1969 ex.s. c 271 § 19.]

Title 60 LIENS

Chapters

60.28 Lien for labor, materials, taxes on public works.

Chapter 60.28 RCW

LIEN FOR LABOR, MATERIALS, TAXES ON PUBLIC WORKS

Sections

60.28.011 Retained percentage—Public transportation projects—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration—General contractor/construction manager procedure—Definitions.

60.28.011 Retained percentage—Public transportation projects—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration—

General contractor/construction manager procedure—

Definitions. (1)(a) Except as provided in (b) of this subsection, public improvement contracts must provide, and public bodies must reserve, a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and payment of: (i) The claims of any person arising under the contract; and (ii) the state with respect to taxes, increases, and penalties imposed pursuant to Titles 50, 51, and 82 RCW which may be due from such contractor.

(b) Public improvement contracts funded in whole or in part by federal transportation funds must rely upon the contract bond as referred to in chapter 39.08 RCW for the protection and payment of: (i) The claims of any person or persons arising under the contract to the extent such claims are provided for in RCW 39.08.010; and (ii) the state with respect to taxes, increases, and penalties incurred on the public improvement project under Titles 50, 51, and 82 RCW which may be due. The contract bond must remain in full force and effect until, at a minimum, all claims filed in compliance with chapter 39.08 RCW are resolved.

(2) Every person performing labor or furnishing supplies toward the completion of a public improvement contract has a lien upon moneys reserved by a public body under the provisions of a public improvement contract. However, the notice of the lien of the claimant must be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

(3) The contractor at any time may request the contract retainage be reduced to one hundred percent of the value of the work remaining on the project.

(a) After completion of all contract work other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter the public body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of chapter 39.12 RCW and this chapter.

(b) Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapter 39.12 RCW and this chapter.

(4) The moneys reserved by a public body under the provisions of a public improvement contract, at the option of the contractor, must be:

(a) Retained in a fund by the public body;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by a public body under the provision of a public improvement contract must be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body. When the moneys reserved are placed in escrow, the public body must issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. This check must be converted into bonds and securities chosen by the contractor and approved by the public body and the bonds and securities must be held in escrow. Interest on the bonds and securities must be paid to the contractor as the interest accrues.

(5) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor must pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(6) A contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to the public body and from an authorized surety insurer. The public body may require that the authorized surety have a minimum A.M. Best financial strength rating so long as that minimum rating does not exceed A-. The public body must comply with the provisions of RCW 48.28.010. At any time prior to final formal acceptance of the project, a subcontractor may request the contractor to submit a bond to the public owner for that portion of the contractor's retainage pertaining to the subcontractor in a form acceptable to the public body and from a bonding company meeting standards established by the public body. The contractor may withhold the subcontractor's portion of the bond premium. Within thirty days of receipt of the request, the contractor shall provide and the public body shall accept a bond meeting these requirements unless the public body can demonstrate good cause for refusing to accept it, the bond is not commercially available, or the subcontractor refuses to pay the subcontractor's portion of the bond premium and to provide the contractor with a like bond. The contractor's bond and any proceeds therefrom are subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body must release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor must accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor must then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(7) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in this case any amounts retained and accumulated under this section must be held for a period of sixty days following the completion. In the event that the work is terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter are exclusive and supersede all provisions and regulations in conflict herewith.

(8) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, sixty days after completion of all contract work on each ferry vessel, the department must release and pay in full the amounts retained in connection with the construction of the vessel subject to the provisions of RCW 60.28.021 and chapter 39.12 RCW. However, the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes may be certified or claims filed for work on the ferry after a period of sixty days following completion of the ferry; and if taxes are certified or claims filed, recovery may be had on the bond by the department of revenue, the employment security department, the department of labor and industries, and the material suppliers and laborers filing claims.

(9) Except as provided in subsection (1) of this section, reservation by a public body for any purpose from the moneys earned by a contractor by fulfilling its responsibilities under public improvement contracts is prohibited.

(10) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations are not subject to subsections (1) through (9) of this section.

(11) This subsection applies only to a public body that has contracted for the construction of a facility using the general contractor/construction manager procedure, as defined under RCW 39.10.210. If the work performed by a subcontractor on the project has been completed within the first half of the time provided in the general contractor/construction manager contract for completing the work, the public body may accept the completion of the subcontract. The public body must give public notice of this acceptance. After a forty-five day period for giving notice of liens, and compliance with the retainage release procedures in RCW 60.28.021, the public body may release that portion of the retained funds associated with the subcontract. Claims against the retained funds after the forty-five day period are not valid.

(12) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Contract retainage" means an amount reserved by a public body from the moneys earned by a person under a public improvement contract.

(b) "Person" means a person or persons, mechanic, subcontractor, or material person who performs labor or provides materials for a public improvement contract, and any other person who supplies the person with provisions or supplies for the carrying on of a public improvement contract.

(c) "Public body" means the state, or a county, city, town, district, board, or other public body.

(d) "Public improvement contract" means a contract for public improvements or work, other than for professional services, or a work order as defined in RCW 39.10.210. [2017 c 302 § 1; 2015 c 280 § 1; 2013 c 113 § 1; 2011 c 231 § 2. Prior: 2009 c 432 § 5; 2009 c 219 § 6; prior: 2007 c 494 § 504; 2007 c 218 § 92; 2003 c 301 § 7; 2000 c 185 § 1; 1994 c 101 § 1; 1992 c 223 § 2.]

Intent—Recognition—2011 c 231: "The legislature recognizes that federal regulations include requirements that pertain to contracts funded by federal-aid highway funds. One such requirement is that states must ensure that prime contractors pay subcontractors in full by no later than thirty days after the subcontractor's work is satisfactorily completed. One option for meeting this requirement is to decline to hold retainage from prime contractors. The legislature also recognizes that retainage is currently used to ensure that claims against the contractor are resolved in a timely manner. The legislature intends that the contract bond provided by sureties on behalf of general contractors provides adequate security for claimants under the bond." [2011 c 231 § 1.]

Report—2009 c 432: See RCW 18.27.800.

Part headings and captions not law—Effective dates—Severability—2007 c 494: See RCW 39.10.903 through 39.10.905.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

**Title 64
REAL PROPERTY AND CONVEYANCES**

Chapters

- 64.08 Acknowledgments.**
- 64.44 Contaminated properties.**
- 64.70 Uniform environmental covenants act.**

**Chapter 64.08 RCW
ACKNOWLEDGMENTS**

Sections

- 64.08.060 Form of certificate for individual. (*Effective July 1, 2018.*)
- 64.08.070 Form of certificate for corporation. (*Effective July 1, 2018.*)

64.08.060 Form of certificate for individual. (*Effective July 1, 2018.*) A certificate of acknowledgment for an individual, substantially in the following form or, after December 31, 1985, substantially in the form set forth in RCW 42.45.140(1), shall be sufficient for the purposes of this chapter and for any acknowledgment required to be taken in accordance with this chapter:

State of }
County of } ss.

On this day personally appeared before me (here insert the name of grantor or grantors) to me known to be the individual, or individuals described in and who executed the within and foregoing instrument, and acknowledged that he (she or they) signed the same as his (her or their) free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this day of, (year) (Signature of officer and official seal)

If acknowledgment is taken before a notary public of this state the signature shall be followed by substantially the following: Notary Public in and for the state of Washington, residing at, (giving place of residence). [2017 c 281 § 41; 2016 c 202 § 40; 1988 c 69 § 2; 1929 c 33 § 13; RRS § 10566. Prior: 1888 p 51 § 2; 1886 p 179 § 7.]

Effective date—2017 c 281: See RCW 42.45.905.

64.08.070 Form of certificate for corporation. (*Effective July 1, 2018.*) A certificate of acknowledgment for a corporation, substantially in the following form or, after

December 31, 1985, substantially in the form set forth in RCW 42.45.140(2), shall be sufficient for the purposes of this chapter and for any acknowledgment required to be taken in accordance with this chapter:

State of }
County of } ss.

On this day of, (year), before me personally appeared, to me known to be the (president, vice president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written. (Signature and title of officer with place of residence of notary public.) [2017 c 281 § 42; 2016 c 202 § 41; 2012 c 117 § 191; 1988 c 69 § 3; 1929 c 33 § 14; RRS § 10567. Prior: 1903 c 132 § 1.]

Effective date—2017 c 281: See RCW 42.45.905.

Chapter 64.44 RCW
CONTAMINATED PROPERTIES

Sections

- 64.44.005 Legislative finding.
64.44.010 Definitions.
64.44.060 Certification of contractors, supervisors, or workers—Denial, suspension, revocation, or restrictions on certificate—Penalties—Fees.

64.44.005 Legislative finding. The legislature finds that some properties are being contaminated by hazardous chemicals used in unsafe or illegal ways in the manufacture of illegal drugs or by hazardous drugs contaminating transient accommodations regulated by the department. Innocent members of the public may be harmed by the residue left by these chemicals when the properties are subsequently rented or sold without having been decontaminated. [2017 c 115 § 1; 1990 c 213 § 1.]

64.44.010 Definitions. The words and phrases defined in this section shall have the following meanings when used in this chapter unless the context clearly indicates otherwise.

- (1) "Authorized contractor" means a person who decontaminates, demolishes, or disposes of contaminated property as required by this chapter who is certified by the department as provided for in RCW 64.44.060.
(2) "Contaminated" or "contamination" means polluted by hazardous chemicals so that the property is unfit for human habitation or use due to immediate or long-term hazards. Property that at one time was contaminated but has been satisfactorily decontaminated according to procedures established by the state board of health is not "contaminated."
(3) "Department" means the department of health.

(4) "Hazardous chemicals" means:

(a) Methamphetamine in amounts exceeding the decontamination standards set by the department when found in transient accommodations such as hotels, motels, bed and breakfasts, resorts, inns, crisis shelters, hostels, and retreats that are regulated by the department; and

(b) The following substances associated with the illegal manufacture of controlled substances: (i) Hazardous substances as defined in RCW 70.105D.020; (ii) precursor substances as defined in RCW 69.43.010 which the state board of health, in consultation with the pharmacy quality assurance commission, has determined present an immediate or long-term health hazard to humans; and (iii) the controlled substance or substances being manufactured, as defined in RCW 69.50.101.

(5) "Officer" means a local health officer authorized under chapters 70.05, 70.08, and 70.46 RCW.

(6) "Property" means any real or personal property, or segregable part thereof, that is involved in or affected by the unauthorized manufacture, distribution, storage, or use of hazardous chemicals. This includes but is not limited to single-family residences, units of multiplexes, condominiums, apartment buildings, transient accommodations, boats, motor vehicles, trailers, manufactured housing, any shop, booth, garden, or storage shed, and all contents of the items referenced in this subsection. [2017 c 115 § 2; 2013 c 19 § 49; 2006 c 339 § 201; 1999 c 292 § 2; 1990 c 213 § 2.]

Intent—Part headings not law—2006 c 339: See notes following RCW 74.34.020.

Finding—Intent—1999 c 292: "The legislature finds that the contamination of properties used for illegal drug manufacturing poses a threat to public health. The toxic chemicals left behind by the illegal drug manufacturing must be cleaned up to prevent harm to subsequent occupants of the properties. It is the intent of the legislature that properties are decontaminated in a manner that is efficient, prompt, and that makes them safe to reoccupy." [1999 c 292 § 1.]

Additional notes found at www.leg.wa.gov

64.44.060 Certification of contractors, supervisors, or workers—Denial, suspension, revocation, or restrictions on certificate—Penalties—Fees. (1) A contractor, supervisor, or worker may not perform decontamination, demolition, or disposal work unless issued a certificate by the state department of health. The department shall establish performance standards for contractors, supervisors, and workers by rule in accordance with chapter 34.05 RCW, the administrative procedure act. The department shall train and test, or may approve courses to train and test, contractors, supervisors, and workers on the essential elements in assessing contaminated transient accommodations or property used as an illegal controlled substances manufacturing or storage site to determine hazard reduction measures needed, techniques for adequately reducing contaminants, use of personal protective equipment, methods for proper decontamination, demolition, removal, and disposal of contaminated property, and relevant federal and state regulations. Upon successful completion of the training, and after a background check, the contractor, supervisor, or worker shall be certified.

(2) The department may require the successful completion of annual refresher courses provided or approved by the department for the continued certification of the contractor or employee.

(3) The department shall provide for reciprocal certification of any individual trained to engage in decontamination, demolition, or disposal work in another state when the prior training is shown to be substantially similar to the training required by the department. The department may require such individuals to take an examination or refresher course before certification.

(4) The department may deny, suspend, revoke, or place restrictions on a certificate for failure to comply with the requirements of this chapter or any rule adopted pursuant to this chapter. A certificate may be denied, suspended, revoked, or have restrictions placed on it on any of the following grounds:

(a) Failing to perform decontamination, demolition, or disposal work under the supervision of trained personnel;

(b) Failing to perform decontamination, demolition, or disposal work using department of health certified decontamination personnel;

(c) Failing to file a work plan;

(d) Failing to perform work pursuant to the work plan;

(e) Failing to perform work that meets the requirements of the department and the requirements of the local health officers;

(f) Failing to properly dispose of contaminated property;

(g) Committing fraud or misrepresentation in: (i) Applying for or obtaining a certification, recertification, or reinstatement; (ii) seeking approval of a work plan; and (iii) documenting completion of work to the department or local health officer;

(h) Failing the evaluation and inspection of decontamination projects pursuant to RCW 64.44.075; or

(i) If the person has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

(5) A contractor, supervisor, or worker who violates any provision of this chapter may be assessed a fine not to exceed five hundred dollars for each violation.

(6) The department of health shall prescribe fees as provided for in RCW 43.70.250 for: The issuance and renewal of certificates, conducting background checks of applicants, the administration of examinations, and the review of training courses. [2017 c 115 § 3; 2013 c 251 § 6; 2006 c 339 § 206; 1999 c 292 § 7; 1997 c 58 § 878; 1990 c 213 § 7.]

***Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Residual balance of funds—Effective date—2013 c 251: See notes following RCW 41.06.280.

Intent—Part headings not law—2006 c 339: See notes following RCW 74.34.020.

Finding—Intent—1999 c 292: See note following RCW 64.44.010.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

Chapter 64.70 RCW

UNIFORM ENVIRONMENTAL COVENANTS ACT

Sections

64.70.020 Definitions.

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

(1) "Activity or use limitations" means restrictions or obligations created under this chapter with respect to real property.

(2) "Agency" means either the department of ecology, the pollution liability insurance agency, or the United States environmental protection agency, whichever determines or approves the environmental response project pursuant to which the environmental covenant is created.

(3)(a) "Common interest community" means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(b) "Common interest community" includes but is not limited to:

(i) An association of apartment owners as defined in RCW 64.32.010;

(ii) A unit owners' association as defined in RCW 64.34.020 and organized under RCW 64.34.300;

(iii) A master association as provided in RCW 64.34.276;

(iv) A subassociation as provided in RCW 64.34.278; and

(v) A homeowners' association as defined in RCW 64.38.010.

(4) "Environmental covenant" means a servitude arising under an environmental response project that imposes activity or use limitations.

(5) "Environmental response project" means a plan or work performed for environmental remediation of real property and conducted:

(a) Under a federal or state program governing environmental remediation of real property, including chapters 43.21C, 64.44, 70.95, 70.98, 70.105, 70.105D, 90.48, and 90.52 RCW;

(b) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or

(c) Under the state voluntary clean-up program authorized under chapter 70.105D RCW or technical assistance program authorized under chapter 70.149 RCW.

(6) "Holder" means the grantee of an environmental covenant as specified in RCW 64.70.030(1).

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(8) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. [2017 c 23 § 6; 2007 c 104 § 3.]

Title 66

ALCOHOLIC BEVERAGE CONTROL

Chapters

- 66.08 Liquor and cannabis board—General provisions.**
66.12 Exemptions.
66.20 Liquor permits.
66.24 Licenses—Stamp taxes.
66.28 Miscellaneous regulatory provisions.

Chapter 66.08 RCW

LIQUOR AND CANNABIS BOARD—GENERAL PROVISIONS

Sections

- 66.08.100 Jurisdiction of action against board—Immunity from personal liability of members.
 66.08.170 Liquor revolving fund—Creation—Composition—State treasurer as custodian—Daily deposits, exceptions—Budget and accounting act applicable.
 66.08.230 Repealed.
 66.08.250 Repealed.

66.08.100 Jurisdiction of action against board—Immunity from personal liability of members. No court of the state of Washington other than the superior court of Thurston county shall have jurisdiction over any action or proceeding against the board or any member thereof for anything done or omitted to be done in or arising out of the performance of his or her or their duties under this title. Neither the board nor any member or members thereof shall be personally liable in any action at law for damages sustained by any person because of any acts performed or done or omitted to be done by the board or any employee of the board in the performance of his or her duties and in the administration of this title or chapter 69.50 or 69.51A RCW. [2017 c 317 § 4; 2012 c 117 § 269; 1935 c 174 § 9 (adding new section 62-A to 1933 ex.s. c 62); RRS § 7306-62A. Formerly RCW 66.08.100 and 66.08.110.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

66.08.170 Liquor revolving fund—Creation—Composition—State treasurer as custodian—Daily deposits, exceptions—Budget and accounting act applicable. There shall be a fund, known as the "liquor revolving fund," which shall consist of all license fees, permit fees, penalties, forfeitures, and all other moneys, income, or revenue received by the board. The state treasurer shall be custodian of the fund. All moneys received by the board or any employee thereof, except for change funds and an amount of petty cash as fixed by the board within the authority of law shall be deposited each day in a depository approved by the state treasurer and transferred to the state treasurer to be credited to the liquor

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revolving fund. During the 2009-2011 fiscal biennium, the legislature may transfer funds from the liquor revolving account [fund] to the state general fund and may direct an additional amount of liquor profits to be distributed to local governments. Neither the transfer of funds nor the additional distribution of liquor profits to local governments during the 2009-2011 fiscal biennium may reduce the excess fund distributions that otherwise would occur under RCW 66.08.190. During the 2011-2013 fiscal biennium, the state treasurer shall transfer from the liquor revolving fund to the state general fund forty-two million five hundred thousand dollars for fiscal year 2012 and forty-two million five hundred thousand dollars for fiscal year 2013. The transfer during the 2011-2013 fiscal biennium may not reduce the excess fund distributions that otherwise would occur under RCW 66.08.190. Sales to licensees are exempt from any liquor price increases that may result from the transfer of funds from the liquor revolving fund to the state general fund during the 2011-2013 fiscal biennium. Disbursements from the revolving fund shall be on authorization of the board or a duly authorized representative thereof. During the 2017-2019 fiscal biennium, the legislature may also appropriate from the account for local government studies. In order to maintain an effective expenditure and revenue control the liquor revolving fund shall be subject in all respects to chapter 43.88 RCW but no appropriation shall be required to permit expenditures and payment of obligations from such fund. During the 2013-2015 and 2015-2017 fiscal biennia, the legislature may transfer from the liquor revolving fund to the state general fund such amounts as reflect the excess fund balance of the account. [2017 3rd sp.s. c 1 § 978; 2015 3rd sp.s. c 4 § 966; 2011 1st sp.s. c 50 § 959; 2009 c 564 § 947; 2002 c 371 § 917; 1961 ex.s. c 6 § 1; 1933 ex.s. c 62 § 73; RRS § 7306-73. Formerly RCW 43.66.060.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2009 c 564: See note following RCW 2.68.020.

Transfer of liquor revolving fund to state treasurer—Outstanding obligations: "On June 30, 1961, the Washington state liquor control board shall deliver and transfer to the state treasurer, as custodian, all moneys and accounts which comprise the liquor revolving fund, except change funds and petty cash, and the state treasurer shall assume custody thereof. All obligations outstanding as of June 30, 1961 shall be paid out of the liquor revolving fund." [1961 ex.s. c 6 § 5.]

Additional notes found at www.leg.wa.gov

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

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

Chapter 66.12 RCW EXEMPTIONS

Sections

- 66.12.020 Repealed.

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

Chapter 66.20 RCW LIQUOR PERMITS

Sections

66.20.010 Permits classified—Issuance—Fees—Waiver of provisions during state of emergency.

66.20.010 Permits classified—Issuance—Fees—Waiver of provisions during state of emergency. Upon application in the prescribed form being made to any employee authorized by the board to issue permits, accompanied by payment of the prescribed fee, and upon the employee being satisfied that the applicant should be granted a permit under this title, the employee must issue to the applicant under such regulations and at such fee as may be prescribed by the board a permit of the class applied for, as follows:

(1) Where the application is for a special permit by a physician or dentist, or by any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, a special liquor purchase permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(2) Where the application is for a special permit by a person engaged within the state in mechanical or manufacturing business or in scientific pursuits requiring alcohol for use therein, or by any private individual, a special permit to purchase alcohol for the purpose named in the permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(3) Where the application is for a special permit to consume liquor at a banquet, at a specified date and place, a special permit to purchase liquor for consumption at such banquet, to such applicants as may be fixed by the board;

(4) Where the application is for a special permit to consume liquor on the premises of a business not licensed under this title, a special permit to purchase liquor for consumption thereon for such periods of time and to such applicants as may be fixed by the board;

(5) Where the application is for a special permit by a manufacturer to import or purchase within the state alcohol, malt, and other materials containing alcohol to be used in the manufacture of liquor, or other products, a special permit;

(6) Where the application is for a special permit by a person operating a drug store to purchase liquor at retail prices only, to be thereafter sold by such person on the prescription of a physician, a special liquor purchase permit, except that the governor may waive the requirement for a special liquor purchase permit under this subsection pursuant to an order issued under RCW 43.06.220(2);

(7) Where the application is for a special permit by an authorized representative of a military installation operated by or for any of the armed forces within the geographical boundaries of the state of Washington, a special permit to purchase liquor for use on such military installation;

(8) Where the application is for a special permit by a vendor that manufactures or sells a product which cannot be effectively presented to potential buyers without serving it with liquor or by a manufacturer, importer, or distributor, or representative thereof, to serve liquor without charge to delegates and guests at a convention of a trade association composed of licensees of the board, when the said liquor is served in a hospitality room or from a booth in a board-approved suppliers' display room at the convention, and when the liquor so served is for consumption in the said hospitality room or display room during the convention, anything in this title to the contrary notwithstanding. Any such spirituous liquor must be purchased from a spirits retailer or distributor, and any such liquor is subject to the taxes imposed by RCW 82.08.150, 66.24.290, and 66.24.210;

(9) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate liquor for a reception, breakfast, luncheon, or dinner for delegates and guests at a convention of a trade association composed of licensees of the board, when the liquor so donated is for consumption at the said reception, breakfast, luncheon, or dinner during the convention, anything in this title to the contrary notwithstanding. Any such spirituous liquor must be purchased from a spirits retailer or distributor, and any such liquor is subject to the taxes imposed by RCW 82.08.150, 66.24.290, and 66.24.210;

(10) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate and/or serve liquor without charge to delegates and guests at an international trade fair, show, or exposition held under the auspices of a federal, state, or local governmental entity or organized and promoted by a nonprofit organization, anything in this title to the contrary notwithstanding. Any such spirituous liquor must be purchased from a liquor spirits retailer or distributor, and any such liquor is subject to the taxes imposed by RCW 82.08.150, 66.24.290, and 66.24.210;

(11) Where the application is for an annual special permit by a person operating a bed and breakfast lodging facility to donate or serve wine or beer without charge to overnight guests of the facility if the wine or beer is for consumption on the premises of the facility. "Bed and breakfast lodging facility," as used in this subsection, means a facility offering from one to eight lodging units and breakfast to travelers and guests;

(12) Where the application is for a special permit to allow tasting of alcohol by persons at least eighteen years of age under the following circumstances:

(a) The application is from a community or technical college as defined in RCW 28B.50.030, a regional university, or a state university;

(b) The person who is permitted to taste under this subsection is enrolled as a student in a required or elective class that is part of a culinary, sommelier, wine business, enology, viticulture, wine technology, beer technology, or spirituous technology-related degree program;

(c) The alcohol served to any person in the degree-related programs under (b) of this subsection is tasted but not consumed for the purposes of educational training as part of the class curriculum with the approval of the educational provider;

(d) The service and tasting of alcoholic beverages is supervised by a faculty or staff member of the educational provider who is twenty-one years of age or older. The supervising faculty or staff member shall possess a class 12 or 13 alcohol server permit under the provisions of RCW 66.20.310;

(e) The enrolled student permitted to taste the alcoholic beverages does not purchase the alcoholic beverages; and

(f) The permit fee for the special permit provided for in this subsection (12) must be waived by the board;

(13) Where the application is for a special permit by a distillery or craft distillery for an event not open to the general public to be held or conducted at a specific place, including at the licensed premise of the applying distillery or craft distillery, upon a specific date for the purpose of tasting and selling spirits of its own production. The distillery or craft distillery must obtain a permit for a fee of ten dollars per event. An application for the permit must be submitted for private banquet permits prior to the event and, once issued, must be posted in a conspicuous place at the premises for which the permit was issued during all times the permit is in use. No licensee may receive more than twelve permits under this subsection (13) each year;

(14) Where the application is for a special permit by a manufacturer of wine for an event not open to the general public to be held or conducted at a specific place upon a specific date for the purpose of tasting and selling wine of its own production. The winery must obtain a permit for a fee of ten dollars per event. An application for the permit must be submitted at least ten days before the event and once issued, must be posted in a conspicuous place at the premises for which the permit was issued during all times the permit is in use. No more than twelve events per year may be held by a single manufacturer under this subsection;

(15) Where the application is for a special permit by a manufacturer of beer for an event not open to the general public to be held or conducted at a specific place upon a specific date for the purpose of tasting and selling beer of its own production. The brewery or microbrewery must obtain a permit for a fee of ten dollars per event. An application for the permit must be submitted at least ten days before the event and, once issued, must be posted in a conspicuous place at the premises for which the permit was issued during all times the permit is in use. No more than twelve events per year may be held by a single manufacturer under this subsection;

(16) Where the application is for a special permit by an individual or business to sell a private collection of wine or spirits to an individual or business. The seller must obtain a permit at least five business days before the sale, for a fee of twenty-five dollars per sale. The seller must provide an inventory of products sold and the agreed price on a form provided by the board. The seller shall submit the report and taxes due to the board no later than twenty calendar days after the sale. A permit may be issued under this section to allow the sale of a private collection to licensees, but may not be issued to a licensee to sell to a private individual or business which is not otherwise authorized under the license held by the seller. If the liquor is purchased by a licensee, all sales are subject to taxes assessed as on liquor acquired from any other source. The board may adopt rules to implement this section;

(17)(a) A special permit, where the application is for a special permit by a nonprofit organization to sell wine through an auction, not open to the public, to be conducted at a specific place, upon a specific date, and to allow wine tastings at the auction of the wine to be auctioned.

(b) A permit holder under this subsection (17) may at the specified event:

(i) Sell wine by auction for off-premises consumption; and

(ii) Allow tastings of samples of the wine to be auctioned at the event.

(c) An application is required for a permit under this subsection (17). The application must be submitted prior to the event and once issued must be posted in a conspicuous place at the premises for which the permit was issued during all times the permit is in use.

(d) Wine from more than one winery may be sold at the auction; however, each winery selling wine at the auction must be listed on the permit application. Only a single application form may be required for each auction, regardless of the number of wineries that are selling wine at the auction. The total fee per event for a permit issued under this subsection (17) is twenty-five dollars multiplied by the number of wineries that are selling wine at the auction.

(e) For the purposes of this subsection (17), "nonprofit organization" means an entity incorporated as a nonprofit organization under Washington state law.

(f) The board may adopt rules to implement this section. [2017 c 250 § 1. Prior: 2016 c 235 § 6; 2016 c 129 § 1; prior: 2015 c 195 § 1; 2015 c 194 § 3; 2015 c 59 § 1; 2013 c 59 § 1; 2012 c 2 § 109 (Initiative Measure No. 1183, approved November 8, 2011); 2011 c 119 § 213; 2008 c 181 § 602; (2008 c 181 § 601 expired July 1, 2008); 2007 c 370 § 16; 1998 c 126 § 1; 1997 c 321 § 43; 1984 c 78 § 6; 1984 c 45 § 1; 1983 c 13 § 1; 1982 c 85 § 1; 1975-'76 2nd ex.s. c 62 § 2; 1959 c 111 § 2; 1951 2nd ex.s. c 13 § 1; 1933 ex.s. c 62 § 12; RRS § 7306-12.]

Finding—Application—Rules—Effective date—Contingent effective date—2012 c 2 (Initiative Measure No. 1183): See notes following RCW 66.24.620.

Effective date—2008 c 181 § 602: "Section 602 of this act takes effect July 1, 2008." [2008 c 181 § 604.]

Expiration date—2008 c 181 § 601: "Section 601 of this act expires July 1, 2008." [2008 c 181 § 603.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

Effective date—2007 c 370 §§ 10-20: See note following RCW 66.04.010.

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

Additional notes found at www.leg.wa.gov

Chapter 66.24 RCW LICENSES—STAMP TAXES

Sections

66.24.035	Combination spirits, beer, and wine license.
66.24.140	Distiller's license—Fee.
66.24.170	Domestic winery license—Winery as distributor and/or retailer of own wine—Off-premises samples—Domestic wine made into sparkling wine—Sales at qualifying farmers markets.

66.24.215	Levy of assessment on wine producers and growers to fund wine commission—Assessment rate changes—Procedures—Disbursement—Continuation.
66.24.330	Tavern license—Fees.
66.24.360	Grocery store license—Fees—Restricted license—Determination of public interest—Inventory—Endorsements.
66.24.363	Grocery store—Beer and wine tasting endorsement.
66.24.371	Beer and/or wine specialty shop license—Fee—Samples—Restricted license—Determination of public interest—Inventory.
66.24.630	Spirits retail license.
66.24.632	Spirits retail licensee—Combination spirits, beer, and wine licensee—License issuance fee exemption.
66.24.640	Licensed distillers operating as spirits retailers/distributors.
66.24.695	Bonded and nonbonded spirits warehouse license.

66.24.035 Combination spirits, beer, and wine license. (1) There is a license called a combination spirits, beer, and wine license, to sell wine and beer, including without limitation strong beer, at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, and to:

(a) Sell spirits in original containers to consumers for consumption off the licensed premises and to permit holders;

(b) Sell spirits in original containers to retailers licensed to sell spirits for consumption on the premises, for resale at their licensed premises according to the terms of their licenses, although no single sale may exceed twenty-four liters; and

(c) Export spirits.

(2) The annual fee for the combination spirits, beer, and wine license is three hundred sixteen dollars for each store.

(3) For the purposes of this title, a combination spirits, beer, and wine license is a retail license, and a sale by a combination spirits, beer, and wine licensee is a retail sale only if not for resale. Nothing in this title authorizes sales by on-premise licensees to other retail licensees.

(4)(a) The board may issue a combination spirits, beer, and wine license:

(i) For premises comprising at least ten thousand square feet of fully enclosed retail space within a single structure, including storerooms and other interior auxiliary areas but excluding covered or fenced exterior areas, whether or not attached to the structure, and only to applicants that the board determines will maintain appropriate systems for inventory management, employee training, employee supervision, and physical security of the product;

(ii) For premises of a former contract liquor store; or

(iii) To a holder of former state liquor store operating rights sold at auction under RCW 66.24.620.

(b) License issuances and renewals are subject to RCW 66.24.010 and the regulations adopted thereunder including, without limitation, rights of cities, towns, county legislative authorities, the public, churches, schools, and public institutions to object to or prevent issuance of local liquor licenses. However, existing grocery and other retail premises over ten thousand square feet licensed to sell beer and/or wine are deemed to be premises "now licensed" under RCW 66.24.010(9)(a) for the purpose of processing applications for combination spirits, beer, and wine licenses.

(c) A retailer authorized to sell spirits for consumption on or off the licensed premises may accept delivery of spirits and deliver spirits in the same manner as is provided in RCW 66.24.630(3)(d).

(d) For purposes of negotiating volume discounts of spirits, a group of individual retailers authorized to sell spirits for consumption off the licensed premises may accept delivery of spirits as provided in RCW 66.24.630(3)(e).

(5) Each combination spirits, beer, and wine licensee must pay to the board, for deposit into the liquor revolving fund, a license issuance fee equivalent to the license issuance fee imposed on licensees selling spirits pursuant to RCW 66.24.630(4)(a).

(6) The board may not issue a combined spirits, beer, and wine license to an applicant if the applicant would qualify for a restricted license as provided in RCW 66.24.371(4) or 66.24.360(7) if the applicant had applied for a license under RCW 66.24.371 or 66.24.360 instead of pursuant to this section.

(7) As a condition to receiving and renewing a combination spirits, beer, and wine license the licensee must comply with RCW 66.24.630(6).

(8) The maximum penalties prescribed by the board in WAC 314-29-020 through 314-29-040 relating to fines and suspensions are doubled for violations relating to the sale of spirits by combination spirits, beer, and wine licensees.

(9)(a) A combination spirits, beer, and wine licensee that joins the responsible vendor program developed by the board pursuant to RCW 66.24.630(8) and maintains all of the program's requirements is not subject to the doubling of penalties provided in this section for a single violation in any period of twelve calendar months.

(b) To participate in the responsible vendor program, a combination spirits, beer, and wine licensee must submit an application form to the board. If the application establishes that the combination spirits, beer, and wine licensee meets the qualifications to join the program, the board must send the licensee a membership certificate.

(c) A combination spirits, beer, and wine licensee participating in the responsible vendor program must meet the requirements in RCW 66.24.630(8)(e) and comply with board rules adopted to implement RCW 66.24.630(8).

(10)(a) Any endorsement available to the holder of a license issued pursuant to RCW 66.24.360 or 66.24.371 is available, upon board approval and pursuant to board rules, to a combination spirits, beer, and wine licensee, provided that the combination spirits, beer, and wine licensee would qualify for a license and the endorsement under RCW 66.24.360 or 66.24.371, as applicable, had the licensee applied for a license and endorsement pursuant to RCW 66.24.360, 66.24.363, or 66.24.371, as applicable, instead of the combination spirits, beer, and wine license pursuant to this section. A combination spirits, beer, and wine licensee with an endorsement issued pursuant to this subsection must comply with the requirements of the endorsement to the same extent as if the endorsement was issued pursuant to RCW 66.24.360, 66.24.363, or 66.24.371, as applicable.

(b) A combination spirits, beer, and wine licensee may conduct sampling in accordance with:

(i) RCW 66.24.371(2) if the combination spirits, beer, and wine licensee would qualify for a license under RCW 66.24.371; or

(ii) RCW 66.24.363 if the combination spirits, beer, and wine licensee would qualify for a license under RCW 66.24.360.

(11) Licensees holding a combination spirits, beer, and wine license must maintain either:

(a) A minimum three thousand dollar inventory of food products for human consumption, not including pop, beer, strong beer, wine, or spirits; or

(b) A minimum three thousand dollar wholesale inventory of beer, strong beer, and/or wine.

(12) A combination spirits, beer, and wine licensee holding a snack bar license under RCW 66.24.350 may receive an endorsement to allow the sale of confections containing more than one percent but not more than ten percent alcohol by weight to persons twenty-one years of age or older.

(13) The board may adopt rules to implement this section. [2017 c 96 § 1.]

66.24.140 Distiller's license—Fee. (1) There is a license to distillers, including blending, rectifying, and bottling; fee two thousand dollars per annum, unless provided otherwise as follows:

(a) For distillers producing one hundred fifty thousand gallons or less of spirits with at least half of the raw materials used in the production grown in Washington, the license fee must be reduced to one hundred dollars per annum;

(b) The board must license stills used and to be used solely and only by a commercial chemist for laboratory purposes, and not for the manufacture of liquor for sale, at a fee of twenty dollars per annum;

(c) The board must license stills used and to be used solely and only for laboratory purposes in any school, college, or educational institution in the state, without fee; and

(d) The board must license stills that have been duly licensed as fruit and/or wine distilleries by the federal government, used and to be used solely as fruit and/or wine distilleries in the production of fruit brandy and wine spirits, at a fee of two hundred dollars per annum.

(2) Any distillery licensed under this section may:

(a) Sell spirits of its own production for consumption off the premises. A distillery selling spirits under this subsection must comply with the applicable laws and rules relating to retailers;

(b) Contract distilled spirits for, and sell contract distilled spirits to, holders of distillers' or manufacturers' licenses, including licenses issued under RCW 66.24.520, or for export; and

(c) Provide samples subject to the following conditions:

(i) For the purposes of this subsection, the maximum amount of alcohol per person per day is two ounces;

(ii) Provide free or for a charge one-half ounce or less samples of spirits of its own production to persons on the premises of the distillery. Spirits samples may be adulterated with nonalcoholic mixers, mixers with alcohol of the distiller's own production, water, and/or ice;

(iii) Sell adulterated samples of spirits of their own production, water, and/or ice to persons on the premises at the distillery; and

(iv) Every person who participates in any manner in the service of these samples must obtain a class 12 alcohol server permit. [2017 c 260 § 1; 2015 c 194 § 1; 2014 c 92 § 4; 2010 c 290 § 1; 2008 c 94 § 1; 1981 1st ex.s. c 5 § 28; 1937 c 217 § 1 (23D) (adding new section 23-D to 1933 ex.s. c 62); RRS § 7306-23D.]

66.24.170 Domestic winery license—Winery as distributor and/or retailer of own wine—Off-premises samples—Domestic wine made into sparkling wine—Sales at qualifying farmers markets. (1) There is a license for domestic wineries; fee to be computed only on the liters manufactured: Less than two hundred fifty thousand liters per year, one hundred dollars per year; and two hundred fifty thousand liters or more per year, four hundred dollars per year.

(2) The license allows for the manufacture of wine in Washington state from grapes or other agricultural products.

(3) Any domestic winery licensed under this section may also act as a retailer of wine of its own production. Any domestic winery licensed under this section may act as a distributor of its own production. Notwithstanding any language in this title to the contrary, a domestic winery may use a common carrier to deliver up to one hundred cases of its own production, in the aggregate, per month to licensed Washington retailers. A domestic winery may not arrange for any such common carrier shipments to licensed retailers of wine not of its own production. Except as provided in this section, any winery operating as a distributor and/or retailer under this subsection must comply with the applicable laws and rules relating to distributors and/or retailers, except that a winery operating as a distributor may maintain a warehouse off the premises of the winery for the distribution of wine of its own production provided that: (a) The warehouse has been approved by the board under RCW 66.24.010; and (b) the number of warehouses off the premises of the winery does not exceed one.

(4) A domestic winery licensed under this section, at locations separate from any of its production or manufacturing sites, may serve samples of its own products, with or without charge, may sell wine of its own production at retail, and may sell for off-premises consumption wines of its own production in kegs or sanitary containers meeting the applicable requirements of federal law brought to the premises by the purchaser or furnished by the licensee and filled at the tap at the time of sale, provided that: (a) Each additional location has been approved by the board under RCW 66.24.010; (b) the total number of additional locations does not exceed four; (c) a winery may not act as a distributor at any such additional location; and (d) any person selling or serving wine at an additional location for on-premises consumption must obtain a class 12 or class 13 alcohol server permit. Each additional location is deemed to be part of the winery license for the purpose of this title. At additional locations operated by multiple wineries under this section, if the board cannot connect a violation of RCW 66.44.200 or 66.44.270 to a single licensee, the board may hold all licensees operating the additional location jointly liable. Nothing in this subsection may be construed to prevent a domestic winery from holding multiple domestic winery licenses.

(5)(a) A domestic winery licensed under this section may apply to the board for an endorsement to sell wine of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars. An endorsement issued pursuant to this

subsection does not count toward the four additional retail locations limit specified in this section.

(b) For each month during which a domestic winery will sell wine at a qualifying farmers market, the winery must provide the board or its designee a list of the dates, times, and locations at which bottled wine may be offered for sale. This list must be received by the board before the winery may offer wine for sale at a qualifying farmers market.

(c) The wine sold at qualifying farmers markets must be made entirely from grapes grown in a recognized Washington appellation or from other agricultural products grown in this state.

(d) Each approved location in a qualifying farmers market is deemed to be part of the winery license for the purpose of this title. The approved locations under an endorsement granted under this subsection include tasting or sampling privileges subject to the conditions pursuant to RCW 66.24.175. The winery may not store wine at a farmers market beyond the hours that the winery offers bottled wine for sale. The winery may not act as a distributor from a farmers market location.

(e) Before a winery may sell bottled wine at a qualifying farmers market, the farmers market must apply to the board for authorization for any winery with an endorsement approved under this subsection to sell bottled wine at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved winery may sell bottled wine; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled wine may be sold. Before authorizing a qualifying farmers market to allow an approved winery to sell bottled wine at retail at its farmers market location, the board must notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers. However, if a farmers market does not satisfy this subsection (5)(g)(i)(B), a farmers market is still considered a "qualifying farmers market" if the total combined gross annual sales of farmers and processors at the farmers market is one million dollars or more;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total

combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(6) Wine produced in Washington state by a domestic winery licensee may be shipped out-of-state for the purpose of making it into sparkling wine and then returned to such licensee for resale. Such wine is deemed wine manufactured in the state of Washington for the purposes of RCW 66.24.206, and shall not require a special license.

(7) During an event held by a nonprofit holding a special occasion license issued under RCW 66.24.380, a domestic winery licensed under this section may take orders, either in writing or electronically, and accept payment for wines of its own production under the following conditions:

(a) Wine produced by the domestic winery may be served for on-premises consumption by the special occasion licensee;

(b) The domestic winery delivers wine to the consumer on a date after the conclusion of the special occasion event;

(c) The domestic winery delivers wine to the consumer at a location different from the location at which the special occasion event is held;

(d) The domestic winery complies with all requirements in chapter 66.20 RCW for direct sale of wine to consumers;

(e) The wine is not sold for resale; and

(f) The domestic winery is entitled to all proceeds from the sale and delivery of its wine to a consumer after the conclusion of the special occasion event, but may enter into an agreement to share a portion of the proceeds of these sales with the special occasion licensee licensed under RCW 66.24.380. [2017 c 238 § 1; 2016 c 235 § 1. Prior: 2014 c 105 § 1; 2014 c 27 § 1; 2013 c 238 § 2; 2009 c 373 § 4; (2011 c 62 § 2 expired December 1, 2012); 2008 c 41 § 5; 2007 c 16 § 2; 2006 c 302 § 1; 2003 c 44 § 1; 2000 c 141 § 1; 1997 c 321 § 3; 1991 c 192 § 2; 1982 c 85 § 4; 1981 1st ex.s. c 5 § 31; 1939 c 172 § 1 (23C); 1937 c 217 § 1 (23C) (adding new section 23-C to 1933 ex.s. c 62); RRS § 7306-23C. Formerly RCW 66.24.170, 66.24.180, and 66.24.190.]

Expiration date—2011 c 62: "This act expires December 1, 2012." [2011 c 62 § 5.]

Additional notes found at www.leg.wa.gov

66.24.215 Levy of assessment on wine producers and growers to fund wine commission—Assessment rate changes—Procedures—Disbursement—Continuation.

(1) To provide for permanent funding of the wine commission after July 1, 1989, agricultural commodity assessments

must be levied by the board on wine producers and growers as follows:

(a) Beginning on July 1, 1989, the assessment on wine producers is two cents per gallon on sales of packaged Washington wines.

(b) Beginning on July 1, 1989, the assessment on growers of Washington vinifera wine grapes is levied as provided in RCW 15.88.130.

(c) After July 1, 1993, assessment rates under (a) of this subsection may be changed pursuant to a referendum conducted by the Washington wine commission and approved by a majority vote of wine producers. The weight of each producer's vote must be equal to the percentage of that producer's share of Washington vinifera wine production in the prior year.

(d) After July 1, 1993, assessment amounts under (b) of this subsection may be changed pursuant to a referendum conducted by the Washington wine commission and approved by a majority vote of grape growers. The weight of each grower's vote must be equal to the percentage of that grower's share of Washington vinifera grape sales in the prior year.

(e) After July 1, 2015, the assessment amounts under this section may not be levied on the production of cider as defined in RCW 66.24.210.

(f) After January 1, 2018, the assessment amounts under this section may not be levied on the production of mead. For purposes of this section, "mead" means a wine or malt beverage of which honey represents the largest percentage of the starting fermentable sugars by weight of the finished product and that:

(i) Is derived from a mixture of honey and water, which may contain hops, fruit, spices, grain, and other agricultural products or flavors; and

(ii) Is sold or offered for sale as mead.

(2) Assessments collected under this section must be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(3) Prior to July 1, 1996, a referendum must be conducted to determine whether to continue the Washington wine commission as representing both wine producers and grape growers. The voting may not be weighted. The wine producers must vote whether to continue the commission's coverage of wineries and wine production. The grape producers must vote whether to continue the commission's coverage of issues pertaining to grape growing. If a majority of both wine and grape producers favor the continuation of the commission, the assessments must continue as provided in subsection (1)(b) and (d) of this section. If only one group of producers favors the continuation, the assessments may only be levied on the group which favored the continuation. [2017 c 8 § 1; 2015 c 76 § 2; 1988 c 257 § 7; 1987 c 452 § 13.]

Finding—Intent—2015 c 76: "The legislature finds that the commodity assessment authorized in RCW 66.24.215 is applied to makers of cider as defined in RCW 66.24.210 but by definition is focused on the marketing and support of vinifera wine grape growers and vinifera wine producers. The rapid growth and strong market potential of the Washington cider industry require marketing efforts that are focused on cider products as a unique beverage category. The legislature intends to allow cider makers to support their own marketing efforts, which will benefit the cider industry by exempting them from an assessment that primarily supports vinifera wine." [2015 c 76 § 1.]

Effective date—2015 c 76: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2015." [2015 c 76 § 3.]

Additional notes found at www.leg.wa.gov

66.24.330 Tavern license—Fees. (1) There is a beer and wine retailer's license to be designated as a tavern license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. Such licenses may be issued only to a person operating a tavern that may be frequented only by persons twenty-one years of age and older.

(2) The annual fee for the license is two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license. Licensees who have a fee increase of more than one hundred dollars as a result of this change shall have their fees increased fifty percent of the amount the first renewal year and the remaining amount beginning with the second renewal period. New licensees obtaining a license after July 1, 1998, must pay the full amount of four hundred dollars.

(3)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove from the liquor stocks at the licensed premises, only those types of liquor that are authorized under the on-premises license privileges for sale and service at event locations at a specified date and, except as provided in subsection (4) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with a catering endorsement must, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee must provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(c) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on the premises of another not licensed by the board so long as there is a written agreement between the licensee and the other party to provide for ongoing catering services, the agreement contains no exclusivity clauses regarding the alcoholic beverages to be served, and the agreement is filed with the board.

(d) The holder of this license with a caterer's endorsement may, under conditions established by the board, store liquor on other premises operated by the licensee so long as the other premises are owned or controlled by a leasehold interest by that licensee. A duplicate license may be issued for each additional premises. A license fee of twenty dollars is required for such duplicate licenses.

(4) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises and may store liquor at such prem-

ises under conditions established by the board under the following conditions:

(a) Agreements between the domestic winery and the retail licensee must be in writing, contain no exclusivity clauses regarding the alcoholic beverages to be served, and be filed with the board; and

(b) The domestic winery and the retail licensee may be separately contracted and compensated by the persons sponsoring the event for their respective services.

(5) The holder of this license or its manager may furnish beer or wine to the licensee's employees free of charge as may be required for use in connection with instruction on beer and wine. The instruction may include the history, nature, values, and characteristics of beer or wine, the use of wine lists, and the methods of presenting, serving, storing, and handling beer or wine. The tavern licensee must use the beer or wine it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the tavern licensee.

(6) Any person serving liquor at a catered event on behalf of a licensee with a caterer's endorsement under this section must be an employee of the licensee and must possess a class 12 alcohol server permit as required under RCW 66.20.310.

(7) The board may issue rules as necessary to implement the requirements of this section. [2017 c 252 § 1; 2003 c 167 § 7; (2009 c 507 § 2 expired July 1, 2011); 1997 c 321 § 19; 1995 c 232 § 7; 1991 c 42 § 2; 1987 c 458 § 12; 1981 1st ex.s. c 5 § 38; 1977 ex.s. c 9 § 2; 1973 1st ex.s. c 209 § 15; 1967 ex.s. c 75 § 3; 1941 c 220 § 2; 1937 c 217 § 1 (23N) (adding new section 23-N to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23N.]

Expiration date—2009 c 507: See note following RCW 66.24.320.

Additional notes found at www.leg.wa.gov

66.24.360 Grocery store license—Fees—Restricted license—Determination of public interest—Inventory—Endorsements. (1) There is a grocery store license to sell wine and/or beer, including without limitation strong beer at retail in original containers, not to be consumed upon the premises where sold.

(2) There is a wine retailer reseller endorsement of a grocery store license, to sell wine at retail in original containers to retailers licensed to sell wine for consumption on the premises, for resale at their licensed premises according to the terms of the license. However, no single sale may exceed twenty-four liters, unless the sale is made by a licensee that was a contract liquor store manager of a contract-operated liquor store at the location from which such sales are made. For the purposes of this title, a grocery store license is a retail license, and a sale by a grocery store licensee with a reseller endorsement is a retail sale only if not for resale.

(3) Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid.

(4) The annual fee for the grocery store license is one hundred fifty dollars for each store.

(5) The annual fee for the wine retailer reseller endorsement is one hundred sixty-six dollars for each store.

(6)(a) Upon approval by the board, a grocery store licensee with revenues derived from beer and/or wine sales exceeding fifty percent of total revenues or that maintains an alcohol inventory of not less than fifteen thousand dollars may also receive an endorsement to permit the sale of beer and cider, as defined in RCW 66.24.210(6), in a sanitary container brought to the premises by the purchaser, or provided by the licensee or manufacturer, and filled at the tap by the licensee at the time of sale by an employee of the licensee holding a class 12 alcohol server permit.

(b) Pursuant to RCW 74.08.580(1)(f), a person may not use an electronic benefit transfer card for the purchase of any product authorized for sale under this section.

(c) The board may, by rule, establish fees to be paid by licensees receiving the endorsement authorized under this subsection (6), as necessary to cover the costs of implementing and enforcing the provisions of this subsection (6).

(7) The board must issue a restricted grocery store license authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board must consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it must issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(8) Licensees holding a grocery store license must maintain a minimum three thousand dollar inventory of food products for human consumption, not including pop, beer, strong beer, or wine.

(9) A grocery store licensee with a wine retailer reseller endorsement may accept delivery of wine at its licensed premises or at one or more warehouse facilities registered with the board, which facilities may also warehouse and distribute nonliquor items, and from which it may deliver to its own licensed premises and, pursuant to sales permitted by this title, to other licensed premises, to other registered facilities, or to lawful purchasers outside the state. Facilities may be registered and utilized by associations, cooperatives, or comparable groups of grocery store licensees.

(10) Upon approval by the board, the grocery store licensee may also receive an endorsement to permit the international export of beer, strong beer, and wine.

(a) Any beer, strong beer, or wine sold under this endorsement must have been purchased from a licensed beer or wine distributor licensed to do business within the state of Washington.

(b) Any beer, strong beer, and wine sold under this endorsement must be intended for consumption outside the

state of Washington and the United States and appropriate records must be maintained by the licensee.

(c) Any beer, strong beer, or wine sold under this endorsement must be sold at a price no less than the acquisition price paid by the holder of the license.

(d) The annual cost of this endorsement is five hundred dollars and is in addition to the license fees paid by the licensee for a grocery store license.

(11) A grocery store licensee holding a snack bar license under RCW 66.24.350 may receive an endorsement to allow the sale of confections containing more than one percent but not more than ten percent alcohol by weight to persons twenty-one years of age or older.

(12) The board may adopt rules to implement this section.

(13) Nothing in this section limits the authority of the board to regulate the sale of beer or cider or container sizes under rules adopted pursuant to RCW 66.08.030.

(14) Any endorsement issued pursuant to this section or RCW 66.24.363 may be issued to a qualified combination spirits, beer, and wine licensee in accordance with RCW 66.24.035(10).

(15)(a) A grocery store licensee that also holds a spirits retail license under RCW 66.24.630 may, upon board approval and pursuant to board rules, transition to a combination spirits, beer, and wine license pursuant to RCW 66.24.035.

(b) An applicant that would qualify for a grocery store license under this section and a spirits retail license under RCW 66.24.630 may apply for a single license pursuant to RCW 66.24.035 instead of applying for a grocery store license under this section in addition to a spirits retail license under to RCW 66.24.630. [2017 c 96 § 2; 2015 c 192 § 1; 2012 c 2 § 104 (Initiative Measure No. 1183, approved November 8, 2011); 2011 c 119 § 203; (2009 c 507 § 5 expired July 1, 2011); 2007 c 226 § 2; 2003 c 167 § 8; 1997 c 321 § 22; 1993 c 21 § 1; 1991 c 42 § 4; 1987 c 46 § 1; 1981 1st ex.s. c 5 § 41; 1967 ex.s. c 75 § 6; 1937 c 217 § 1 (23Q) (adding new section 23-Q to 1933 ex.s. c 62); RRS § 7306-23Q.]

Finding—Application—Rules—Effective date—Contingent effective date—2012 c 2 (Initiative Measure No. 1183): See notes following RCW 66.24.620.

Expiration date—2009 c 507: See note following RCW 66.24.320.

Employees under eighteen allowed to handle beer or wine: RCW 66.44.340.

Additional notes found at www.leg.wa.gov

66.24.363 Grocery store—Beer and wine tasting endorsement. (1) A grocery store licensed under RCW 66.24.360 may apply for an endorsement to offer beer and wine tasting under this section.

(2) To be issued an endorsement, a licensee must meet the following criteria:

(a) The licensee operates a fully enclosed retail area encompassing at least ten thousand square feet of fully enclosed retail space within a single structure, including storerooms and other interior auxiliary areas but excluding covered or fenced exterior areas, whether or not attached to the structure, except that the board may issue an endorsement to a licensee with a retail area encompassing less than ten thousand square feet if the board determines that no licensee

in the community the licensee serves meets the square footage requirement and the licensee meets operational requirements established by the board by rule; and

(b) The licensee has not had more than one public safety violation within the past two years.

(3) A tasting must be conducted under the following conditions:

(a) Each sample must be two ounces or less, up to a total of four ounces, per customer during any one visit to the premises;

(b) No more than one sample of the same product offering of beer or wine may be provided to a customer during any one visit to the premises;

(c) The licensee must have food available for the tasting participants;

(d) Customers must remain in the service area while consuming samples; and

(e) The service area and facilities must be located within the licensee's fully enclosed retail area and must be of a size and design such that the licensee can observe and control persons in the area to ensure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol.

(4) Employees of licensees whose duties include serving during tasting activities under this section must hold a class 12 alcohol server permit.

(5) Tasting activities under this section are subject to RCW 66.28.305 and 66.28.040 and the cost of sampling may not be borne, directly or indirectly, by any liquor manufacturer, importer, or distributor.

(6) A licensee may advertise a tasting event only within the store, on a store web site, in store newsletters and flyers, and via email and mail to customers who have requested notice of events. Advertising under this subsection may not be targeted to or appeal principally to youth.

(7)(a) If a licensee is found to have committed a public safety violation in conjunction with tasting activities, the board may suspend the licensee's tasting endorsement and not reissue the endorsement for up to two years from the date of the violation. If mitigating circumstances exist, the board may offer a monetary penalty in lieu of suspension during a settlement conference.

(b) The board may revoke an endorsement granted to a licensee that is located within the boundaries of an alcohol impact area recognized by resolution of the board if the board finds that the tasting activities by the licensee are having an adverse effect on the reduction of chronic public inebriation in the area.

(c) RCW 66.08.150 applies to the suspension or revocation of an endorsement.

(8) The board may establish additional requirements under this section to assure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol.

(9) The annual fee for the endorsement is two hundred dollars. The board shall review the fee annually and may increase the fee by rule to a level sufficient to defray the cost of administration and enforcement of the endorsement, except that the board may not increase the fee by more than ten percent annually.

(10) The board must adopt rules to implement this section.

(11) An endorsement issued pursuant to this section may be issued to a qualified combination spirits, beer, and wine licensee in accordance with RCW 66.24.035. [2017 c 96 § 5; 2013 c 52 § 1; 2010 c 141 § 1.]

66.24.371 Beer and/or wine specialty shop license—Fee—Samples—Restricted license—Determination of public interest—Inventory. (1) There shall be a beer and/or wine retailer's license to be designated as a beer and/or wine specialty shop license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores. Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. The annual fee for the beer and/or wine specialty shop license is one hundred dollars for each store. The sale of any container holding four gallons or more must comply with RCW 66.28.200 and 66.28.220.

(2) Licensees under this section may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section are subject to RCW 66.28.305 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, or distributor of liquor.

(3) Upon approval by the board, the beer and/or wine specialty shop licensee that exceeds fifty percent beer and/or wine sales may also receive an endorsement to permit the sale of beer to a purchaser in a sanitary container brought to the premises by the purchaser, or provided by the licensee or manufacturer, and fill at the tap by the licensee at the time of sale. If the beer and/or wine specialty shop licensee does not exceed fifty percent beer and/or wine sales, the board may waive the fifty percent beer and/or wine sale criteria if the beer and/or wine specialty shop maintains alcohol inventory that exceeds fifteen thousand dollars.

(4) The board shall issue a restricted beer and/or wine specialty shop license, authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(5) Licensees holding a beer and/or wine specialty shop license must maintain a minimum three thousand dollar wholesale inventory of beer, strong beer, and/or wine.

(6) The board may adopt rules to implement this section.

(7) Any endorsement issued pursuant to this section may be issued to a qualified combination spirits, beer, and wine licensee in accordance with RCW 66.24.035.

(8)(a) A beer and/or wine specialty shop licensee that also holds a spirits retail license under RCW 66.24.630 may, upon board approval and pursuant to board rules, transition to a combination spirits, beer, and wine license pursuant to RCW 66.24.035.

(b) An applicant that would qualify for a beer and/or wine specialty shop license under this section and a spirits retail license under RCW 66.24.630 may apply for a single license pursuant to RCW 66.24.035 instead of applying for a beer and/or wine specialty shop license under this section in addition to a spirits retail license under RCW 66.24.630. [2017 c 96 § 3. Prior: 2011 c 195 § 4; 2011 c 119 § 204; (2009 c 507 § 6 expired July 1, 2011); 2009 c 373 § 6; 2003 c 167 § 9; 1997 c 321 § 23.]

Expiration date—2009 c 507: See note following RCW 66.24.320.

Additional notes found at www.leg.wa.gov

66.24.630 Spirits retail license. (1) There is a spirits retail license to: Sell spirits in original containers to consumers for consumption off the licensed premises and to permit holders; sell spirits in original containers to retailers licensed to sell spirits for consumption on the premises, for resale at their licensed premises according to the terms of their licenses, although no single sale may exceed twenty-four liters, unless the sale is by a licensee that was a contract liquor store manager of a contract liquor store at the location of its spirits retail licensed premises from which it makes such sales; and export spirits.

(2) For the purposes of this title, a spirits retail license is a retail license, and a sale by a spirits retailer is a retail sale only if not for resale. Nothing in this title authorizes sales by on-sale licensees to other retail licensees. The board must establish by rule an obligation of on-sale spirits retailers to:

(a) Maintain a schedule by stock-keeping unit of all their purchases of spirits from spirits retail licensees, including combination spirits, beer, and wine licensees holding a license issued pursuant to RCW 66.24.035, indicating the identity of the seller and the quantities purchased; and

(b) Provide, not more frequently than quarterly, a report for each scheduled item containing the identity of the purchasing on-premises licensee and the quantities of that scheduled item purchased since any preceding report to:

(i) A distributor authorized by the distiller to distribute a scheduled item in the on-sale licensee's geographic area; or

(ii) A distiller acting as distributor of the scheduled item in the area.

(3)(a) Except as otherwise provided in (c) of this subsection, the board may issue spirits retail licenses only for premises comprising at least ten thousand square feet of fully enclosed retail space within a single structure, including storerooms and other interior auxiliary areas but excluding covered or fenced exterior areas, whether or not attached to the structure, and only to applicants that the board determines will maintain systems for inventory management, employee

training, employee supervision, and physical security of the product substantially as effective as those of stores currently operated by the board with respect to preventing sales to or pilferage by underage or inebriated persons.

(b) License issuances and renewals are subject to RCW 66.24.010 and the regulations adopted thereunder, including without limitation rights of cities, towns, county legislative authorities, the public, churches, schools, and public institutions to object to or prevent issuance of local liquor licenses. However, existing grocery premises licensed to sell beer and/or wine are deemed to be premises "now licensed" under RCW 66.24.010(9)(a) for the purpose of processing applications for spirits retail licenses.

(c) The board may not deny a spirits retail license to an otherwise qualified contract liquor store at its contract location or to the holder of former state liquor store operating rights sold at auction under RCW 66.24.620 on the grounds of location, nature, or size of the premises to be licensed. The board may not deny a spirits retail license to applicants that are not contract liquor stores or operating rights holders on the grounds of the size of the premises to be licensed, if such applicant is otherwise qualified and the board determines that:

(i) There is no spirits retail license holder in the trade area that the applicant proposes to serve;

(ii) The applicant meets, or upon licensure will meet, the operational requirements established by the board by rule; and

(iii) The licensee has not committed more than one public safety violation within the three years preceding application.

(d) A retailer authorized to sell spirits for consumption on or off the licensed premises may accept delivery of spirits at its licensed premises, at another licensed premises as designated by the retailer, or at one or more warehouse facilities registered with the board, which facilities may also warehouse and distribute nonliquor items, and from which the retailer may deliver to its own licensed premises and, pursuant to sales permitted under subsection (1) of this section:

(i) To other retailer premises licensed to sell spirits for consumption on the licensed premises;

(ii) To other registered facilities; or

(iii) To lawful purchasers outside the state. The facilities may be registered and utilized by associations, cooperatives, or comparable groups of retailers, including at least one retailer licensed to sell spirits.

(e) For purposes of negotiating volume discounts, a group of individual retailers authorized to sell spirits for consumption off the licensed premises may accept delivery of spirits at their individual licensed premises or at any one of the individual licensee's premises, or at a warehouse facility registered with the board.

(4)(a) Except as otherwise provided in RCW 66.24.632, or in (b) of this subsection, each spirits retail licensee must pay to the board, for deposit into the liquor revolving fund, a license issuance fee equivalent to seventeen percent of all spirits sales revenues under the license, exclusive of taxes collected by the licensee and of sales of items on which a license fee payable under this section has otherwise been incurred. The board must establish rules setting forth the timing of such payments and reporting of sales dollar volume by

the licensee, with payments required quarterly in arrears. The first payment is due October 1, 2012.

(b) This subsection (4) does not apply to craft distilleries.

(5) In addition to the payment required under subsection (4) of this section, each licensee must pay an annual license renewal fee of one hundred sixty-six dollars. The board must periodically review and adjust the renewal fee as may be required to maintain it as comparable to annual license renewal fees for licenses to sell beer and wine not for consumption on the licensed premises. If required by law at the time, any increase of the annual renewal fee becomes effective only upon ratification by the legislature.

(6) As a condition to receiving and renewing a spirits retail license the licensee must provide training as prescribed by the board by rule for individuals who sell spirits or who manage others who sell spirits regarding compliance with laws and regulations regarding sale of spirits, including without limitation the prohibitions against sale of spirits to individuals who are underage or visibly intoxicated. The training must be provided before the individual first engages in the sale of spirits and must be renewed at least every five years. The licensee must maintain records documenting the nature and frequency of the training provided. An employee training program is presumptively sufficient if it incorporates a "responsible vendor program" adopted by the board.

(7) The maximum penalties prescribed by the board in WAC 314-29-020 through 314-29-040 relating to fines and suspensions are doubled for violations relating to the sale of spirits by spirits retail licensees.

(8)(a) The board must adopt regulations concerning the adoption and administration of a compliance training program for spirits retail licensees, to be known as a "responsible vendor program," to reduce underage drinking, encourage licensees to adopt specific best practices to prevent sales to minors, and provide licensees with an incentive to give their employees ongoing training in responsible alcohol sales and service.

(b) Licensees who join the responsible vendor program under this section and maintain all of the program's requirements are not subject to the doubling of penalties provided in this section for a single violation in any period of twelve calendar months.

(c) The responsible vendor program must be free, voluntary, and self-monitoring.

(d) To participate in the responsible vendor program, licensees must submit an application form to the board. If the application establishes that the licensee meets the qualifications to join the program, the board must send the licensee a membership certificate.

(e) A licensee participating in the responsible vendor program must at a minimum:

(i) Provide ongoing training to employees;

(ii) Accept only certain forms of identification for alcohol sales;

(iii) Adopt policies on alcohol sales and checking identification;

(iv) Post specific signs in the business; and

(v) Keep records verifying compliance with the program's requirements.

(f)(i) A spirits retail licensee that also holds a grocery store license under RCW 66.24.360 or a beer and/or wine

specialty shop license under RCW 66.24.371 may, upon board approval and pursuant to board rules, transition to a combination spirits, beer, and wine license pursuant to RCW 66.24.035.

(ii) An applicant that would qualify for a spirits retail license under this section and that qualifies for a combination spirits, beer, and wine license pursuant to RCW 66.24.035 may apply for a license pursuant to RCW 66.24.035 instead of applying for a spirits retail license under this section. [2017 c 96 § 4; 2015 c 186 § 1; 2012 2nd sp.s. c 6 § 401; 2012 c 2 § 103 (Initiative Measure No. 1183, approved November 8, 2011).]

Reviser's note: Pursuant to RCW 43.135.041, chapter 6, Laws of 2012 2nd special session was subject to an advisory vote of the people in the November 2012 general election on whether the tax increase in such session law should be maintained or repealed. The advisory vote was in favor of repeal.

Existing rights, liabilities, or obligations—Effective dates—Contingent effective dates—2012 2nd sp.s. c 6: See notes following RCW 82.04.29005.

Finding—Application—Rules—Effective date—Contingent effective date—2012 c 2 (Initiative Measure No. 1183): See notes following RCW 66.24.620.

66.24.632 Spirits retail licensee—Combination spirits, beer, and wine licensee—License issuance fee exemption. (1) Beginning June 30, 2013, the license issuance fee under RCW 66.24.630(4) does not apply to a spirits retail licensee or combination spirits, beer, and wine licensee that was a contract liquor store manager with respect to sales of spirits in original containers from the location of its spirits retail licensed premises to retailers licensed to sell spirits for consumption on the premises for resale at their licensed premises.

(2) Beginning June 30, 2013, the license issuance fee under RCW 66.24.630(4) does not apply to a spirits retail licensee or combination spirits, beer, and wine licensee that was a former state store auction buyer, with respect to sales of spirits in original containers from the location of its spirits retail licensed premises to retailers licensed to sell spirits for consumption on the premises for resale at their licensed premises.

(3) The exemptions created in this section attach to any successor, by purchase or otherwise, to the spirits retail license or combination beer and wine license, except that an exemption does not attach to any such successor that owns, directly or indirectly, any interest in a spirits retail license that is not derived directly from a former contract liquor store manager or a former state store auction buyer. [2017 c 96 § 6; 2013 2nd sp.s. c 12 § 3.]

Effective date—2013 2nd sp.s. c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 30, 2013]." [2013 2nd sp.s. c 12 § 4.]

66.24.640 Licensed distillers operating as spirits retailers/distributors. Any distiller licensed under this title may act as a retailer and/or distributor to retailers selling for consumption on or off the licensed premises of spirits of its own production, and any manufacturer, importer, or bottler of spirits holding a certificate of approval may act as a distributor of spirits it is entitled to import into the state under such certificate. The board must by rule provide for issuance of

certificates of approval to spirits suppliers. An industry member operating as a distributor and/or retailer under this section must comply with the applicable laws and rules relating to distributors and/or retailers, except that an industry member operating as a distributor under this section may maintain a warehouse off the distillery premises for the distribution of bottled spirits of its own production to spirits retailers within the state and for bottled foreign-made spirits that such distillery is entitled to distribute under this title, if the warehouse is within the United States and has been approved by the board. [2017 c 229 § 2; 2012 c 2 § 206 (Initiative Measure No. 1183, approved November 8, 2011).]

Finding—Application—Rules—Effective date—Contingent effective date—2012 c 2 (Initiative Measure No. 1183): See notes following RCW 66.24.620.

66.24.695 Bonded and nonbonded spirits warehouse license. (1) There shall be a bonded and nonbonded spirits warehouse license for spirits warehouses that authorizes the storage and handling of bonded bulk spirits and, to the extent allowed under federal law and under rules adopted by the board, bottled spirits and the storage of tax-paid spirits not in bond. Under this license a licensee may maintain a warehouse for the storage of federally authorized spirits off the premises of a distillery for distillers qualified under RCW 66.24.140, 66.24.145, or 66.24.150, or entities otherwise licensed and permitted in this state, or bulk spirits transferred in bond from out-of-state distilleries and, to the extent allowed by federal law and under rules adopted by the board, bottled spirits, if the storage of the federally authorized spirits transferred into the state is for storage only and not for processing or bottling in the bonded spirits warehouse. A licensee must designate clearly in its license application to the board the sections of the warehouse that are bonded and nonbonded with a physical separation between such spaces. Only spirits in bond may be stored in the bonded sections of the warehouse and only spirits that have been removed from bond tax-paid may be stored in nonbonded areas of the warehouse. The proprietor of the warehouse must maintain a plan for tracking spirits being stored in the warehouse to ensure compliance with relevant bonding and tax obligations.

(2) The board must adopt similar qualifications for a spirits warehouse licensed under this section as required for obtaining a distillery license as specified in RCW 66.24.140, 66.24.145, and 66.24.150. A licensee must be a sole proprietor, a partnership, a limited liability company, a corporation, a port authority, a city, a county, or any other public entity or subdivision of the state that elects to license a bonded spirits warehouse as an agricultural or economic development activity. One or more domestic distilleries or manufacturers may operate as a partnership, corporation, business co-op, cotenant, or agricultural co-op for the purpose of obtaining a bonded and nonbonded spirits warehouse license or storing spirits in the facility under a common management and oversight agreement free of charge or for a fee.

(3) Spirits in bond may be removed from a bonded spirits warehouse for the purpose of being:

(a) Exported from the state;

(b) Returned to a distillery or spirits warehouse licensed under this section; or

(c) Transferred to a distillery, spirits warehouse licensed under this section, or a licensed bottling or packaging facility.

(4) Bottled spirits that are being removed from a spirits warehouse licensed under this section tax-paid may be:

- (a) Transferred back to the distillery that produced them;
- (b) Shipped to a licensed Washington spirits distributor;
- (c) Shipped to a licensed Washington spirits retailer;
- (d) Exported from the state; or
- (e) Removed for direct shipping to a consumer pursuant to RCW 66.20.410.

(5) The ownership and operation of a spirits warehouse facility licensed under this section may be by a person or entity other than those described in this section acting in a commercial warehouse management position under contract for such licensed persons or entities on their behalf.

(6) A license applicant must demonstrate the right to have warehoused spirits under a valid federal permit held by a licensee who maintains ownership and title to the spirits while they are in storage in the spirits warehouse licensed under this section. The fee for this license is one hundred dollars per year.

(7) The board must adopt rules requiring a spirits warehouse licensed under this section to be physically secure, zoned for the intended use, and physically separated from any other use.

(8) The operator or licensee operating a spirits warehouse licensed under this section must submit to the board a monthly report of movement of spirits to and from a warehouse licensed under this section in a form prescribed by the board. The board may adopt other necessary procedures by which such warehouses are licensed and regulated.

(9) The board may require a single annual permit valid for a full calendar year issued to each licensee or entity warehousing spirits under this section that allows for unlimited transfers to and from such warehouse within that year. The fee for this permit is one hundred dollars per year.

(10) Handling of bottled spirits that have been removed from bond tax-paid and that reside in the spirits warehouse licensed under this section includes packaging and repackaging services; bottle labeling services; creating baskets or variety packs that may or may not include nonspirits products; and picking, packing, and shipping spirits orders on behalf of a licensed distillery direct to consumers in accordance with RCW 66.20.410. A distillery contracting with the operator of a spirits warehouse licensed under this section for handling bottled spirits must comply with all applicable state and federal laws and is responsible for financial transactions in direct to consumer shipping activities. [2017 c 229 § 1.]

Chapter 66.28 RCW

MISCELLANEOUS REGULATORY PROVISIONS

Sections

66.28.185	Sales of wine and spirits to the employees of licensed wine and spirits distributors.
66.28.270	Cash payments—Electronic funds transfers.
66.28.360	Cider sales—Container brought by purchaser.

66.28.185 Sales of wine and spirits to the employees of licensed wine and spirits distributors. (1) A person holding a spirits distributor license issued pursuant to RCW

66.24.055 may sell spirits directly to bona fide, full-time employees, subject to the following requirements:

(a) No spirits may be sold under this section unless they are in such condition that they cannot reasonably be sold in the normal course of business, such as, for example, because of damage to the labels on individual bottles;

(b) No spirits may be sold under this section for less than the spirits distributor licensee's cost of acquisition;

(c) All sales of spirits made under this section are subject to the license issuance fee established by RCW 66.24.630(4) and the taxes imposed on a retail sale under RCW 82.08.150;

(d) No spirits may be sold under this section to a person who has been employed by the spirits distributor licensee for less than ninety days at the time of the sale or who is under the age of twenty-one;

(e) No person purchasing spirits under this section may sell such spirits by the drink or otherwise to a third person, or otherwise dispose of all or any part of such spirits in any manner or for any purpose other than personal use; and

(f) No spirits may be sold under this section by a person holding any license other than a spirits distributor license, whether or not the license held by such person permits the sale of spirits to consumers.

(2) A person holding a wine distributor license issued pursuant to RCW 66.24.200 may sell wine directly to bona fide, full-time employees, subject to the following requirements:

(a) No wine may be sold under this section unless it is in such condition that it cannot reasonably be sold in the normal course of business, such as, for example, because of damage to the labels on individual bottles;

(b) No wine may be sold under this section for less than the wine distributor licensee's cost of acquisition;

(c) All sales of wine made under this section are subject to the same taxes that would be applicable if the sale were made to a consumer;

(d) No wine may be sold under this section to a person who has been employed by the wine distributor licensee for less than ninety days at the time of the sale or who is under the age of twenty-one;

(e) No person purchasing wine under this section may sell such wine by the glass or otherwise to a third person, or otherwise dispose of all or any part of such wine in any manner or for any purpose other than personal use; and

(f) No wine may be sold under this section by a person holding any license other than a wine distributor license, whether or not the license held by such person permits the sale of wine to consumers. [2017 c 160 § 1.]

66.28.270 Cash payments—Electronic funds transfers. (1) Nothing in this chapter prohibits the use of checks, credit or debit cards, prepaid accounts, electronic funds transfers, and other similar methods as approved by the board, as cash payments for purposes of this title. Electronic funds transfers must be: (a) Voluntary; (b) conducted pursuant to a prior written agreement of the parties that includes a provision that the purchase be initiated by an irrevocable invoice or sale order before the time of delivery; (c) initiated by the retailer, manufacturer, importer, or distributor no later than the first business day following delivery; and (d) completed

as promptly as is reasonably practical, and in no event later than five business days following delivery.

(2) Any person licensed as a distributor of beer, spirits, and/or wine may pass credit card fees on to a purchaser licensed to sell beer, spirits, and/or wine for consumption on the licensed premises, if the decision to use a credit card is entirely voluntary and the credit card fees are set out as a separate line item on the distributor's invoice. Nothing in this section requires the use of a credit card by any licensee. In establishing the fees to be passed on as authorized in this section a distributor must use the same method of determining or calculating such fees for all customers who elect to use a credit card when accepting delivery of beer, spirits and/or wine. The aggregate of all credit card fees passed on to customers by a distributor as authorized under this section during a calendar month, or such longer time as may be established by the board, may not exceed the aggregate of the fees imposed on that distributor by credit card issuers during that same time period. [2017 c 190 § 1; 2009 c 373 § 11.]

66.28.360 Cider sales—Container brought by purchaser. (1) Licensees holding either a license that permits or a license with an endorsement that permits the sale of beer to a purchaser in a container supplied by the licensee or a sanitary container brought to the premises by the purchaser and filled at the tap at the time of sale may similarly sell cider and mead to a purchaser in such a container, subject to subsection (2) of this section. Nothing in this section relieves a licensee from complying with federal law.

(2) Any mead sold pursuant to this section must have an alcohol content equal to or less than fourteen percent alcohol by volume.

(3) For purposes of this section, "cider" has the same meaning as in RCW 66.24.210(6) and "mead" has the same meaning as in RCW 66.24.215. [2017 c 8 § 2; 2014 c 54 § 1.]

Title 67

SPORTS AND RECREATION—CONVENTION FACILITIES

Chapters

67.08 Boxing, martial arts, and wrestling.

Chapter 67.08 RCW

BOXING, MARTIAL ARTS, AND WRESTLING

Sections

67.08.002	Definitions.
67.08.100	Annual licenses—Fees—Qualifications—Revocation—Exceptions.
67.08.160	Ambulance or paramedical unit at location.
67.08.330	Theatrical wrestling schools—Wrestling shows.

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

(1) "Amateur" means a person who has never received nor competed for any purse or other article of value, either for expenses of training or for participating in an event, other than a prize of fifty dollars in value or less.

(2) "Amateur event" means an event in which all the participants are "amateurs" and which is registered and sanctioned by:

- (a) United States Amateur Boxing, Inc.;
- (b) Washington Interscholastic Activities Association;
- (c) National Collegiate Athletic Association;
- (d) Amateur Athletic Union;
- (e) Golden Gloves of America;
- (f) Any similar organization nationally recognized by the United States Olympic Committee;
- (g) United Full Contact Federation and any similar amateur sanctioning organization, recognized and licensed by the department as exclusively or primarily dedicated to advancing the sport of amateur mixed martial arts, as those sports are defined in this section and where the promoter, officials, and participants are licensed under this chapter; or

(h) Local affiliate of any organization identified in (a) through (f) of this subsection.

(3) "Boxing" means the sport of attack and defense which uses the contestants fists and where the contestants compete with the intent not to injure or disable an opponent, but to win by decision, knockout, or technical knockout, but does not include professional wrestling.

(4) "Chiropractor" means a person licensed under chapter 18.25 RCW as a doctor of chiropractic or under the laws of any jurisdiction in which that person resides.

(5) "Combative fighting," also known as "toughman fighting," "toughwoman fighting," "badman fighting," and "so you think you're tough," means a contest, exhibition, or match between contestants who use their fists, with or without gloves, or their feet, or both, and which allows contestants that are not trained in the sport to compete and the object is to defeat an opponent or to win by decision, knockout, or technical knockout.

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

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

(8) "Elimination tournament" means any contest in which contestants compete in a series of matches until not more than one contestant remains in any weight category. The term does not include any event that complies with the provisions of RCW 67.08.015(2).

(9) "Event" includes, but is not limited to, a professional boxing, wrestling, or martial arts or an amateur mixed martial arts contest, sparring, fisticuffs, match, show, or exhibition.

(10) "Event chiropractor" means the chiropractor licensed under RCW 67.08.100 and who is operating in a supporting role to the event physician who is responsible for the activities described in RCW 67.08.090.

(11) "Event physician" means the physician licensed under RCW 67.08.100 and who is responsible for the activities described in RCW 67.08.090.

(12) "Face value" means the dollar value of a ticket or order, which value must reflect the dollar amount that the customer is required to pay or, for a complimentary ticket, would have been required to pay to purchase a ticket with equivalent seating priority, in order to view the event.

(13) "Gross receipts" means the amount received from the face value of all tickets sold and complimentary tickets redeemed.

(14) "Kickboxing" means a type of boxing in which blows are delivered with the fist and any part of the leg below the hip, including the foot and where the contestants compete with the intent not to injure or disable an opponent, but to win by decision, knockout, or technical knockout.

(15) "Martial arts" means a type of boxing including sumo, judo, karate, kung fu, tae kwon do, pankration, muay thai, or other forms of full-contact martial arts or self-defense conducted on a full-contact basis where weapons are not used and the participants utilize kicks, punches, blows, or other techniques with the intent not to injure or disable an opponent, but to defeat an opponent or win by decision, knockout, technical knockout, or submission.

(16) "Mixed martial arts" means a combative sporting contest, the rules of which allow two mixed martial arts competitors to attempt to achieve dominance over one another by utilizing a variety of techniques including, but not limited to, striking, grappling, and the application of submission holds. "Mixed martial arts" is a type of martial arts that does not include martial arts such as tae kwon do, karate, judo, sumo, jujitsu, and kung fu.

(17) "No holds barred fighting," also known as "frontier fighting" and "extreme fighting," means a contest, exhibition, or match between contestants where any part of the contestant's body may be used as a weapon or any means of fighting may be used with the specific purpose to intentionally injure the other contestant in such a manner that they may not defend themselves and a winner is declared. Rules may or may not be used.

(18) "Physician" means a person licensed under chapter 18.57, 18.36A, or 18.71 RCW as a physician or a person holding an osteopathic or allopathic physician license under the laws of any jurisdiction in which the person resides.

(19) "Professional" means a person who has received or competed for any purse or other articles of value greater than fifty dollars, either for the expenses of training or for participating in an event.

(20) "Promoter" means a person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, stages, holds, or gives an event in this state involving a professional boxing, martial arts, or wrestling event or amateur mixed martial arts event, or shows or causes to be shown in this state a closed circuit telecast of a match involving professional or amateur mixed martial arts participants whether or not the telecast originates in this state.

(21) "Theatrical wrestling" means the performance of sports entertainment in which:

(a) Two or more participants work together in a performance of mock combat in a ring for the purpose of entertainment; and

(b)(i) The outcome is predetermined; and/or

(ii) The participants do not necessarily strive to win.

(22) "Theatrical wrestling school" means a facility that offers training in theatrical wrestling.

(23) "Training facility" means a facility that:

(a) Offers training in one or more of the mixed martial arts; and

(b) Holds exhibitions in which all the participants are amateurs and where an admission fee is charged.

(24) "Wrestling exhibition," "wrestling show," or "wrestling event" means a demonstration of theatrical wrestling presented to the public. [2017 c 46 § 1. Prior: 2012 c 99 § 1; 2004 c 149 § 1; 2002 c 147 § 1; 1999 c 282 § 2; 1997 c 205 § 1; 1993 c 278 § 8; 1989 c 127 § 1.]

Findings—2017 c 46: See note following RCW 67.08.330.

Additional notes found at www.leg.wa.gov

67.08.100 Annual licenses—Fees—Qualifications—Revocation—Exceptions. (1) The department upon receipt of a properly completed application and payment of a nonrefundable fee, may grant an annual license to an applicant for the following: (a) Promoter; (b) manager; (c) boxer; (d) second; (e) wrestling participant; (f) inspector; (g) judge; (h) timekeeper; (i) announcer; (j) event physician; (k) event chiropractor; (l) referee; (m) matchmaker; (n) kickboxer; (o) martial arts participant; (p) training facility; (q) amateur sanctioning organization; and (r) theatrical wrestling school.

(2) The application for the following types of licenses includes a physical performed by a physician, as defined in RCW 67.08.002, which was performed by the physician with a time period preceding the application as specified by rule: (a) Boxer; (b) wrestling participant; (c) kickboxer; (d) martial arts participant; and (e) referee.

(3) An applicant for the following types of licenses for the sports of boxing, kickboxing, and martial arts must provide annual proof of certification as having adequate experience, skill, and training from an organization approved by the department, including, but not limited to, the association of boxing commissions, the international boxing federation, the international boxing organization, the Washington state association of professional ring officials, the world boxing association, the world boxing council, or the world boxing organization for kickboxing and martial arts officials: (a) Judge; (b) referee; (c) inspector; (d) timekeeper; or (e) other officials deemed necessary by the department.

(4) No person may participate or serve in any of the above capacities unless licensed as provided in this chapter.

(5) The referees, judges, timekeepers, event physicians, chiropractors, and inspectors for any boxing, kickboxing, or martial arts event must be designated by the department from among licensed officials.

(6) The referee for any wrestling event must be provided by the promoter and must be licensed as a wrestling participant.

(7) The department must immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate is automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(8) The director must suspend the license of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the

person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license may not be reissued until the person provides the director a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for licensure during the suspension, reinstatement is automatic upon receipt of the notice and payment of any reinstatement fee the director may impose.

(9) A person may not be issued a license if the person has an unpaid fine outstanding to the department.

(10) A person may not be issued a license unless they are at least eighteen years of age.

(11)(a) This section does not apply to:

(i) Contestants or participants in events at which only amateurs are engaged in contests;

(ii) Wrestling participants engaged in training or a wrestling show at a theatrical wrestling school; and

(iii) Fraternal organizations and/or veterans' organizations chartered by congress or the defense department, excluding any recognized amateur sanctioning body recognized by the department.

(b) Upon request of the department, a promoter, contestant, or participant must provide sufficient information to reasonably determine whether this chapter applies. [2017 c 46 § 3; 2012 c 99 § 6. Prior: 2002 c 147 § 3; 2002 c 86 § 309; 2001 c 246 § 1; 1999 c 282 § 7; prior: 1997 c 205 § 10; 1997 c 58 § 864; 1993 c 278 § 20; 1989 c 127 § 10; 1959 c 305 § 6; 1933 c 184 § 16; RRS § 8276-16. FORMER PART OF SECTION: 1933 c 184 § 20, part; RRS § 8276-20, part, now codified in RCW 67.08.025.]

Findings—2017 c 46: See note following RCW 67.08.330.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

67.08.160 Ambulance or paramedical unit at location. (1) A promoter must have an ambulance or paramedical unit present at the event location. [2017 c 46 § 4; 1999 c 282 § 10; 1989 c 127 § 2.]

Findings—2017 c 46: See note following RCW 67.08.330.

67.08.330 Theatrical wrestling schools—Wrestling shows. (1) A theatrical wrestling school may hold wrestling shows at the school facility for training purposes and may charge an admission fee without a promoter license.

(2) A theatrical wrestling school may hold a limited number of wrestling shows for training purposes off the school premises and may charge a fee without a promoter license.

(3) Any wrestling show presented by a theatrical wrestling school must feature at least eighty percent amateur participants and must have an ambulance or paramedical unit or an emergency medical technician licensed under RCW 18.73.081 at the event location.

(4) The department must promulgate rules to implement this section. [2017 c 46 § 2.]

Findings—2017 c 46: "(1) The legislature finds that theatrical wrestling, like circus arts, is an art form that promotes the economic and cultural vitality of the state of Washington. Theatrical wrestling has a long history in Washington, and while large-scale professional wrestling companies have dominated the field in recent years, independent theatrical wrestling again has the potential to thrive in this state. Legislation and rule making should reflect the economic and cultural potential of theatrical wrestling.

(2) The legislature further finds that theatrical wrestling can be safe for both participants and spectators. Safety requirements aimed at more dangerous and daring forms of sport and entertainment are unduly burdensome on theatrical wrestling promoters. Additionally, it is important to adequately train the next generation of theatrical wrestlers to foster safety and skill in theatrical wrestling.

(3) The legislature finds that a theatrical wrestling school license will create opportunity for a new generation of luchadores, faces, and heels to create economic and cultural vitality in Washington. Finally, reducing the medical personnel requirement for wrestling shows will preserve the safety of participants and spectators while fostering the ability of independent theatrical wrestling promoters to build an audience in Washington and create new artistic opportunities for Washington residents.

(4) The legislature finds that Washington is ready to rumble." [2017 c 46 § 5.]

Title 68

CEMETERIES, MORGUES, AND HUMAN REMAINS

Chapters

68.50 Human remains.

68.54 Annexation and merger of cemetery districts.

68.60 Abandoned and historic cemeteries and historic graves.

Chapter 68.50 RCW HUMAN REMAINS

Sections

68.50.040 Deceased's effects to be listed.

68.50.040 Deceased's effects to be listed. All jewelry, moneys, papers, and other personal property of the deceased shall be inventoried immediately upon being taken into custody by the coroner or his or her appointees. The original of such lists shall be certified to by the coroner and kept as a public record at the county morgue. [2017 c 37 § 5; 2012 c 117 § 314; 1917 c 90 § 6; RRS § 6045. Formerly RCW 68.08.040.]

Chapter 68.54 RCW ANNEXATION AND MERGER OF CEMETERY DISTRICTS

Sections

68.54.130 Withdrawal of territory.

68.54.130 Withdrawal of territory. Territory within a cemetery district may be withdrawn from the district in the same manner provided by law for withdrawal of territory from water-sewer districts, as provided by chapter 57.28 RCW, except that no territory within a cemetery district may be withdrawn unless a special election is held and a majority of votes cast by qualified voters residing within the district approve the withdrawal. Agreement between the district board of commissioners and the county legislative authority on the findings of fact under RCW 57.28.080 does not preclude an election under this section. [2017 c 62 § 1.]

Chapter 68.60 RCW

ABANDONED AND HISTORIC CEMETERIES AND HISTORIC GRAVES

Sections

68.60.010	Definitions.
68.60.070	Abandoned cemetery burials—Records—Endowment care funds.

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

(1) "Abandoned cemetery" means a burial ground of the human dead:

(a) For which the county assessor can find no record of an owner;

(b) Where the last known owner is deceased and lawful conveyance of the title has not been made; or

(c) In which the cemetery company, cemetery association, corporation, or other organization that formed for the purposes of burying the human dead:

(i) Has disbanded, has been administratively dissolved by the secretary of state, or has otherwise ceased to exist, and for which title has not been conveyed; or

(ii) No longer has a valid certificate of authority as determined by the funeral and cemetery board.

(2) "Cemetery" has the same meaning as provided in RCW 68.04.040.

(3) "Historic grave" means a grave or graves that were placed outside a cemetery dedicated pursuant to this chapter and to chapter 68.24 RCW, prior to June 7, 1990, except Indian graves and burial cairns protected under chapter 27.44 RCW.

(4) "Historical cemetery" means any burial site or grounds which contain within them human remains buried prior to November 11, 1889; except that (a) cemeteries holding a valid certificate of authority to operate granted under RCW 68.05.115 and 68.05.215, (b) cemeteries owned or operated by any recognized religious denomination that qualifies for an exemption from real estate taxation under RCW 84.36.020 on any of its churches or the ground upon which any of its churches are or will be built, and (c) cemeteries controlled or operated by a coroner, county, city, town, or cemetery district shall not be considered historical cemeteries. [2017 c 208 § 1; 1990 c 92 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

68.60.070 Abandoned cemetery burials—Records—Endowment care funds. (1)(a) The funeral and cemetery board must consult with the department of archaeology and historic preservation to promulgate rules in order to allow for burials in abandoned cemeteries.

(b) The landowner of an abandoned cemetery must allow for burials in accordance with rules promulgated by the funeral and cemetery board.

(2) Any records, maps, or other documents associated with an abandoned cemetery must be transferred to the state archives at the time the cemetery becomes an abandoned cemetery.

(3) Any endowment care funds held by the cemetery authority at the time such cemetery becomes an abandoned

cemetery must be transferred to the department of archaeology and historic preservation. [2017 c 208 § 2.]

Title 69

FOOD, DRUGS, COSMETICS, AND POISONS

Chapters

- 69.04** Intrastate commerce in food, drugs, and cosmetics.
69.07 Washington food processing act.
69.50 Uniform controlled substances act.
69.51A Medical cannabis.
69.70 Access to prescription drugs.
69.77 Investigational drugs, biological products, and devices.

Chapter 69.04 RCW

INTRASTATE COMMERCE IN FOOD, DRUGS, AND COSMETICS

Sections

69.04.570	Introduction of new drug.
69.04.933	Fish and shellfish labeling—Identification of species—Exceptions—Penalty. (<i>Effective January 1, 2018.</i>)
69.04.934	Salmon labeling—Identification as farm-raised or commercially caught—Exceptions—Penalty. (<i>Effective January 1, 2018.</i>)

69.04.570 Introduction of new drug. Except as permitted by chapter 69.77 RCW, no person shall introduce or deliver for introduction into intrastate commerce any new drug which is subject to section 505 of the federal act unless an application with respect to such drug has become effective thereunder. No person shall introduce or deliver for introduction into intrastate commerce any new drug which is not subject to section 505 of the federal act, unless (1) it has been found, by appropriate tests, that such drug is not unsafe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; and (2) an application has been filed under this section of this chapter with respect to such drug: PROVIDED, That the requirement of subsection (2) of this section shall not apply to any drug introduced into intrastate commerce at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act: PROVIDED FURTHER, That if the director finds that the requirement of subsection (2) of this section as applied to any drug or class of drugs, is not necessary for the protection of the public health, he or she shall promulgate regulations of exemption accordingly. [2017 c 212 § 10; 2012 c 117 § 338; 1945 c 257 § 75; Rem. Supp. 1945 § 6163-124.]

69.04.933 Fish and shellfish labeling—Identification of species—Exceptions—Penalty. (*Effective January 1, 2018.*) (1) It is unlawful to knowingly sell or offer for sale at wholesale or retail any fresh, frozen, or processed fish or shellfish without identifying for the buyer at the point of sale the species of fish or shellfish by its common name, such that the buyer can make an informed purchasing decision for his or her protection, health, and safety.

(2) It is unlawful to knowingly label or offer for sale any fish designated as halibut, with or without additional descrip-

tive words, unless the fish product is *Hippoglossus hippoglossus* or *Hippoglossus stenolepis*.

(3) This section does not apply to salmon that is minced, pulverized, coated with batter, or breaded.

(4) This section does not apply to a commercial fisher properly licensed under chapter 77.65 or 77.70 RCW and engaged in sales of fish to a wholesale fish buyer.

(5) A violation of this section constitutes misbranding under RCW 69.04.938 and is punishable as a misdemeanor, gross misdemeanor, or felony depending on the fair market value of the fish or shellfish involved in the violation.

(6)(a) The common names for salmon species are as listed in RCW 69.04.932.

(b) The common names for all other fish and shellfish are the common names for fish and shellfish species as defined by rule of the department of fish and wildlife. If the common name for a species is not defined by rule of the department of fish and wildlife, then the common name is the acceptable market name or common name as provided in the United States food and drug administration's publication "Seafood list - FDA's guide to acceptable market names for seafood sold in interstate commerce," as the publication existed on July 28, 2013.

(7) For the purposes of this section, "processed" means fish or shellfish processed by heat for human consumption, such as fish or shellfish that is kippered, smoked, boiled, canned, cleaned, portioned, or prepared for sale or attempted sale for human consumption.

(8) Nothing in this section precludes using additional descriptive language or trade names to describe fish or shellfish as long as the labeling requirements in this section are met. [2017 3rd sp.s. c 8 § 6; 2013 c 290 § 4; 1993 c 282 § 3.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Finding—1993 c 282: See note following RCW 69.04.932.

69.04.934 Salmon labeling—Identification as farm-raised or commercially caught—Exceptions—Penalty. (Effective January 1, 2018.) (1) It is unlawful to knowingly sell or offer for sale at wholesale or retail any fresh, frozen, or processed salmon without identifying private sector cultured aquatic salmon or salmon products as farm-raised salmon, or identifying commercially caught salmon or salmon products as commercially caught salmon.

(2) Identification of the products under subsection (1) of this section must be made to the buyer at the point of sale such that the buyer can make an informed purchasing decision for his or her protection, health, and safety.

(3) A violation of this section constitutes misbranding under RCW 69.04.938 and is punishable as a misdemeanor, gross misdemeanor, or felony depending on the fair market value of the fish or shellfish involved in the violation.

(4) This section does not apply to salmon that is minced, pulverized, coated with batter, or breaded.

(5) This section does not apply to a commercial fisher properly licensed under chapter 77.65 or 77.70 RCW and lawfully engaged in the sale of fish to a wholesale fish buyer.

(6) Nothing in this section precludes using additional descriptive language or trade names to describe fish or shellfish as long as the labeling requirements of this section are

met. [2017 3rd sp.s. c 8 § 7; 2013 c 290 § 5; 2003 c 39 § 29; 1993 c 282 § 4.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Finding—1993 c 282: See note following RCW 69.04.932.

Chapter 69.07 RCW

WASHINGTON FOOD PROCESSING ACT

Sections

69.07.010	Definitions.
69.07.020	Enforcement—Rules—Adoption—Contents—Standards.
69.07.100	Establishments exempted from provisions of chapter. (<i>Effective January 1, 2018.</i>)
69.07.200	Marijuana-infused edible processing. (<i>Effective April 1, 2018.</i>)
69.07.210	Marijuana-infused edible processing—Implementation.

69.07.010 Definitions. For the purposes of this chapter:

- (1) "Board" means the state liquor and cannabis board;
- (2) "Department" means the department of agriculture of the state of Washington;
- (3) "Director" means the director of the department;
- (4) "Food" means any substance used for food or drink by any person, including ice, bottled water, and any ingredient used for components of any such substance regardless of the quantity of such component;
- (5) "Food processing" means the handling or processing of any food in any manner in preparation for sale for human consumption: PROVIDED, That it shall not include fresh fruit or vegetables merely washed or trimmed while being prepared or packaged for sale in their natural state;
- (6) "Food processing plant" includes but is not limited to any premises, plant, establishment, building, room, area, facilities and the appurtenances thereto, in whole or in part, where food is prepared, handled or processed in any manner for distribution or sale for resale by retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer: PROVIDED, That, as set forth herein, establishments processing foods in any manner for resale shall be considered a food processing plant as to such processing;
- (7) "Food service establishment" shall mean any fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, night club, roadside stand, industrial-feeding establishment, retail grocery, retail food market, retail meat market, retail bakery, private, public, or nonprofit organization routinely serving food, catering kitchen, commissary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

For the purpose of this chapter any custom cannery or processing plant where raw food products, food, or food products are processed for the owner thereof, or the food processing facilities are made available to the owners or persons in control of raw food products or food or food products for processing in any manner, shall be considered to be food processing plants;

- (8) "Marijuana" has the definition in RCW 69.50.101;

(9) "Marijuana-infused edible" has the same meaning as "marijuana-infused products" as defined in RCW 69.50.101, but limited to products intended for oral consumption;

(10) "Marijuana-infused edible processing" means processing, packaging, or making marijuana-infused edibles using marijuana, marijuana extract, or marijuana concentrates as an ingredient. The term does not include preparation of marijuana as an ingredient including, but not limited to, processing marijuana extracts or marijuana concentrates;

(11) "Marijuana processor" has the definition in RCW 69.50.101;

(12) "Person" means an individual, partnership, corporation, or association;

(13) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media. [2017 c 138 § 1; 1992 c 34 § 3; 1991 c 137 § 2; 1967 ex.s. c 121 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

69.07.020 Enforcement—Rules—Adoption—Contents—Standards. (1) The department shall enforce and carry out the provisions of this chapter, and may adopt the necessary rules to carry out its purposes.

(2) Such rules may include:

(a) Standards for temperature controls in the storage of foods, so as to provide proper refrigeration.

(b) Standards for temperatures at which low acid foods must be processed and the length of time such temperatures must be applied and at what pressure in the processing of such low acid foods.

(c) Standards and types of recording devices that must be used in providing records of the processing of low acid foods, and how they shall be made available to the department of agriculture for inspection.

(d) Requirements for the keeping of records of the temperatures, times and pressures at which foods were processed, or for the temperatures at which refrigerated products were stored by the licensee and the furnishing of such records to the department.

(e) Standards that must be used to establish the temperature and purity of water used in the processing of foods.

(3) The department may adopt rules specific to marijuana-infused edibles. Such rules must be written and interpreted to be consistent with rules adopted by the board and the department of health. [2017 c 138 § 2; 1969 c 68 § 1; 1967 ex.s. c 121 § 2.]

69.07.100 Establishments exempted from provisions of chapter. (Effective January 1, 2018.) (1) The provisions of this chapter shall not apply to establishments issued a permit or licensed under the provisions of:

(a) Chapter 69.25 RCW, the Washington wholesome eggs and egg products act;

(b) Chapter 69.28 RCW, the Washington state honey act;

(c) Chapter 16.49 RCW, the meat inspection act;

(d) Chapter 77.65 RCW, relating to the limited fish seller endorsement for wild-caught seafood;

(e) Chapter 69.22 RCW, relating to cottage food operations;

(f) Title 66 RCW, relating to alcoholic beverage control; and

(g) Chapter 69.30 RCW, the sanitary control of shellfish act.

(2) If any such establishments process foods not specifically provided for in the above entitled acts, the establishments are subject to the provisions of this chapter.

(3) The provisions of this chapter do not apply to restaurants or food service establishments. [2017 3rd sp.s. c 8 § 55; 2011 c 281 § 13; 2002 c 301 § 10; 1995 c 374 § 22; 1988 c 5 § 4; 1983 c 3 § 168; 1967 ex.s. c 121 § 10.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

Additional notes found at www.leg.wa.gov

69.07.200 Marijuana-infused edible processing. (Effective April 1, 2018.) (1) In addition to the requirements administered by the board under chapter 69.50 RCW, the department shall regulate marijuana-infused edible processing the same as other food processing under this chapter, except:

(a) The department shall not consider foods containing marijuana to be adulterated when produced in compliance with chapter 69.50 RCW and the rules adopted by the board;

(b) Initial issuance and renewal for an annual marijuana-infused edible endorsement in lieu of a food processing license under RCW 69.07.040 must be made through the business licensing system under chapter 19.02 RCW;

(c) Renewal of the endorsement must coincide with renewal of the endorsement holder's marijuana processor license;

(d) The department shall adopt a penalty schedule specific to marijuana processors, which may have values equivalent to the penalty schedule adopted by the board. Such penalties are in addition to any penalties imposed under the penalty schedule adopted by the board; and

(e) The department shall notify the board of violations by marijuana processors under this chapter.

(2) A marijuana processor that processes, packages, or makes marijuana-infused edibles must obtain an annual marijuana-infused edible endorsement, as provided in this subsection (2).

(a) The marijuana processor must apply for issuance and renewal for the endorsement from the department through the business licensing system under chapter 19.02 RCW.

(b) The marijuana processor must have a valid marijuana processor license before submitting an application for initial endorsement. The application and initial endorsement fees total eight hundred ninety-five dollars. Applicants for endorsement otherwise must meet the same requirements as applicants for a food processing license under this chapter including, but not limited to, successful completion of inspection by the department.

(c) Annual renewal of the endorsement must coincide with renewal of the endorsement holder's marijuana processor license. The endorsement renewal fee is eight hundred ninety-five dollars.

(d) A marijuana processor must obtain a separate endorsement for each location at which the marijuana processor intends to process marijuana-infused edibles. Premises used for marijuana-infused edible processing may not be used for processing food that does not use marijuana as an ingredient, with the exception of edibles produced solely for tasting samples or internal product testing.

(3) The department may deny, suspend, or revoke a marijuana-infused edible endorsement on the same grounds as the department may deny, suspend, or revoke a food processor's license under this chapter.

(4) Information about processors otherwise exempt from public inspection and copying under chapter 42.56 RCW is also exempt from public inspection and copying if submitted to or used by the department. [2017 c 138 § 4.]

Effective date—2017 c 138 § 4: "Section 4 of this act takes effect April 1, 2018." [2017 c 138 § 6.]

69.07.210 Marijuana-infused edible processing—Implementation. The department of agriculture, state liquor and cannabis board, and department of revenue shall take the necessary steps to ensure that RCW 69.07.200 is implemented on its effective date. [2017 c 138 § 5.]

Chapter 69.50 RCW

UNIFORM CONTROLLED SUBSTANCES ACT

Sections

69.50.101	Definitions.
69.50.1011	Repealed.
69.50.325	Marijuana producer's license, marijuana processor's license, marijuana retailer's license. (<i>Effective until July 1, 2018.</i>)
69.50.325	Marijuana producer's license, marijuana processor's license, marijuana retailer's license. (<i>Effective July 1, 2018.</i>)
69.50.331	Application for license.
69.50.357	Retail outlets—Rules.
69.50.366	Marijuana producers, employees—Certain acts not criminal or civil offenses.
69.50.369	Marijuana producers, processors, researchers, retailers—Advertisements—Rules—Penalty.
69.50.372	Marijuana research license. (<i>Effective until July 1, 2018.</i>)
69.50.372	Marijuana research license. (<i>Effective July 1, 2018.</i>)
69.50.382	Common carriers—Transportation or delivery of marijuana, useable marijuana, marijuana concentrates, immature plants or clones, marijuana seeds, and marijuana-infused products—Employees prohibited from carrying or using firearm during such services—Exceptions—Use of state ferry routes.
69.50.395	Licensed marijuana businesses may enter into certain licensing agreements or consulting contracts—Disclosure to state liquor and cannabis board.
69.50.4013	Possession of controlled substance—Penalty—Possession of useable marijuana, marijuana concentrates, or marijuana-infused products—Delivery.
69.50.540	Dedicated marijuana account—Appropriations.
69.50.545	Decodified.
69.50.606	Decodified.
69.50.607	Decodified.

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

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

- (1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or
- (2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "CBD concentration" has the meaning provided in RCW 69.51A.010.

(d) "Commission" means the pharmacy quality assurance commission.

(e) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or commission rules, but does not include industrial hemp as defined in RCW 15.120.010.

(f)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal food, drug, and cosmetic act, 21 U.S.C. Sec. 355, or chapter 69.77 RCW to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(g) "Deliver" or "delivery" means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

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

(i) "Designated provider" has the meaning provided in RCW 69.51A.010.

(j) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(k) "Dispenser" means a practitioner who dispenses.

(l) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(m) "Distributor" means a person who distributes.

(n) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation,

treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(o) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(p) "Electronic communication of prescription information" means the transmission of a prescription or refill authorization for a drug of a practitioner using computer systems. The term does not include a prescription or refill authorization verbally transmitted by telephone nor a facsimile manually signed by the practitioner.

(q) "Immature plant or clone" means a plant or clone that has no flowers, is less than twelve inches in height, and is less than twelve inches in diameter.

(r) "Immediate precursor" means a substance:

(1) that the commissioner has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(s) "Isomer" means an optical isomer, but in subsection (ee)(5) of this section, RCW 69.50.204(a) (12) and (34), and 69.50.206(b)(4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

(t) "Lot" means a definite quantity of marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product identified by a lot number, every portion or package of which is uniform within recognized tolerances for the factors that appear in the labeling.

(u) "Lot number" must identify the licensee by business or trade name and Washington state unified business identifier number, and the date of harvest or processing for each lot of marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product.

(v) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of,

or as an incident to, research, teaching, or chemical analysis and not for sale.

(w) "Marijuana" or "marihuana" means all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include:

(1) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination; or

(2) Industrial hemp as defined in RCW 15.120.010.

(x) "Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* and having a THC concentration greater than ten percent.

(y) "Marijuana processor" means a person licensed by the state liquor and cannabis board to process marijuana into marijuana concentrates, useable marijuana, and marijuana-infused products, package and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, useable marijuana, and marijuana-infused products at wholesale to marijuana retailers.

(z) "Marijuana producer" means a person licensed by the state liquor and cannabis board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

(aa) "Marijuana products" means useable marijuana, marijuana concentrates, and marijuana-infused products as defined in this section.

(bb) "Marijuana researcher" means a person licensed by the state liquor and cannabis board to produce, process, and possess marijuana for the purposes of conducting research on marijuana and marijuana-derived drug products.

(cc) "Marijuana retailer" means a person licensed by the state liquor and cannabis board to sell marijuana concentrates, useable marijuana, and marijuana-infused products in a retail outlet.

(dd) "Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, are derived from marijuana as defined in subsection (w) of this section, and have a THC concentration no greater than ten percent. The term "marijuana-infused products" does not include either useable marijuana or marijuana concentrates.

(ee) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in subparagraphs (1) through (7).

(ff) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

(gg) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(hh) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(ii) "Plant" has the meaning provided in RCW 69.51A.010.

(jj) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(kk) "Practitioner" means:

(1) A physician under chapter 18.71 RCW; a physician assistant under chapter 18.71A RCW; an osteopathic physician and surgeon under chapter 18.57 RCW; an osteopathic physician assistant under chapter 18.57A RCW who is licensed under RCW 18.57A.020 subject to any limitations in RCW 18.57A.040; an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010 subject to any limitations in RCW 18.53.010; a dentist under chapter 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW; a veterinarian under chapter 18.92 RCW; a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW who is licensed under RCW 18.36A.030 subject to any limitations in RCW 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled

substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, a licensed physician assistant or a licensed osteopathic physician assistant specifically approved to prescribe controlled substances by his or her state's medical quality assurance commission or equivalent and his or her supervising physician, an advanced registered nurse practitioner licensed to prescribe controlled substances, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(ll) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(mm) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(nn) "Qualifying patient" has the meaning provided in RCW 69.51A.010.

(oo) "Recognition card" has the meaning provided in RCW 69.51A.010.

(pp) "Retail outlet" means a location licensed by the state liquor and cannabis board for the retail sale of marijuana concentrates, useable marijuana, and marijuana-infused products.

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

(rr) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(ss) "THC concentration" means percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

(tt) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

(uu) "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include either marijuana-infused products or marijuana concentrates. [2017 c 317 § 5; 2017 c 212 § 11; 2017 c 153 § 1. Prior: 2015 2nd sp.s. c 4 § 901; 2015 c 70 § 4; 2014 c 192 § 1; prior: 2013 c 276 § 2; 2013 c 116 § 1; 2013 c 12 § 2; prior: 2013 c 3 § 2 (Initiative Measure No. 502, approved November 6, 2012); 2012 c 8 § 1; 2010 c 177 § 1; 2003 c 142 § 4; 1998 c 222 § 3; 1996 c 178 § 18; 1994 sp.s. c 9 § 739; 1993 c 187 § 1; prior: 1990 c 248 § 1; 1990 c 219 § 3; 1990 c 196 § 8; 1989 1st ex.s. c 9 § 429; 1987 c 144 § 2; 1986 c 124 § 1; 1984 c 153 § 18; 1980 c 71 § 2; 1973 2nd ex.s. c 38 § 1; 1971 ex.s. c 308 § 69.50.101.]

Reviser's note: This section was amended by 2017 c 153 § 1, 2017 c 212 § 11, and by 2017 c 317 § 5, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW 69.50.334.

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW 66.08.012.

Effective date—2013 c 116: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 1, 2013]." [2013 c 116 § 2.]

Intent—2013 c 3 (Initiative Measure No. 502): "The people intend to stop treating adult marijuana use as a crime and try a new approach that:

(1) Allows law enforcement resources to be focused on violent and property crimes;

(2) Generates new state and local tax revenue for education, health care, research, and substance abuse prevention; and

(3) Takes marijuana out of the hands of illegal drug organizations and brings it under a tightly regulated, state-licensed system similar to that for controlling hard alcohol.

This measure authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and add a new threshold for driving under the influence of marijuana." [2013 c 3 § 1 (Initiative Measure No. 502, approved November 6, 2012).]

Finding—1990 c 219: See note following RCW 69.41.030.

Additional notes found at www.leg.wa.gov

69.50.1011 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

69.50.325 Marijuana producer's license, marijuana processor's license, marijuana retailer's license. (Effective until July 1, 2018.) (1) There shall be a marijuana producer's license regulated by the state liquor and cannabis board and subject to annual renewal. The licensee is authorized to produce: (a) Marijuana for sale at wholesale to marijuana processors and other marijuana producers; (b) immature plants or clones and seeds for sale to cooperatives as described under RCW 69.51A.250; and (c) immature plants or clones and seeds for sale to qualifying patients and designated providers as provided under RCW 69.51A.310. The production, possession, delivery, distribution, and sale of marijuana in accordance with the provisions of this chapter and the rules adopted to implement and enforce it, by a validly licensed marijuana producer, shall not be a criminal or civil offense under Washington state law. Every marijuana producer's license shall be issued in the name of the applicant, shall specify the location at which the marijuana producer intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana producer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana producer's license shall be one thousand dollars. A separate license shall be required for each location at which a marijuana producer intends to produce marijuana.

(2) There shall be a marijuana processor's license to process, package, and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers, regulated by the state liquor and cannabis board and subject to

annual renewal. The processing, packaging, possession, delivery, distribution, and sale of marijuana, useable marijuana, marijuana-infused products, and marijuana concentrates in accordance with the provisions of this chapter and chapter 69.51A RCW and the rules adopted to implement and enforce these chapters, by a validly licensed marijuana processor, shall not be a criminal or civil offense under Washington state law. Every marijuana processor's license shall be issued in the name of the applicant, shall specify the location at which the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana processor's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana processor's license shall be one thousand dollars. A separate license shall be required for each location at which a marijuana processor intends to process marijuana.

(3)(a) There shall be a marijuana retailer's license to sell marijuana concentrates, useable marijuana, and marijuana-infused products at retail in retail outlets, regulated by the state liquor and cannabis board and subject to annual renewal. The possession, delivery, distribution, and sale of marijuana concentrates, useable marijuana, and marijuana-infused products in accordance with the provisions of this chapter and the rules adopted to implement and enforce it, by a validly licensed marijuana retailer, shall not be a criminal or civil offense under Washington state law. Every marijuana retailer's license shall be issued in the name of the applicant, shall specify the location of the retail outlet the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana retailer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana retailer's license shall be one thousand dollars. A separate license shall be required for each location at which a marijuana retailer intends to sell marijuana concentrates, useable marijuana, and marijuana-infused products.

(b) An individual retail licensee and all other persons or entities with a financial or other ownership interest in the business operating under the license are limited, in the aggregate, to holding a collective total of not more than five retail marijuana licenses.

(c)(i) A marijuana retailer's license is subject to forfeiture in accordance with rules adopted by the state liquor and cannabis board pursuant to this section.

(ii) The state liquor and cannabis board shall adopt rules to establish a license forfeiture process for a licensed marijuana retailer that is not fully operational and open to the public within a specified period from the date of license issuance, as established by the state liquor and cannabis board, subject to the following restrictions:

(A) No marijuana retailer's license may be subject to forfeiture within the first nine months of license issuance; and

(B) The state liquor and cannabis board must require license forfeiture on or before twenty-four calendar months of license issuance if a marijuana retailer is not fully operational and open to the public, unless the board determines that circumstances out of the licensee's control are preventing the licensee from becoming fully operational and that, in the

board's discretion, the circumstances warrant extending the forfeiture period beyond twenty-four calendar months.

(iii) The state liquor and cannabis board has discretion in adopting rules under this subsection (3)(c).

(iv) This subsection (3)(c) applies to marijuana retailer's licenses issued before and after July 23, 2017. However, no license of a marijuana retailer that otherwise meets the conditions for license forfeiture established pursuant to this subsection (3)(c) may be subject to forfeiture within the first nine calendar months of July 23, 2017.

(v) The state liquor and cannabis board may not require license forfeiture if the licensee has been incapable of opening a fully operational retail marijuana business due to actions by the city, town, or county with jurisdiction over the licensee that include any of the following:

(A) The adoption of a ban or moratorium that prohibits the opening of a retail marijuana business; or

(B) The adoption of an ordinance or regulation related to zoning, business licensing, land use, or other regulatory measure that has the effect of preventing a licensee from receiving an occupancy permit from the jurisdiction or which otherwise prevents a licensed marijuana retailer from becoming operational. [2017 c 317 § 1; 2016 c 170 § 1; 2015 c 70 § 5; 2014 c 192 § 2; 2013 c 3 § 4 (Initiative Measure No. 502, approved November 6, 2012).]

Findings—2017 c 317: "The legislature finds that protecting the state's children, youth, and young adults under the legal age to purchase and consume marijuana, by establishing limited restrictions on the advertising of marijuana and marijuana products, is necessary to assist the state's efforts to discourage and prevent underage consumption and the potential risks associated with underage consumption. The legislature finds that these restrictions assist the state in maintaining a strong and effective regulatory and enforcement system as specified by the federal government. The legislature finds this act leaves ample opportunities for licensed marijuana businesses to market their products to those who are of legal age to purchase them, without infringing on the free speech rights of business owners. Finally, the legislature finds that the state has a substantial and compelling interest in enacting this act aimed at protecting Washington's children, youth, and young adults." [2017 c 317 § 12.]

Application—2017 c 317: "This act applies prospectively only and not retroactively. It applies only to causes of action that arise (if change is substantive) or that are commenced (if change is procedural) on or after July 23, 2017." [2017 c 317 § 25.]

Effective date—2016 c 170: "This act takes effect July 1, 2016." [2016 c 170 § 3.]

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW 66.08.012.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

69.50.325 Marijuana producer's license, marijuana processor's license, marijuana retailer's license. (Effective July 1, 2018.) (1) There shall be a marijuana producer's license regulated by the state liquor and cannabis board and subject to annual renewal. The licensee is authorized to produce: (a) Marijuana for sale at wholesale to marijuana processors and other marijuana producers; (b) immature plants or clones and seeds for sale to cooperatives as described under RCW 69.51A.250; and (c) immature plants or clones and seeds for sale to qualifying patients and designated providers as provided under RCW 69.51A.310. The production, possession, delivery, distribution, and sale of marijuana in accordance with the provisions of this chapter and the rules

adopted to implement and enforce it, by a validly licensed marijuana producer, shall not be a criminal or civil offense under Washington state law. Every marijuana producer's license shall be issued in the name of the applicant, shall specify the location at which the marijuana producer intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana producer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana producer's license shall be one thousand three hundred dollars. A separate license shall be required for each location at which a marijuana producer intends to produce marijuana.

(2) There shall be a marijuana processor's license to process, package, and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers, regulated by the state liquor and cannabis board and subject to annual renewal. The processing, packaging, possession, delivery, distribution, and sale of marijuana, useable marijuana, marijuana-infused products, and marijuana concentrates in accordance with the provisions of this chapter and chapter 69.51A RCW and the rules adopted to implement and enforce these chapters, by a validly licensed marijuana processor, shall not be a criminal or civil offense under Washington state law. Every marijuana processor's license shall be issued in the name of the applicant, shall specify the location at which the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana processor's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana processor's license shall be one thousand three hundred dollars. A separate license shall be required for each location at which a marijuana processor intends to process marijuana.

(3)(a) There shall be a marijuana retailer's license to sell marijuana concentrates, useable marijuana, and marijuana-infused products at retail in retail outlets, regulated by the state liquor and cannabis board and subject to annual renewal. The possession, delivery, distribution, and sale of marijuana concentrates, useable marijuana, and marijuana-infused products in accordance with the provisions of this chapter and the rules adopted to implement and enforce it, by a validly licensed marijuana retailer, shall not be a criminal or civil offense under Washington state law. Every marijuana retailer's license shall be issued in the name of the applicant, shall specify the location of the retail outlet the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana retailer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana retailer's license shall be one thousand three hundred dollars. A separate license shall be required for each location at which a marijuana retailer intends to sell marijuana concentrates, useable marijuana, and marijuana-infused products.

(b) An individual retail licensee and all other persons or entities with a financial or other ownership interest in the business operating under the license are limited, in the aggregate,

gate, to holding a collective total of not more than five retail marijuana licenses.

(c)(i) A marijuana retailer's license is subject to forfeiture in accordance with rules adopted by the state liquor and cannabis board pursuant to this section.

(ii) The state liquor and cannabis board shall adopt rules to establish a license forfeiture process for a licensed marijuana retailer that is not fully operational and open to the public within a specified period from the date of license issuance, as established by the state liquor and cannabis board, subject to the following restrictions:

(A) No marijuana retailer's license may be subject to forfeiture within the first nine months of license issuance; and

(B) The state liquor and cannabis board must require license forfeiture on or before twenty-four calendar months of license issuance if a marijuana retailer is not fully operational and open to the public, unless the board determines that circumstances out of the licensee's control are preventing the licensee from becoming fully operational and that, in the board's discretion, the circumstances warrant extending the forfeiture period beyond twenty-four calendar months.

(iii) The state liquor and cannabis board has discretion in adopting rules under this subsection (3)(c).

(iv) This subsection (3)(c) applies to marijuana retailer's licenses issued before and after July 23, 2017. However, no license of a marijuana retailer that otherwise meets the conditions for license forfeiture established pursuant to this subsection (3)(c) may be subject to forfeiture within the first nine calendar months of July 23, 2017.

(v) The state liquor and cannabis board may not require license forfeiture if the licensee has been incapable of opening a fully operational retail marijuana business due to actions by the city, town, or county with jurisdiction over the licensee that include any of the following:

(A) The adoption of a ban or moratorium that prohibits the opening of a retail marijuana business; or

(B) The adoption of an ordinance or regulation related to zoning, business licensing, land use, or other regulatory measure that has the effect of preventing a licensee from receiving an occupancy permit from the jurisdiction or which otherwise prevents a licensed marijuana retailer from becoming operational. [2017 c 317 § 1; 2017 c 316 § 2; 2016 c 170 § 1; 2015 c 70 § 5; 2014 c 192 § 2; 2013 c 3 § 4 (Initiative Measure No. 502, approved November 6, 2012).]

Reviser's note: This section was amended by 2017 c 316 § 2 and by 2017 c 317 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—2017 c 317: "The legislature finds that protecting the state's children, youth, and young adults under the legal age to purchase and consume marijuana, by establishing limited restrictions on the advertising of marijuana and marijuana products, is necessary to assist the state's efforts to discourage and prevent underage consumption and the potential risks associated with underage consumption. The legislature finds that these restrictions assist the state in maintaining a strong and effective regulatory and enforcement system as specified by the federal government. The legislature finds this act leaves ample opportunities for licensed marijuana businesses to market their products to those who are of legal age to purchase them, without infringing on the free speech rights of business owners. Finally, the legislature finds that the state has a substantial and compelling interest in enacting this act aimed at protecting Washington's children, youth, and young adults." [2017 c 317 § 12.]

Application—2017 c 317: "This act applies prospectively only and not retroactively. It applies only to causes of action that arise (if change is sub-

stantive) or that are commenced (if change is procedural) on or after July 23, 2017." [2017 c 317 § 25.]

Effective date—2017 c 316 §§ 2 and 3: "Sections 2 and 3 of this act take effect July 1, 2018." [2017 c 316 § 4.]

Effective date—2016 c 170: "This act takes effect July 1, 2016." [2016 c 170 § 3.]

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW 66.08.012.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

69.50.331 Application for license. (1) For the purpose of considering any application for a license to produce, process, research, transport, or deliver marijuana, useable marijuana, marijuana concentrates, or marijuana-infused products subject to the regulations established under RCW 69.50.385, or sell marijuana, or for the renewal of a license to produce, process, research, transport, or deliver marijuana, useable marijuana, marijuana concentrates, or marijuana-infused products subject to the regulations established under RCW 69.50.385, or sell marijuana, the state liquor and cannabis board must conduct a comprehensive, fair, and impartial evaluation of the applications timely received.

(a) The state liquor and cannabis board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension, revocation, or renewal or denial thereof, of any license, the state liquor and cannabis board may consider any prior criminal conduct of the applicant including an administrative violation history record with the state liquor and cannabis board and a criminal history record information check. The state liquor and cannabis board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The state liquor and cannabis board must require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation. The provisions of RCW 9.95.240 and of chapter 9.96A RCW do not apply to these cases. Subject to the provisions of this section, the state liquor and cannabis board may, in its discretion, grant or deny the renewal or license applied for. Denial may be based on, without limitation, the existence of chronic illegal activity documented in objections submitted pursuant to subsections (7)(c) and (10) of this section. Authority to approve an uncontested or unopposed license may be granted by the state liquor and cannabis board to any staff member the board designates in writing. Conditions for granting this authority must be adopted by rule.

(b) No license of any kind may be issued to:

(i) A person under the age of twenty-one years;

(ii) A person doing business as a sole proprietor who has not lawfully resided in the state for at least six months prior to applying to receive a license;

(iii) A partnership, employee cooperative, association, nonprofit corporation, or corporation unless formed under the

laws of this state, and unless all of the members thereof are qualified to obtain a license as provided in this section; or

(iv) A person whose place of business is conducted by a manager or agent, unless the manager or agent possesses the same qualifications required of the licensee.

(2)(a) The state liquor and cannabis board may, in its discretion, subject to the provisions of RCW 69.50.334, suspend or cancel any license; and all protections of the licensee from criminal or civil sanctions under state law for producing, processing, researching, or selling marijuana, marijuana concentrates, useable marijuana, or marijuana-infused products thereunder must be suspended or terminated, as the case may be.

(b) The state liquor and cannabis board must immediately suspend the license of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license is automatic upon the state liquor and cannabis board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The state liquor and cannabis board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under rules and regulations the state liquor and cannabis board may adopt.

(d) Witnesses must be allowed fees and mileage each way to and from any inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) In case of disobedience of any person to comply with the order of the state liquor and cannabis board or a subpoena issued by the state liquor and cannabis board, or any of its members, or administrative law judges, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, compels obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(3) Upon receipt of notice of the suspension or cancellation of a license, the licensee must forthwith deliver up the license to the state liquor and cannabis board. Where the license has been suspended only, the state liquor and cannabis board must return the license to the licensee at the expiration or termination of the period of suspension. The state liquor and cannabis board must notify all other licensees in the county where the subject licensee has its premises of the suspension or cancellation of the license; and no other licensee or employee of another licensee may allow or cause any marijuana, marijuana concentrates, useable marijuana, or marijuana-infused products to be delivered to or for any person at the premises of the subject licensee.

(4) Every license issued under this chapter is subject to all conditions and restrictions imposed by this chapter or by rules adopted by the state liquor and cannabis board to implement and enforce this chapter. All conditions and restrictions imposed by the state liquor and cannabis board in the issuance of an individual license must be listed on the face of the individual license along with the trade name, address, and expiration date.

(5) Every licensee must post and keep posted its license, or licenses, in a conspicuous place on the premises.

(6) No licensee may employ any person under the age of twenty-one years.

(7)(a) Before the state liquor and cannabis board issues a new or renewed license to an applicant it must give notice of the application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns, or to the tribal government if the application is for a license within Indian country, or to the port authority if the application for a license is located on property owned by a port authority.

(b) The incorporated city or town through the official or employee selected by it, the county legislative authority or the official or employee selected by it, the tribal government, or port authority has the right to file with the state liquor and cannabis board within twenty days after the date of transmittal of the notice for applications, or at least thirty days prior to the expiration date for renewals, written objections against the applicant or against the premises for which the new or renewed license is asked. The state liquor and cannabis board may extend the time period for submitting written objections upon request from the authority notified by the state liquor and cannabis board.

(c) The written objections must include a statement of all facts upon which the objections are based, and in case written objections are filed, the city or town or county legislative authority may request, and the state liquor and cannabis board may in its discretion hold, a hearing subject to the applicable provisions of Title 34 RCW. If the state liquor and cannabis board makes an initial decision to deny a license or renewal based on the written objections of an incorporated city or town or county legislative authority, the applicant may request a hearing subject to the applicable provisions of Title 34 RCW. If a hearing is held at the request of the applicant, state liquor and cannabis board representatives must present and defend the state liquor and cannabis board's initial decision to deny a license or renewal.

(d) Upon the granting of a license under this title the state liquor and cannabis board must send written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns.

(8)(a) Except as provided in (b) through (d) of this subsection, the state liquor and cannabis board may not issue a license for any premises within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any

game arcade admission to which is not restricted to persons aged twenty-one years or older.

(b) A city, county, or town may permit the licensing of premises within one thousand feet but not less than one hundred feet of the facilities described in (a) of this subsection, except elementary schools, secondary schools, and playgrounds, by enacting an ordinance authorizing such distance reduction, provided that such distance reduction will not negatively impact the jurisdiction's civil regulatory enforcement, criminal law enforcement interests, public safety, or public health.

(c) A city, county, or town may permit the licensing of research premises allowed under RCW 69.50.372 within one thousand feet but not less than one hundred feet of the facilities described in (a) of this subsection by enacting an ordinance authorizing such distance reduction, provided that the ordinance will not negatively impact the jurisdiction's civil regulatory enforcement, criminal law enforcement, public safety, or public health.

(d) The state liquor and cannabis board may license premises located in compliance with the distance requirements set in an ordinance adopted under (b) or (c) of this subsection. Before issuing or renewing a research license for premises within one thousand feet but not less than one hundred feet of an elementary school, secondary school, or playground in compliance with an ordinance passed pursuant to (c) of this subsection, the board must ensure that the facility:

(i) Meets a security standard exceeding that which applies to marijuana producer, processor, or retailer licensees;

(ii) Is inaccessible to the public and no part of the operation of the facility is in view of the general public; and

(iii) Bears no advertising or signage indicating that it is a marijuana research facility.

(e) The state liquor and cannabis board may not issue a license for any premises within Indian country, as defined in 18 U.S.C. Sec. 1151, including any fee patent lands within the exterior boundaries of a reservation, without the consent of the federally recognized tribe associated with the reservation or Indian country.

(9) A city, town, or county may adopt an ordinance prohibiting a marijuana producer or marijuana processor from operating or locating a business within areas zoned primarily for residential use or rural use with a minimum lot size of five acres or smaller.

(10) In determining whether to grant or deny a license or renewal of any license, the state liquor and cannabis board must give substantial weight to objections from an incorporated city or town or county legislative authority based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. "Chronic illegal activity" means (a) a pervasive pattern of activity that threatens the public health, safety, and welfare of the city, town, or county including, but not limited to, open container violations, assaults, disturbances, disorderly conduct, or other criminal law violations, or as documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar records of a law enforcement agency for the city, town, county, or

any other municipal corporation or any state agency; or (b) an unreasonably high number of citations for violations of RCW 46.61.502 associated with the applicant's or licensee's operation of any licensed premises as indicated by the reported statements given to law enforcement upon arrest. [2017 c 317 § 2; 2015 2nd sp.s. c 4 § 301; 2015 c 70 § 6; 2013 c 3 § 6 (Initiative Measure No. 502, approved November 6, 2012).]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW 69.50.334.

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW 66.08.012.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

69.50.357 Retail outlets—Rules. (1)(a) Retail outlets may not sell products or services other than marijuana concentrates, useable marijuana, marijuana-infused products, or paraphernalia intended for the storage or use of marijuana concentrates, useable marijuana, or marijuana-infused products.

(b)(i) Retail outlets may receive lockable boxes, intended for the secure storage of marijuana products and paraphernalia, and related literature as a donation from another person or entity, that is not a marijuana producer, processor, or retailer, for donation to their customers.

(ii) Retail outlets may donate the lockable boxes and provide the related literature to any person eligible to purchase marijuana products under subsection (2) of this section. Retail outlets may not use the donation of lockable boxes or literature as an incentive or as a condition of a recipient's purchase of a marijuana product or paraphernalia.

(iii) Retail outlets may also purchase and sell lockable boxes, provided that the sales price is not less than the cost of acquisition.

(2) Licensed marijuana retailers may not employ persons under twenty-one years of age or allow persons under twenty-one years of age to enter or remain on the premises of a retail outlet. However, qualifying patients between eighteen and twenty-one years of age with a recognition card may enter and remain on the premises of a retail outlet holding a medical marijuana endorsement and may purchase products for their personal medical use. Qualifying patients who are under the age of eighteen with a recognition card and who accompany their designated providers may enter and remain on the premises of a retail outlet holding a medical marijuana endorsement, but may not purchase products for their personal medical use.

(3)(a) Licensed marijuana retailers must ensure that all employees are trained on the rules adopted to implement this chapter, identification of persons under the age of twenty-one, and other requirements adopted by the state liquor and cannabis board to ensure that persons under the age of twenty-one are not permitted to enter or remain on the premises of a retail outlet.

(b) Licensed marijuana retailers with a medical marijuana endorsement must ensure that all employees are trained on the subjects required by (a) of this subsection as well as identification of authorizations and recognition cards.

Employees must also be trained to permit qualifying patients who hold recognition cards and are between the ages of eighteen and twenty-one to enter the premises and purchase marijuana for their personal medical use and to permit qualifying patients who are under the age of eighteen with a recognition card to enter the premises if accompanied by their designated providers.

(4) Except for the purposes of disposal as authorized by the state liquor and cannabis board, no licensed marijuana retailer or employee of a retail outlet may open or consume, or allow to be opened or consumed, any marijuana concentrates, useable marijuana, or marijuana-infused product on the outlet premises.

(5) The state liquor and cannabis board must fine a licensee one thousand dollars for each violation of any subsection of this section. Fines collected under this section must be deposited into the dedicated marijuana account created under RCW 69.50.530. [2017 c 317 § 13; 2017 c 131 § 1; 2016 c 171 § 1; 2015 2nd sp.s. c 4 § 203; 2015 c 70 § 12; 2014 c 192 § 4; 2013 c 3 § 14 (Initiative Measure No. 502, approved November 6, 2012).]

Reviser's note: This section was amended by 2017 c 131 § 1 and by 2017 c 317 § 13, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

Effective date—2016 c 171: "This act takes effect July 1, 2016." [2016 c 171 § 2.]

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW 69.50.334.

Effective date—2015 c 70 §§ 12, 19, 20, 23-26, 31, 35, 40, and 49: "Sections 12, 19, 20, 23 through 26, 31, 35, 40, and 49 of this act take effect July 1, 2016." [2015 c 70 § 50.]

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW 66.08.012.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

69.50.366 Marijuana producers, employees—Certain acts not criminal or civil offenses. The following acts, when performed by a validly licensed marijuana producer or employee of a validly licensed marijuana producer in compliance with rules adopted by the state liquor and cannabis board to implement and enforce this chapter, do not constitute criminal or civil offenses under Washington state law:

(1) Production or possession of quantities of marijuana that do not exceed the maximum amounts established by the state liquor and cannabis board under RCW 69.50.345(3);

(2) Delivery, distribution, and sale of marijuana to a marijuana processor or another marijuana producer validly licensed under this chapter;

(3) Delivery, distribution, and sale of immature plants or clones and marijuana seeds to a licensed marijuana researcher, and to receive or purchase immature plants or clones and seeds from a licensed marijuana researcher; and

(4) Delivery, distribution, and sale of marijuana or useable marijuana to a federally recognized Indian tribe as permitted under an agreement between the state and the tribe entered into under RCW 43.06.490. [2017 c 317 § 6; 2015 c

207 § 8; 2013 c 3 § 17 (Initiative Measure No. 502, approved November 6, 2012).]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

Intent—Finding—2015 c 207: See note following RCW 43.06.490.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

69.50.369 Marijuana producers, processors, researchers, retailers—Advertisements—Rules—Penalty. (1) No licensed marijuana producer, processor, researcher, or retailer may place or maintain, or cause to be placed or maintained, any sign or other advertisement for a marijuana business or marijuana product, including useable marijuana, marijuana concentrates, or marijuana-infused product, in any form or through any medium whatsoever within one thousand feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older.

(2) Except for the use of billboards as authorized under this section, licensed marijuana retailers may not display any signage outside of the licensed premises, other than two signs identifying the retail outlet by the licensee's business or trade name, stating the location of the business, and identifying the nature of the business. Each sign must be no larger than one thousand six hundred square inches and be permanently affixed to a building or other structure. The location and content of the retail marijuana signs authorized under this subsection are subject to all other requirements and restrictions established in this section for indoor signs, outdoor signs, and other marijuana-related advertising methods.

(3) A marijuana licensee may not utilize transit advertisements for the purpose of advertising its business or product line. "Transit advertisements" means advertising on or within private or public vehicles and all advertisements placed at, on, or within any bus stop, taxi stand, transportation waiting area, train station, airport, or any similar transit-related location.

(4) A marijuana licensee may not engage in advertising or other marketing practice that specifically targets persons residing outside of the state of Washington.

(5) All signs, billboards, or other print advertising for marijuana businesses or marijuana products must contain text stating that marijuana products may be purchased or possessed only by persons twenty-one years of age or older.

(6) A marijuana licensee may not:

(a) Take any action, directly or indirectly, to target youth in the advertising, promotion, or marketing of marijuana and marijuana products, or take any action the primary purpose of which is to initiate, maintain, or increase the incidence of youth use of marijuana or marijuana products;

(b) Use objects such as toys or inflatables, movie or cartoon characters, or any other depiction or image likely to be appealing to youth, where such objects, images, or depictions indicate an intent to cause youth to become interested in the purchase or consumption of marijuana products; or

(c) Use or employ a commercial mascot outside of, and in proximity to, a licensed marijuana business. A "commercial mascot" means live human being, animal, or mechanical

device used for attracting the attention of motorists and passersby so as to make them aware of marijuana products or the presence of a marijuana business. Commercial mascots include, but are not limited to, inflatable tube displays, persons in costume, or wearing, holding, or spinning a sign with a marijuana-related commercial message or image, where the intent is to draw attention to a marijuana business or its products.

(7) A marijuana licensee that engages in outdoor advertising is subject to the advertising requirements and restrictions set forth in this subsection (7) and elsewhere in this chapter.

(a) All outdoor advertising signs, including billboards, are limited to text that identifies the retail outlet by the licensee's business or trade name, states the location of the business, and identifies the type or nature of the business. Such signs may not contain any depictions of marijuana plants, marijuana products, or images that might be appealing to children. The state liquor and cannabis board is granted rule-making authority to regulate the text and images that are permissible on outdoor advertising. Such rule making must be consistent with other administrative rules generally applicable to the advertising of marijuana businesses and products.

(b) Outdoor advertising is prohibited:

(i) On signs and placards in arenas, stadiums, shopping malls, fairs that receive state allocations, farmers markets, and video game arcades, whether any of the foregoing are open air or enclosed, but not including any such sign or placard located in an adult only facility; and

(ii) Billboards that are visible from any street, road, highway, right-of-way, or public parking area are prohibited, except as provided in (c) of this subsection.

(c) Licensed retail outlets may use a billboard or outdoor sign solely for the purpose of identifying the name of the business, the nature of the business, and providing the public with directional information to the licensed retail outlet. Billboard advertising is subject to the same requirements and restrictions as set forth in (a) of this subsection.

(d) Advertising signs within the premises of a retail marijuana business outlet that are visible to the public from outside the premises must meet the signage regulations and requirements applicable to outdoor signs as set forth in this section.

(e) The restrictions and regulations applicable to outdoor advertising under this section are not applicable to:

(i) An advertisement inside a licensed retail establishment that sells marijuana products that is not placed on the inside surface of a window facing outward; or

(ii) An outdoor advertisement at the site of an event to be held at an adult only facility that is placed at such site during the period the facility or enclosed area constitutes an adult only facility, but in no event more than fourteen days before the event, and that does not advertise any marijuana product other than by using a brand name to identify the event.

(8) Merchandising within a retail outlet is not advertising for the purposes of this section.

(9) This section does not apply to a noncommercial message.

(10)(a) The state liquor and cannabis board must:

(i) Adopt rules implementing this section and specifically including provisions regulating the billboards and outdoor signs authorized under this section; and

(ii) Fine a licensee one thousand dollars for each violation of this section until the state liquor and cannabis board adopts rules prescribing penalties for violations of this section. The rules must establish escalating penalties including fines and up to suspension or revocation of a marijuana license for subsequent violations.

(b) Fines collected under this subsection must be deposited into the dedicated marijuana account created under RCW 69.50.530.

(11) A city, town, or county may adopt rules of outdoor advertising by licensed marijuana retailers that are more restrictive than the advertising restrictions imposed under this chapter. Enforcement of restrictions to advertising by a city, town, or county is the responsibility of the city, town, or county. [2017 c 317 § 14; 2015 2nd sp.s. c 4 § 204; 2013 c 3 § 18 (Initiative Measure No. 502, approved November 6, 2012).]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW 69.50.334.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

69.50.372 Marijuana research license. (Effective until July 1, 2018.) (1) A marijuana research license is established that permits a licensee to produce, process, and possess marijuana for the following limited research purposes:

(a) To test chemical potency and composition levels;

(b) To conduct clinical investigations of marijuana-derived drug products;

(c) To conduct research on the efficacy and safety of administering marijuana as part of medical treatment; and

(d) To conduct genomic or agricultural research.

(2) As part of the application process for a marijuana research license, an applicant must submit to the liquor and cannabis board's designated scientific reviewer a description of the research that is intended to be conducted. The liquor and cannabis board must select a scientific reviewer to review an applicant's research project and determine that it meets the requirements of subsection (1) of this section, as well as assess the following:

(a) Project quality, study design, value, or impact;

(b) Whether applicants have the appropriate personnel, expertise, facilities/infrastructure, funding, and human/animal/other federal approvals in place to successfully conduct the project; and

(c) Whether the amount of marijuana to be grown by the applicant is consistent with the project's scope and goals.

If the scientific reviewer determines that the research project does not meet the requirements of subsection (1) of this section, the application must be denied.

(3) A marijuana research licensee may only sell marijuana grown or within its operation to other marijuana research licensees. The liquor and cannabis board may revoke a marijuana research license for violations of this subsection.

(4) A marijuana research licensee may contract with the University of Washington or Washington State University to perform research in conjunction with the university. All research projects, not including those projects conducted pursuant to a contract entered into under RCW 28B.20.502(3), must be approved by the scientific reviewer and meet the requirements of subsection (1) of this section.

(5) In establishing a marijuana research license, the liquor and cannabis board may adopt rules on the following:

(a) Application requirements;

(b) Marijuana research license renewal requirements, including whether additional research projects may be added or considered;

(c) Conditions for license revocation;

(d) Security measures to ensure marijuana is not diverted to purposes other than research;

(e) Amount of plants, useable marijuana, marijuana concentrates, or marijuana-infused products a licensee may have on its premises;

(f) Licensee reporting requirements;

(g) Conditions under which marijuana grown by licensed marijuana producers and other product types from licensed marijuana processors may be donated to marijuana research licensees; and

(h) Additional requirements deemed necessary by the liquor and cannabis board.

(6) The production, processing, possession, delivery, donation, and sale of marijuana, including immature plants or clones and seeds, in accordance with this section, RCW 69.50.366(3), and the rules adopted to implement and enforce this section and RCW 69.50.366(3), by a validly licensed marijuana researcher, shall not be a criminal or civil offense under Washington state law. Every marijuana research license must be issued in the name of the applicant, must specify the location at which the marijuana researcher intends to operate, which must be within the state of Washington, and the holder thereof may not allow any other person to use the license.

(7) The application fee for a marijuana research license is two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana research license is one thousand dollars. The applicant must pay the cost of the review process directly to the scientific reviewer as designated by the liquor and cannabis board.

(8) The scientific reviewer shall review any reports made by marijuana research licensees under liquor and cannabis board rule and provide the liquor and cannabis board with its determination on whether the research project continues to meet research qualifications under this section.

(9) For the purposes of this section, "scientific reviewer" means an organization that convenes or contracts with persons who have the training and experience in research practice and research methodology to determine whether a project meets the criteria for a marijuana research license under this section and to review any reports submitted by marijuana research licensees under liquor and cannabis board rule. "Scientific reviewers" include, but are not limited to, educational institutions, research institutions, peer review bodies, or such other organizations that are focused on science or research in its day-to-day activities. [2017 c 317 § 3; 2016 sp.s. c 9 § 1; 2015 2nd sp.s. c 4 § 1501; 2015 c 71 § 1.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW 69.50.334.

69.50.372 Marijuana research license. (Effective July 1, 2018.) (1) A marijuana research license is established that permits a licensee to produce, process, and possess marijuana for the following limited research purposes:

(a) To test chemical potency and composition levels;

(b) To conduct clinical investigations of marijuana-derived drug products;

(c) To conduct research on the efficacy and safety of administering marijuana as part of medical treatment; and

(d) To conduct genomic or agricultural research.

(2) As part of the application process for a marijuana research license, an applicant must submit to the liquor and cannabis board's designated scientific reviewer a description of the research that is intended to be conducted. The liquor and cannabis board must select a scientific reviewer to review an applicant's research project and determine that it meets the requirements of subsection (1) of this section, as well as assess the following:

(a) Project quality, study design, value, or impact;

(b) Whether applicants have the appropriate personnel, expertise, facilities/infrastructure, funding, and human/animal/other federal approvals in place to successfully conduct the project; and

(c) Whether the amount of marijuana to be grown by the applicant is consistent with the project's scope and goals.

If the scientific reviewer determines that the research project does not meet the requirements of subsection (1) of this section, the application must be denied.

(3) A marijuana research licensee may only sell marijuana grown or within its operation to other marijuana research licensees. The liquor and cannabis board may revoke a marijuana research license for violations of this subsection.

(4) A marijuana research licensee may contract with the University of Washington or Washington State University to perform research in conjunction with the university. All research projects, not including those projects conducted pursuant to a contract entered into under RCW 28B.20.502(3), must be approved by the scientific reviewer and meet the requirements of subsection (1) of this section.

(5) In establishing a marijuana research license, the liquor and cannabis board may adopt rules on the following:

(a) Application requirements;

(b) Marijuana research license renewal requirements, including whether additional research projects may be added or considered;

(c) Conditions for license revocation;

(d) Security measures to ensure marijuana is not diverted to purposes other than research;

(e) Amount of plants, useable marijuana, marijuana concentrates, or marijuana-infused products a licensee may have on its premises;

(f) Licensee reporting requirements;

(g) Conditions under which marijuana grown by licensed marijuana producers and other product types from licensed

marijuana processors may be donated to marijuana research licensees; and

(h) Additional requirements deemed necessary by the liquor and cannabis board.

(6) The production, processing, possession, delivery, donation, and sale of marijuana, including immature plants or clones and seeds, in accordance with this section, RCW 69.50.366(3), and the rules adopted to implement and enforce this section and RCW 69.50.366(3), by a validly licensed marijuana researcher, shall not be a criminal or civil offense under Washington state law. Every marijuana research license must be issued in the name of the applicant, must specify the location at which the marijuana researcher intends to operate, which must be within the state of Washington, and the holder thereof may not allow any other person to use the license.

(7) The application fee for a marijuana research license is two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana research license is one thousand three hundred dollars. The applicant must pay the cost of the review process directly to the scientific reviewer as designated by the liquor and cannabis board.

(8) The scientific reviewer shall review any reports made by marijuana research licensees under liquor and cannabis board rule and provide the liquor and cannabis board with its determination on whether the research project continues to meet research qualifications under this section.

(9) For the purposes of this section, "scientific reviewer" means an organization that convenes or contracts with persons who have the training and experience in research practice and research methodology to determine whether a project meets the criteria for a marijuana research license under this section and to review any reports submitted by marijuana research licensees under liquor and cannabis board rule. "Scientific reviewers" include, but are not limited to, educational institutions, research institutions, peer review bodies, or such other organizations that are focused on science or research in its day-to-day activities. [2017 c 317 § 3; 2017 c 316 § 3; 2016 sp.s. c 9 § 1; 2015 2nd sp.s. c 4 § 1501; 2015 c 71 § 1.]

Reviser's note: This section was amended by 2017 c 316 § 3 and by 2017 c 317 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

Effective date—2017 c 316: See note following RCW 69.50.325.

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW 69.50.334.

69.50.382 Common carriers—Transportation or delivery of marijuana, useable marijuana, marijuana concentrates, immature plants or clones, marijuana seeds, and marijuana-infused products—Employees prohibited from carrying or using firearm during such services—Exceptions—Use of state ferry routes. (1) A licensed marijuana producer, marijuana processor, marijuana researcher, or marijuana retailer, or their employees, in accordance with the requirements of this chapter and the administrative rules adopted thereunder, may use the services of a common carrier subject to regulation under chapters 81.28 and 81.29 RCW and licensed in compliance with the regulations established under RCW 69.50.385, to physically trans-

port or deliver, as authorized under this chapter, marijuana, useable marijuana, marijuana concentrates, immature plants or clones, marijuana seeds, and marijuana-infused products between licensed marijuana businesses located within the state.

(2) An employee of a common carrier engaged in marijuana-related transportation or delivery services authorized under subsection (1) of this section is prohibited from carrying or using a firearm during the course of providing such services, unless:

(a) Pursuant to RCW 69.50.385, the state liquor and cannabis board explicitly authorizes the carrying or use of firearms by such employee while engaged in the transportation or delivery services;

(b) The employee has an armed private security guard license issued pursuant to RCW 18.170.040; and

(c) The employee is in full compliance with the regulations established by the state liquor and cannabis board under RCW 69.50.385.

(3) A common carrier licensed under RCW 69.50.385 may, for the purpose of transporting and delivering marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products, utilize Washington state ferry routes for such transportation and delivery.

(4) The possession of marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products being physically transported or delivered within the state, in amounts not exceeding those that may be established under RCW 69.50.385(3), by a licensed employee of a common carrier when performing the duties authorized under, and in accordance with, this section and RCW 69.50.385, is not a violation of this section, this chapter, or any other provision of Washington state law. [2017 c 317 § 7; 2015 2nd sp.s. c 4 § 501.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW 69.50.334.

69.50.395 Licensed marijuana businesses may enter into certain licensing agreements or consulting contracts—Disclosure to state liquor and cannabis board. (1) A licensed marijuana business may enter into a licensing agreement, or consulting contract, with any individual, partnership, employee cooperative, association, nonprofit corporation, or corporation, for:

(a) Any goods or services that are registered as a trademark under federal law or under chapter 19.77 RCW;

(b) Any unregistered trademark, trade name, or trade dress; or

(c) Any trade secret, technology, or proprietary information used to manufacture a cannabis product or used to provide a service related to a marijuana business.

(2) All agreements or contracts entered into by a licensed marijuana business, as authorized under this section, must be disclosed to the state liquor and cannabis board. [2017 c 317 § 16.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

69.50.4013 Possession of controlled substance—Penalty—Possession of useable marijuana, marijuana concentrates, or marijuana-infused products—Delivery. (1) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.

(2) Except as provided in RCW 69.50.4014, any person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW.

(3)(a) The possession, by a person twenty-one years of age or older, of useable marijuana, marijuana concentrates, or marijuana-infused products in amounts that do not exceed those set forth in RCW 69.50.360(3) is not a violation of this section, this chapter, or any other provision of Washington state law.

(b) The possession of marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products being physically transported or delivered within the state, in amounts not exceeding those that may be established under RCW 69.50.385(3), by a licensed employee of a common carrier when performing the duties authorized in accordance with RCW 69.50.382 and 69.50.385, is not a violation of this section, this chapter, or any other provision of Washington state law.

(4)(a) The delivery by a person twenty-one years of age or older to one or more persons twenty-one years of age or older, during a single twenty-four hour period, for noncommercial purposes and not conditioned upon or done in connection with the provision or receipt of financial consideration, of any of the following marijuana products, is not a violation of this section, this chapter, or any other provisions of Washington state law:

- (i) One-half ounce of useable marijuana;
 - (ii) Eight ounces of marijuana-infused product in solid form;
 - (iii) Thirty-six ounces of marijuana-infused product in liquid form; or
 - (iv) Three and one-half grams of marijuana concentrates.
- (b) The act of delivering marijuana or a marijuana product as authorized under this subsection (4) must meet one of the following requirements:

- (i) The delivery must be done in a location outside of the view of general public and in a nonpublic place; or
- (ii) The marijuana or marijuana product must be in the original packaging as purchased from the marijuana retailer.

(5) No person under twenty-one years of age may possess, manufacture, sell, or distribute marijuana, marijuana-infused products, or marijuana concentrates, regardless of THC concentration. This does not include qualifying patients with a valid authorization.

(6) The possession by a qualifying patient or designated provider of marijuana concentrates, useable marijuana, marijuana-infused products, or plants in accordance with chapter 69.51A RCW is not a violation of this section, this chapter, or any other provision of Washington state law. [2017 c 317 § 15; 2015 2nd sp.s. c 4 § 503; 2015 c 70 § 14; 2013 c 3 § 20 (Initiative Measure No. 502, approved November 6, 2012); 2003 c 53 § 334.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW 69.50.334.

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW 66.08.012.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

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

69.50.540 Dedicated marijuana account—Appropriations. The legislature must annually appropriate moneys in the dedicated marijuana account created in RCW 69.50.530 as follows:

(1) For the purposes listed in this subsection (1), the legislature must appropriate to the respective agencies amounts sufficient to make the following expenditures on a quarterly basis:

(a) Beginning July 1, 2015, one hundred twenty-five thousand dollars to the department of social and health services to design and administer the Washington state healthy youth survey, analyze the collected data, and produce reports, in collaboration with the office of the superintendent of public instruction, department of health, department of commerce, family policy council, and state liquor and cannabis board. The survey must be conducted at least every two years and include questions regarding, but not necessarily limited to, academic achievement, age at time of substance use initiation, antisocial behavior of friends, attitudes toward antisocial behavior, attitudes toward substance use, laws and community norms regarding antisocial behavior, family conflict, family management, parental attitudes toward substance use, peer rewarding of antisocial behavior, perceived risk of substance use, and rebelliousness. Funds disbursed under this subsection may be used to expand administration of the healthy youth survey to student populations attending institutions of higher education in Washington;

(b) Beginning July 1, 2015, fifty thousand dollars to the department of social and health services for the purpose of contracting with the Washington state institute for public policy to conduct the cost-benefit evaluation and produce the reports described in RCW 69.50.550. This appropriation ends after production of the final report required by RCW 69.50.550;

(c) Beginning July 1, 2015, five thousand dollars to the University of Washington alcohol and drug abuse institute for the creation, maintenance, and timely updating of web-based public education materials providing medically and scientifically accurate information about the health and safety risks posed by marijuana use;

(d)(i) An amount not less than one million two hundred fifty thousand dollars to the state liquor and cannabis board for administration of this chapter as appropriated in the omnibus appropriations act; and

(ii) Three hundred fifty-one thousand seven hundred fifty dollars for fiscal year 2018 and three hundred fifty-one thousand seven hundred fifty dollars for fiscal year 2019 to the health professions account established under RCW 43.70.320 for the development and administration of the marijuana authorization database by the department of health. It

is the intent of the legislature that this policy will be continued in the 2019-2021 fiscal biennium;

(e) Twenty-three thousand seven hundred fifty dollars to the department of enterprise services provided solely for the state building code council established under RCW 19.27.070, to develop and adopt fire and building code provisions related to marijuana processing and extraction facilities. The distribution under this subsection (1)(e) is for fiscal year 2016 only;

(2) From the amounts in the dedicated marijuana account after appropriation of the amounts identified in subsection (1) of this section, the legislature must appropriate for the purposes listed in this subsection (2) as follows:

(a)(i) Up to fifteen percent to the department of social and health services division of behavioral health and recovery for the development, implementation, maintenance, and evaluation of programs and practices aimed at the prevention or reduction of maladaptive substance use, substance use disorder, substance abuse or substance dependence, as these terms are defined in the Diagnostic and Statistical Manual of Mental Disorders, among middle school and high school-age students, whether as an explicit goal of a given program or practice or as a consistently corresponding effect of its implementation, mental health services for children and youth, and services for pregnant and parenting women; PROVIDED, That:

(A) Of the funds appropriated under (a)(i) of this subsection for new programs and new services, at least eighty-five percent must be directed to evidence-based or research-based programs and practices that produce objectively measurable results and, by September 1, 2020, are cost-beneficial; and

(B) Up to fifteen percent of the funds appropriated under (a)(i) of this subsection for new programs and new services may be directed to proven and tested practices, emerging best practices, or promising practices.

(ii) In deciding which programs and practices to fund, the secretary of the department of social and health services must consult, at least annually, with the University of Washington's social development research group and the University of Washington's alcohol and drug abuse institute.

(iii) For the fiscal year beginning July 1, 2016, the legislature must appropriate a minimum of twenty-seven million seven hundred eighty-six thousand dollars, and for each subsequent fiscal year thereafter, the legislature must appropriate a minimum of twenty-five million five hundred thirty-six thousand dollars under this subsection (2)(a);

(b)(i) Up to ten percent to the department of health for the following, subject to (b)(ii) of this subsection (2):

(A) Creation, implementation, operation, and management of a marijuana education and public health program that contains the following:

(I) A marijuana use public health hotline that provides referrals to substance abuse treatment providers, utilizes evidence-based or research-based public health approaches to minimizing the harms associated with marijuana use, and does not solely advocate an abstinence-only approach;

(II) A grants program for local health departments or other local community agencies that supports development and implementation of coordinated intervention strategies for the prevention and reduction of marijuana use by youth; and

(III) Media-based education campaigns across television, internet, radio, print, and out-of-home advertising, separately targeting youth and adults, that provide medically and scientifically accurate information about the health and safety risks posed by marijuana use;

(B) The Washington poison control center; and

(C) During the 2015-2017 fiscal biennium, the funds appropriated under this subsection (2)(b) may be used for prevention activities that target youth and populations with a high incidence of tobacco use.

(ii) For the fiscal year beginning July 1, 2016, the legislature must appropriate a minimum of seven million five hundred thousand dollars and for each subsequent fiscal year thereafter, the legislature must appropriate a minimum of nine million seven hundred fifty thousand dollars under this subsection (2)(b);

(c)(i) Up to six-tenths of one percent to the University of Washington and four-tenths of one percent to Washington State University for research on the short and long-term effects of marijuana use, to include but not be limited to formal and informal methods for estimating and measuring intoxication and impairment, and for the dissemination of such research.

(ii) For the fiscal year beginning July 1, 2016, the legislature must appropriate a minimum of two hundred seven thousand dollars and for each subsequent fiscal year, except for the 2017-2019 fiscal biennium, the legislature must appropriate a minimum of one million twenty-one thousand dollars to the University of Washington. For the fiscal year beginning July 1, 2016, the legislature must appropriate a minimum of one hundred thirty-eight thousand dollars and for each subsequent fiscal year thereafter, except for the 2017-2019 fiscal biennium, a minimum of six hundred eighty-one thousand dollars to Washington State University under this subsection (2)(c). It is the intent of the legislature that this policy will be continued in the 2019-2021 fiscal biennium;

(d) Fifty percent to the state basic health plan trust account to be administered by the Washington basic health plan administrator and used as provided under chapter 70.47 RCW;

(e) Five percent to the Washington state health care authority to be expended exclusively through contracts with community health centers to provide primary health and dental care services, migrant health services, and maternity health care services as provided under RCW 41.05.220;

(f)(i) Up to three-tenths of one percent to the office of the superintendent of public instruction to fund grants to building bridges programs under chapter 28A.175 RCW.

(ii) For the fiscal year beginning July 1, 2016, and each subsequent fiscal year, the legislature must appropriate a minimum of five hundred eleven thousand dollars to the office of the superintendent of public instruction under this subsection (2)(f); and

(g) At the end of each fiscal year, the treasurer must transfer any amounts in the dedicated marijuana account that are not appropriated pursuant to subsection (1) of this section and this subsection (2) into the general fund, except as provided in (g)(i) of this subsection (2).

(i) Beginning in fiscal year 2018, if marijuana excise tax collections deposited into the general fund in the prior fiscal

year exceed twenty-five million dollars, then each fiscal year the legislature must appropriate an amount equal to thirty percent of all marijuana excise taxes deposited into the general fund the prior fiscal year to the treasurer for distribution to counties, cities, and towns as follows:

(A) Thirty percent must be distributed to counties, cities, and towns where licensed marijuana retailers are physically located. Each jurisdiction must receive a share of the revenue distribution under this subsection (2)(g)(i)(A) based on the proportional share of the total revenues generated in the individual jurisdiction from the taxes collected under RCW 69.50.535, from licensed marijuana retailers physically located in each jurisdiction. For purposes of this subsection (2)(g)(i)(A), one hundred percent of the proportional amount attributed to a retailer physically located in a city or town must be distributed to the city or town.

(B) Seventy percent must be distributed to counties, cities, and towns ratably on a per capita basis. Counties must receive sixty percent of the distribution, which must be disbursed based on each county's total proportional population. Funds may only be distributed to jurisdictions that do not prohibit the siting of any state licensed marijuana producer, processor, or retailer.

(ii) Distribution amounts allocated to each county, city, and town must be distributed in four installments by the last day of each fiscal quarter.

(iii) By September 15th of each year, the state liquor and cannabis board must provide the state treasurer the annual distribution amount, if any, for each county and city as determined in (g)(i) of this subsection (2).

(iv) The total share of marijuana excise tax revenues distributed to counties and cities in (g)(i) of this subsection (2) may not exceed six million dollars in fiscal years 2018 and 2019 and twenty million dollars per fiscal year thereafter. However, if the February 2018 forecast of state revenues for the general fund in the 2017-2019 fiscal biennium exceeds the amount estimated in the June 2017 revenue forecast by over eighteen million dollars after adjusting for changes directly related to legislation adopted in the 2017 legislative session, the total share of marijuana excise tax revenue distributed to counties and cities in (g)(i) of this subsection (2) may not exceed fifteen million dollars in fiscal years 2018 and 2019. It is the intent of the legislature that the policy for the maximum distributions in the subsequent fiscal biennia will be no more than \$6 million per fiscal year.

For the purposes of this section, "marijuana products" means "useable marijuana," "marijuana concentrates," and "marijuana-infused products" as those terms are defined in RCW 69.50.101. [2017 3rd sp.s. c 1 § 979; 2015 3rd sp.s. c 4 § 967; 2015 2nd sp.s. c 4 § 206; 2013 c 3 § 28 (Initiative Measure No. 502, approved November 6, 2012).]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW 69.50.334.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

69.50.545 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

69.50.606 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

69.50.607 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 69.51A RCW
MEDICAL CANNABIS
 (Formerly: Medical marijuana)

Sections

- 69.51A.250 Cooperatives—Qualifying patients or designated providers may form—Requirements—Restrictions on locations—State liquor and cannabis board may adopt rules.
- 69.51A.310 Immature plants and clones, marijuana seeds—Qualifying patients and designated providers may purchase.

69.51A.250 Cooperatives—Qualifying patients or designated providers may form—Requirements—Restrictions on locations—State liquor and cannabis board may adopt rules.

(1) Qualifying patients or designated providers may form a cooperative and share responsibility for acquiring and supplying the resources needed to produce and process marijuana only for the medical use of members of the cooperative. No more than four qualifying patients or designated providers may become members of a cooperative under this section and all members must hold valid recognition cards. All members of the cooperative must be at least twenty-one years old. The designated provider of a qualifying patient who is under twenty-one years old may be a member of a cooperative on the qualifying patient's behalf. All plants grown in the cooperative must be from an immature plant or clone purchased from a licensed marijuana producer as defined in RCW 69.50.101. Cooperatives may also purchase marijuana seeds from a licensed marijuana producer.

(2) Qualifying patients and designated providers who wish to form a cooperative must register the location with the state liquor and cannabis board and this is the only location where cooperative members may grow or process marijuana. This registration must include the names of all participating members and copies of each participant's recognition card. Only qualifying patients or designated providers registered with the state liquor and cannabis board in association with the location may participate in growing or receive useable marijuana or marijuana-infused products grown at that location.

(3) No cooperative may be located in any of the following areas:

- (a) Within one mile of a marijuana retailer;
- (b) Within the smaller of either:

(i) One thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library, or any game arcade that admission to which is not restricted to persons aged twenty-one years or older; or

(ii) The area restricted by ordinance, if the cooperative is located in a city, county, or town that has passed an ordinance pursuant to RCW 69.50.331(8); or

(c) Where prohibited by a city, town, or county zoning provision.

(4) The state liquor and cannabis board must deny the registration of any cooperative if the location does not comply with the requirements set forth in subsection (3) of this section.

(5) If a qualifying patient or designated provider no longer participates in growing at the location, he or she must notify the state liquor and cannabis board within fifteen days of the date the qualifying patient or designated provider ceases participation. The state liquor and cannabis board must remove his or her name from connection to the cooperative. Additional qualifying patients or designated providers may not join the cooperative until sixty days have passed since the date on which the last qualifying patient or designated provider notifies the state liquor and cannabis board that he or she no longer participates in that cooperative.

(6) Qualifying patients or designated providers who participate in a cooperative under this section:

(a) May grow up to the total amount of plants for which each participating member is authorized on their recognition cards, up to a maximum of sixty plants. At the location, the qualifying patients or designated providers may possess the amount of useable marijuana that can be produced with the number of plants permitted under this subsection, but no more than seventy-two ounces;

(b) May only participate in one cooperative;

(c) May only grow plants in the cooperative and if he or she grows plants in the cooperative may not grow plants elsewhere;

(d) Must provide assistance in growing plants. A monetary contribution or donation is not to be considered assistance under this section. Participants must provide nonmonetary resources and labor in order to participate; and

(e) May not sell, donate, or otherwise provide marijuana, marijuana concentrates, useable marijuana, or marijuana-infused products to a person who is not participating under this section.

(7) The location of the cooperative must be the domicile of one of the participants. Only one cooperative may be located per property tax parcel. A copy of each participant's recognition card must be kept at the location at all times.

(8) The state liquor and cannabis board may adopt rules to implement this section including:

(a) Any security requirements necessary to ensure the safety of the cooperative and to reduce the risk of diversion from the cooperative;

(b) A seed to sale traceability model that is similar to the seed to sale traceability model used by licensees that will allow the state liquor and cannabis board to track all marijuana grown in a cooperative.

(9) The state liquor and cannabis board or law enforcement may inspect a cooperative registered under this section to ensure members are in compliance with this section. The state liquor and cannabis board must adopt rules on reasonable inspection hours and reasons for inspections. [2017 c 317 § 8; 2016 c 170 § 2; 2015 2nd sp.s. c 4 § 1001; 2015 c 70 § 26.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

Effective date—2016 c 170: See note following RCW 69.50.325.

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW 69.50.334.

Effective date—2015 c 70 §§ 12, 19, 20, 23-26, 31, 35, 40, and 49: See note following RCW 69.50.357.

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW 66.08.012.

69.51A.310 Immature plants and clones, marijuana seeds—Qualifying patients and designated providers may purchase. Qualifying patients and designated providers, who hold a recognition card and have been entered into the medical marijuana authorization database, may purchase immature plants or clones from a licensed marijuana producer as defined in RCW 69.50.101. Qualifying patients and designated providers may also purchase marijuana seeds from a licensed marijuana producer. [2017 c 317 § 11.]

Findings—Application—2017 c 317: See notes following RCW 69.50.325.

Chapter 69.70 RCW ACCESS TO PRESCRIPTION DRUGS

Sections

69.70.020 Donations of prescription drugs and supplies—Distribution.

69.70.020 Donations of prescription drugs and supplies—Distribution. (1) Any practitioner, pharmacist, medical facility, drug manufacturer, or drug wholesaler may donate prescription drugs and supplies to a pharmacy for redistribution without compensation or the expectation of compensation to individuals who meet the prioritization criteria established in RCW 69.70.040. Donations of prescription drugs and supplies may be made on the premises of a pharmacy that elects to participate in the provisions of this chapter. A pharmacy that receives prescription drugs or supplies may distribute the prescription drugs or supplies to another pharmacy, pharmacist, or prescribing practitioner for use pursuant to the program.

(2) The person to whom a prescription drug was prescribed, or the person's representative, may donate prescription drugs under subsection (1) of this section if, as determined by the professional judgment of a pharmacist, prescription drugs:

(a) Equipped with a time temperature indicator at the point of manufacture were stored under required temperature conditions using the prescription drugs' time temperature indicator information and the person, or the person's representative, has completed and signed a donor form, adopted by the department, to release the prescription drug for distribution under this chapter and certifying that the donated prescription drug has never been opened, used, adulterated, or misbranded; or

(b) Not equipped with a time temperature indicator at the point of manufacture, were properly stored and the person, or the person's representative, has completed and signed a donor form, adopted by the department, to release the prescription drugs for distribution under this chapter and certified that the donated prescription drugs have never been opened, used, adulterated, or misbranded. The donor form must require that the person, or the person's representative, attest that the donated prescription drugs have been stored in a manner and

location that adheres to the conditions established by the manufacturer. [2017 c 205 § 1; 2016 c 43 § 2; 2013 c 260 § 2.]

Effective date—2017 c 205: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 2017]." [2017 c 205 § 2.]

Effective date—Short title—2016 c 43: See notes following RCW 69.77.010.

Chapter 69.77 RCW

INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, AND DEVICES

Sections

69.77.010	Findings—Intent.
69.77.020	Definitions.
69.77.030	Eligible patient and treating physician may request investigational product—Manufacturer may make for treatment—Agreement.
69.77.040	Patient eligibility for access and treatment with investigational product.
69.77.050	Informed consent.
69.77.060	Issuer may provide coverage for cost or administration of investigational product—Denial of coverage.
69.77.070	Hospitals and health care facilities.
69.77.080	Private right of action—Unprofessional conduct—Immunity from civil or criminal liability.
69.77.090	Pharmacy quality assurance commission may adopt rules.

69.77.010 Findings—Intent. The legislature finds that the process for approval of investigational drugs, biological products, and devices in the United States protects future patients from premature, ineffective, and unsafe medications and treatments over time, but the process often takes many years. Patients who have a terminal illness do not have the luxury of waiting until an investigational drug, biological product, or device receives final approval from the United States food and drug administration. The legislature further finds that patients who have a terminal illness should be permitted to pursue the preservation of their own lives by accessing available investigational drugs, biological products, and devices. The use of available investigational drugs, biological products, and devices is a decision that should be made by the patient with a terminal illness in consultation with the patient's health care provider so that the decision to use an investigational drug, biological product, or device is made with full awareness of the potential risks, benefits, and consequences to the patient and the patient's family.

The legislature, therefore, intends to allow terminally ill patients to use potentially lifesaving investigational drugs, biological products, and devices. [2017 c 212 § 1.]

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

(1) "Eligible patient" means an individual who meets the requirements of RCW 69.77.040.

(2) "Health care facility" means a clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(3) "Hospital" means a health care institution licensed under chapter 70.41, 71.12, or 72.23 RCW.

(4) "Investigational product" means a drug, biological product, or device that has successfully completed phase one

and is currently in a subsequent phase of a clinical trial approved by the United States food and drug administration assessing the safety of the drug, biological product, or device under section 505 of the federal food, drug, and cosmetic act, 21 U.S.C. Sec. 355.

(5) "Issuer" means any state purchased health care programs under chapter 41.05 or 74.09 RCW, a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020.

(6) "Manufacturer" means a person or other entity engaged in the manufacture or distribution of drugs, biological products, or devices.

(7) "Physician" means a physician licensed under chapter 18.71 RCW or an osteopathic physician and surgeon licensed under chapter 18.57 RCW.

(8) "Serious or immediately life-threatening disease or condition" means a stage of disease in which there is reasonable likelihood that death will occur within six months or in which premature death is likely without early treatment. [2017 c 212 § 2.]

69.77.030 Eligible patient and treating physician may request investigational product—Manufacturer may make for treatment—Agreement. (1) An eligible patient and his or her treating physician may request that a manufacturer make an investigational product available for treatment of the patient. The request must include a copy of the written informed consent form described in RCW 69.77.050 and an explanation of why the treating physician believes the investigational product may help the patient.

(2) Upon receipt of the request and the written informed consent form, the manufacturer may, but is not required to, make the investigational product available for treatment of the eligible patient. Prior to making the investigational product available, the manufacturer shall enter into an agreement with the treating physician and the eligible patient providing that the manufacturer will transfer the investigational product to the physician and the physician will use the investigational product to treat the eligible patient. [2017 c 212 § 3.]

69.77.040 Patient eligibility for access and treatment with investigational product. A patient is eligible to request access to and be treated with an investigational product if:

- (1) The patient is eighteen years of age or older;
- (2) The patient is a resident of this state;
- (3) The patient's treating physician attests to the fact that the patient has a serious or immediately life-threatening disease or condition;
- (4) The patient acknowledges having been informed by the treating physician of all other treatment options currently approved by the United States food and drug administration;
- (5) The patient's treating physician recommends that the patient be treated with an investigational product;
- (6) The patient is unable to participate in a clinical trial for the investigational product because the patient's physician has contacted one or more clinical trials or researchers in the physician's practice area and has determined, using the physician's professional judgment, that there are no clinical trials reasonably available for the patient to participate in, that the patient would not qualify for a clinical trial, or that delay in

waiting to join a clinical trial would risk further harm to the patient; and

(7) In accordance with RCW 69.77.050, the patient has provided written informed consent for the use of the investigational product, or, if the patient lacks the capacity to consent, the patient's legally authorized representative has provided written informed consent on behalf of the patient. [2017 c 212 § 4.]

69.77.050 Informed consent. (1) Prior to treatment of the eligible patient with an investigational product, the treating physician shall obtain written informed consent, consistent with the requirements of RCW 7.70.060(1), and signed by the eligible patient or, if the patient lacks the capacity to consent, his or her legally authorized representative.

(2) Information provided in order to obtain the informed consent must, to the extent possible, include the following:

(a) That the patient has been diagnosed with a serious or immediately life-threatening disease or condition and explains the currently approved products and treatments for the disease or condition from which the eligible patient suffers;

(b) That all currently approved and conventionally recognized treatments are unlikely to prolong the eligible patient's life;

(c) Clear identification of the investigational product that the eligible patient seeks to use;

(d) The potentially best and worst outcomes of using the investigational product and a realistic description of the most likely outcome. This description must include the possibility that new, unanticipated, different, or worse symptoms may result and that death could be hastened by the proposed treatment. The description must be based on the physician's knowledge of the proposed treatment in conjunction with an awareness of the eligible patient's condition;

(e) That the eligible patient's health benefit plan is not obligated to pay for the investigational product or any harm caused to the eligible patient by the investigational product, unless otherwise specifically required to do so by law or contract, and that in order to receive the investigational product the patient may be required to pay the costs of administering the investigational product; and

(f) That the eligible patient is liable for all expenses consequent to the use of the investigational product, except as otherwise provided in the eligible patient's health benefit plan or a contract between the eligible patient and the manufacturer of the investigational product.

(3) The document must be signed and dated by the eligible patient's treating physician and witnessed in writing by at least one adult. [2017 c 212 § 5.]

69.77.060 Issuer may provide coverage for cost or administration of investigational product—Denial of coverage. (1) An issuer may, but is not required to, provide coverage for the cost or the administration of an investigational product provided to an eligible patient pursuant to this chapter.

(2)(a) An issuer may deny coverage to an eligible patient who is treated with an investigational product for harm to the eligible patient caused by the investigational product and is not required to cover the costs associated with receiving the

investigational product or the costs demonstrated to be associated with an adverse effect that is a result of receiving the investigational product.

(b) Except as stated in (a) of this subsection, an issuer may not deny coverage to an eligible patient for: (i) The eligible patient's serious or immediately life-threatening disease or condition; (ii) benefits that accrued before the day on which the eligible patient was treated with an investigational product; or (iii) palliative or hospice care for an eligible patient who was previously treated with an investigational product but who is no longer being treated with an investigational product. [2017 c 212 § 6.]

69.77.070 Hospitals and health care facilities. A hospital or health care facility:

(1) May, but is not required to, allow a health care practitioner who is privileged to practice or who is employed at the hospital or health care facility to treat, administer, or provide an investigational product to an eligible patient under this chapter;

(2) May establish a policy regarding treating, administering, or providing investigational products under this chapter; and

(3) Is not obligated to pay for the investigational product or any harm caused to the eligible patient by the product, or any care that is necessary as a result of the use of the investigational product, including under chapter 70.170 RCW. [2017 c 212 § 7.]

69.77.080 Private right of action—Unprofessional conduct—Immunity from civil or criminal liability. (1) Chapter 212, Laws of 2017 does not create a private right of action.

(2) A health care practitioner does not commit unprofessional conduct under RCW 18.130.180 and does not violate the applicable standard of care by:

(a) Obtaining an investigational product pursuant to this chapter;

(b) Refusing to recommend, request, prescribe, or otherwise provide an investigational product pursuant to this chapter;

(c) Administering an investigational product to an eligible patient pursuant to this chapter; or

(d) Treating an eligible patient with an investigational product pursuant to this chapter.

(3) The following persons and entities are immune from civil or criminal liability and administrative actions arising out of treatment of an eligible patient with an investigational product, other than acts or omissions constituting gross negligence or willful or wanton misconduct:

(a) A health care practitioner who recommends or requests an investigational product for an eligible patient in compliance with this chapter;

(b) A health care practitioner who refuses to recommend or request an investigational product for a patient seeking access to an investigational product;

(c) A manufacturer that provides an investigational product to a health care practitioner in compliance with this chapter;

(d) A hospital or health care facility where an investigational product is either administered or provided to an eligible patient in compliance with this chapter; and

(e) A hospital or health care facility that does not allow a health care practitioner to provide treatment with an investigational product or enforces a policy it has adopted regarding treating, administering, or providing care with an investigational product. [2017 c 212 § 8.]

69.77.090 Pharmacy quality assurance commission may adopt rules. The pharmacy quality assurance commission may adopt rules necessary to implement this chapter. [2017 c 212 § 9.]

Title 70

PUBLIC HEALTH AND SAFETY

Chapters

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Chapter 70.01 RCW GENERAL PROVISIONS

Sections

70.01.050	Breast cancer—Breast reconstruction and prostheses—Education campaign.
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70.01.050 Breast cancer—Breast reconstruction and prostheses—Education campaign. (1) The health care authority, in coordination with the department of health, must create and implement a campaign to educate breast cancer patients about the availability of insurance coverage for breast reconstruction and breast prostheses.

(2) The health care authority and department of health may create new educational materials or make available materials published by for-profit or nonprofit organizations. The materials must provide, at a minimum, all of the following:

(a) Information about the availability of breast reconstruction surgery following a mastectomy including that the breast reconstruction surgery may be performed at the time of a mastectomy or the breast reconstruction surgery may be delayed until a time after the mastectomy.

(b) Information about prostheses or breast forms as alternatives to breast reconstruction surgery.

(c) Information about the requirements of the women's health and cancer rights act of 1998 (P.L. 105-277) including the right to breast reconstruction surgery even if the surgery is delayed.

(3) The educational materials developed or made available under subsection (2) of this section must be distributed by the office of the insurance commissioner and the health care authority to people receiving their services. Distribution may be accomplished through current methods used to inform consumers including posting information online and other methods developed or used by the office of the insurance commissioner and the health care authority.

(4) The department of health must also make the educational materials developed or made available under subsection (2) of this section available to health care professionals for distribution to patients who may qualify for breast reconstruction surgery following a mastectomy. This may be accomplished through current methods used by the department to provide health care professionals with informational materials, including making them available online.

(5) This section does not create a private right of action. [2017 c 91 § 1.]

Chapter 70.02 RCW MEDICAL RECORDS—HEALTH CARE INFORMATION ACCESS AND DISCLOSURE

Sections

70.02.050	Disclosure without patient's authorization—Need-to-know basis.
70.02.200	Disclosure without patient's authorization—Permitted and mandatory disclosures. (<i>Effective until July 1, 2018.</i>)
70.02.200	Disclosure without patient's authorization—Permitted and mandatory disclosures. (<i>Effective July 1, 2018.</i>)
70.02.205	Disclosure without patient's authorization—Persons with close relationship.
70.02.220	Sexually transmitted diseases—Permitted and mandatory disclosures. (<i>Effective until July 1, 2018.</i>)
70.02.220	Sexually transmitted diseases—Permitted and mandatory disclosures. (<i>Effective July 1, 2018.</i>)

- 70.02.230 Mental health services, confidentiality of records—Permitted disclosures. (*Effective until April 1, 2018.*)
- 70.02.230 Mental health services, confidentiality of records—Permitted disclosures. (*Effective April 1, 2018, until July 1, 2018.*)
- 70.02.230 Mental health services, confidentiality of records—Permitted disclosures. (*Effective July 1, 2018.*)

70.02.050 Disclosure without patient's authorization—Need-to-know basis. (1) A health care provider or health care facility may disclose health care information, except for information and records related to sexually transmitted diseases which are addressed in RCW 70.02.220, about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is:

(a) To a person who the provider or facility reasonably believes is providing health care to the patient;

(b) To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, actuarial services to, or other health care operations for or on behalf of the health care provider or health care facility; or for assisting the health care provider or health care facility in the delivery of health care and the health care provider or health care facility reasonably believes that the person:

(i) Will not use or disclose the health care information for any other purpose; and

(ii) Will take appropriate steps to protect the health care information;

(c) To any person if the health care provider or health care facility believes, in good faith, that use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and the information is disclosed only to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat. There is no obligation under this chapter on the part of the provider or facility to so disclose; or

(d) For payment, including information necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(2) A health care provider shall disclose health care information, except for information and records related to sexually transmitted diseases, unless otherwise authorized in RCW 70.02.220, about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws, or to investigate unprofessional conduct or ability to practice with reasonable skill and safety under chapter 18.130 RCW. Any health care information obtained under this subsection is exempt from public inspection and copying pursuant to chapter 42.56 RCW; or

(b) When needed to protect the public health. [2017 c 298 § 2; 2014 c 220 § 6; 2013 c 200 § 3; 2007 c 156 § 12; 2006 c 235 § 3; 2005 c 468 § 4; 1998 c 158 § 1; 1993 c 448 § 4; 1991 c 335 § 204.]

Effective date—2014 c 220: See note following RCW 70.02.290.

Effective date—2013 c 200: See note following RCW 70.02.010.

Purpose—2006 c 235: "The purpose of this act is to aid law enforcement in combating crime through the rapid identification of all persons who require medical treatment as a result of a criminal act and to assist in the rapid identification of human remains." [2006 c 235 § 1.]

Additional notes found at www.leg.wa.gov

70.02.200 Disclosure without patient's authorization—Permitted and mandatory disclosures. (*Effective until July 1, 2018.*) (1) In addition to the disclosures authorized by RCW 70.02.050 and 70.02.210, a health care provider or health care facility may disclose health care information, except for information and records related to sexually transmitted diseases and information related to mental health services which are addressed by RCW 70.02.220 through 70.02.260, about a patient without the patient's authorization, to:

(a) Any other health care provider or health care facility reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(b) Persons under RCW 70.02.205 if the conditions in RCW 70.02.205 are met;

(c) A health care provider or health care facility who is the successor in interest to the health care provider or health care facility maintaining the health care information;

(d) A person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(e) Provide directory information, unless the patient has instructed the health care provider or health care facility not to make the disclosure;

(f) Fire, police, sheriff, or other public authority, that brought, or caused to be brought, the patient to the health care facility or health care provider if the disclosure is limited to the patient's name, residence, sex, age, occupation, condition, diagnosis, estimated or actual discharge date, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted;

(g) Federal, state, or local law enforcement authorities and the health care provider, health care facility, or third-party payor believes in good faith that the health care information disclosed constitutes evidence of criminal conduct that occurred on the premises of the health care provider, health care facility, or third-party payor;

(h) Another health care provider, health care facility, or third-party payor for the health care operations of the health care provider, health care facility, or third-party payor that receives the information, if each entity has or had a relationship with the patient who is the subject of the health care information being requested, the health care information pertains to such relationship, and the disclosure is for the purposes described in RCW 70.02.010(17) (a) and (b);

(i) An official of a penal or other custodial institution in which the patient is detained; and

(j) Any law enforcement officer, corrections officer, or guard supplied by a law enforcement or corrections agency who is accompanying a patient pursuant to RCW 10.110.020, only to the extent the disclosure is incidental to the fulfillment of the role of the law enforcement officer, corrections officer, or guard under RCW 10.110.020.

(2) In addition to the disclosures required by RCW 70.02.050 and 70.02.210, a health care provider shall disclose health care information, except for information related to sexually transmitted diseases and information related to mental health services which are addressed by RCW 70.02.220 through 70.02.260, about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;

(b) To federal, state, or local law enforcement authorities, upon receipt of a written or oral request made to a nursing supervisor, administrator, or designated privacy official, in a case in which the patient is being treated or has been treated for a bullet wound, gunshot wound, powder burn, or other injury arising from or caused by the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which federal, state, or local law enforcement authorities reasonably believe to have been intentionally inflicted upon a person, or a blunt force injury that federal, state, or local law enforcement authorities reasonably believe resulted from a criminal act, the following information, if known:

(i) The name of the patient;

(ii) The patient's residence;

(iii) The patient's sex;

(iv) The patient's age;

(v) The patient's condition;

(vi) The patient's diagnosis, or extent and location of injuries as determined by a health care provider;

(vii) Whether the patient was conscious when admitted;

(viii) The name of the health care provider making the determination in (b)(v), (vi), and (vii) of this subsection;

(ix) Whether the patient has been transferred to another facility; and

(x) The patient's discharge time and date;

(c) Pursuant to compulsory process in accordance with RCW 70.02.060. [2017 c 298 § 3; 2015 c 267 § 7; 2014 c 220 § 7; 2013 c 200 § 4.]

Effective date—2014 c 220: See note following RCW 70.02.290.

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.200 Disclosure without patient's authorization—Permitted and mandatory disclosures. (Effective July 1, 2018.)

(1) In addition to the disclosures authorized by RCW 70.02.050 and 70.02.210, a health care provider or health care facility may disclose health care information, except for information and records related to sexually transmitted diseases and information related to mental health services which are addressed by RCW 70.02.220 through 70.02.260, about a patient without the patient's authorization, to:

(a) Any other health care provider or health care facility reasonably believed to have previously provided health care

to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(b) Persons under RCW 70.02.205 if the conditions in RCW 70.02.205 are met;

(c) A health care provider or health care facility who is the successor in interest to the health care provider or health care facility maintaining the health care information;

(d) A person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(e) Provide directory information, unless the patient has instructed the health care provider or health care facility not to make the disclosure;

(f) Fire, police, sheriff, or other public authority, that brought, or caused to be brought, the patient to the health care facility or health care provider if the disclosure is limited to the patient's name, residence, sex, age, occupation, condition, diagnosis, estimated or actual discharge date, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted;

(g) Federal, state, or local law enforcement authorities and the health care provider, health care facility, or third-party payor believes in good faith that the health care information disclosed constitutes evidence of criminal conduct that occurred on the premises of the health care provider, health care facility, or third-party payor;

(h) Another health care provider, health care facility, or third-party payor for the health care operations of the health care provider, health care facility, or third-party payor that receives the information, if each entity has or had a relationship with the patient who is the subject of the health care information being requested, the health care information pertains to such relationship, and the disclosure is for the purposes described in RCW 70.02.010(17) (a) and (b);

(i) An official of a penal or other custodial institution in which the patient is detained; and

(j) Any law enforcement officer, corrections officer, or guard supplied by a law enforcement or corrections agency who is accompanying a patient pursuant to RCW 10.110.020, only to the extent the disclosure is incidental to the fulfillment of the role of the law enforcement officer, corrections officer, or guard under RCW 10.110.020.

(2) In addition to the disclosures required by RCW 70.02.050 and 70.02.210, a health care provider shall disclose health care information, except for information related to sexually transmitted diseases and information related to mental health services which are addressed by RCW 70.02.220 through 70.02.260, about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;

(b) To federal, state, or local law enforcement authorities, upon receipt of a written or oral request made to a nursing supervisor, administrator, or designated privacy official, in a case in which the patient is being treated or has been treated for a bullet wound, gunshot wound, powder burn, or other injury arising from or caused by the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which federal, state, or local law enforcement authorities reasonably believe to have been intentionally inflicted upon a person, or a blunt force injury that federal, state, or local law enforcement authorities reasonably believe resulted from a criminal act, the following information, if known:

- (i) The name of the patient;
 - (ii) The patient's residence;
 - (iii) The patient's sex;
 - (iv) The patient's age;
 - (v) The patient's condition;
 - (vi) The patient's diagnosis, or extent and location of injuries as determined by a health care provider;
 - (vii) Whether the patient was conscious when admitted;
 - (viii) The name of the health care provider making the determination in (b)(v), (vi), and (vii) of this subsection;
 - (ix) Whether the patient has been transferred to another facility; and
 - (x) The patient's discharge time and date;
- (c) Pursuant to compulsory process in accordance with RCW 70.02.060.

(3) To the extent they retain health care information subject to this chapter, the department of social and health services and the health care authority shall disclose to the department of children, youth, and families health care information, except for information and records related to sexually transmitted diseases and information related to mental health services that are addressed by RCW 70.02.220 through 70.02.260, about a patient without the patient's authorization, for the purpose of investigating and preventing child abuse and neglect and providing for the health care coordination and the well-being of children in foster care. Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act. [2017 3rd sp.s. c 6 § 815; 2017 c 298 § 3; 2015 c 267 § 7; 2014 c 220 § 7; 2013 c 200 § 4.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—2014 c 220: See note following RCW 70.02.290.

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.205 Disclosure without patient's authorization—Persons with close relationship. (1)(a) A health care provider or health care facility may use or disclose the health care information of a patient without obtaining an authorization from the patient or the patient's personal representative if the conditions in (b) of this subsection are met and:

(i) The disclosure is to a family member, including a patient's state registered domestic partner, other relative, a close personal friend, or other person identified by the patient, and the health care information is directly relevant to

the person's involvement with the patient's health care or payment related to the patient's health care; or

(ii) The use or disclosure is for the purpose of notifying, or assisting in the notification of, including identifying or locating, a family member, a personal representative of the patient, or another person responsible for the care of the patient of the patient's location, general condition, or death.

(b) A health care provider or health care facility may make the uses and disclosures described in (a) of this subsection if:

(i) The patient is not present or obtaining the patient's authorization or providing the opportunity to agree or object to the use or disclosure is not practicable due to the patient's incapacity or an emergency circumstance, the health care provider or health care facility may in the exercise of professional judgment, determine whether the use or disclosure is in the best interests of the patient and, if so, disclose only the health care information that is directly relevant to the person's involvement with the patient's health care or payment related to the patient's health care; or

(ii) The patient is present for, or otherwise available prior to, the use or disclosure and has the capacity to make health care decisions, the health care provider or health care facility may use or disclose the information if it:

(A) Obtains the patient's agreement;

(B) Provides the patient with the opportunity to object to the use or disclosure, and the patient does not express an objection; or

(C) Reasonably infers from the circumstances, based on the exercise of professional judgment, that the patient does not object to the use or disclosure.

(2) With respect to information and records related to mental health services provided to a patient by a health care provider, the health care information disclosed under this section may include, to the extent consistent with the health care provider's professional judgment and standards of ethical conduct:

(a) The patient's diagnoses and the treatment recommendations;

(b) Issues concerning the safety of the patient, including risk factors for suicide, steps that can be taken to make the patient's home safer, and a safety plan to monitor and support the patient;

(c) Information about resources that are available in the community to help the patient, such as case management and support groups; and

(d) The process to ensure that the patient safely transitions to a higher or lower level of care, including an interim safety plan.

(3) Any use or disclosure of health care information under this section must be limited to the minimum necessary to accomplish the purpose of the use or disclosure.

(4) A health care provider or health care facility is not subject to any civil liability for making or not making a use or disclosure in accordance with this section. [2017 c 298 § 1.]

70.02.220 Sexually transmitted diseases—Permitted and mandatory disclosures. (Effective until July 1, 2018.)

(1) No person may disclose or be compelled to disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted dis-

ease, except as authorized by this section, RCW 70.02.210, or chapter 70.24 RCW.

(2) No person may disclose or be compelled to disclose information and records related to sexually transmitted diseases, except as authorized by this section, RCW 70.02.210, 70.02.205, or chapter 70.24 RCW. A person may disclose information related to sexually transmitted diseases about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is to:

(a) The subject of the test or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor fourteen years of age or over and otherwise competent;

(b) The state public health officer as defined in RCW 70.24.017, a local public health officer, or the centers for disease control of the United States public health service in accordance with reporting requirements for a diagnosed case of a sexually transmitted disease;

(c) A health facility or health care provider that procures, processes, distributes, or uses: (i) A human body part, tissue, or blood from a deceased person with respect to medical information regarding that person; (ii) semen, including that was provided prior to March 23, 1988, for the purpose of artificial insemination; or (iii) blood specimens;

(d) Any state or local public health officer conducting an investigation pursuant to RCW 70.24.024, so long as the record was obtained by means of court-ordered HIV testing pursuant to RCW 70.24.340 or 70.24.024;

(e) A person allowed access to the record by a court order granted after application showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of the order, the court, in determining the extent to which any disclosure of all or any part of the record of any such test is necessary, shall impose appropriate safeguards against unauthorized disclosure. An order authorizing disclosure must: (i) Limit disclosure to those parts of the patient's record deemed essential to fulfill the objective for which the order was granted; (ii) limit disclosure to those persons whose need for information is the basis for the order; and (iii) include any other appropriate measures to keep disclosure to a minimum for the protection of the patient, the physician-patient relationship, and the treatment services;

(f) Persons who, because of their behavioral interaction with the infected individual, have been placed at risk for acquisition of a sexually transmitted disease, as provided in RCW 70.24.022, if the health officer or authorized representative believes that the exposed person was unaware that a risk of disease exposure existed and that the disclosure of the identity of the infected person is necessary;

(g) A law enforcement officer, firefighter, health care provider, health care facility staff person, department of correction's staff person, jail staff person, or other persons as defined by the board of health in rule pursuant to RCW 70.24.340(4), who has requested a test of a person whose bodily fluids he or she has been substantially exposed to, pursuant to RCW 70.24.340(4), if a state or local public health officer performs the test;

(h) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state administered health care claims payer, or any other payer of health care claims where such disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims. Information released under this subsection must be confidential and may not be released or available to persons who are not involved in handling or determining medical claims payment; and

(i) A department of social and health services worker, a child placing agency worker, or a guardian ad litem who is responsible for making or reviewing placement or case-planning decisions or recommendations to the court regarding a child, who is less than fourteen years of age, has a sexually transmitted disease, and is in the custody of the department of social and health services or a licensed child placing agency. This information may also be received by a person responsible for providing residential care for such a child when the department of social and health services or a licensed child placing agency determines that it is necessary for the provision of child care services.

(3) No person to whom the results of a test for a sexually transmitted disease have been disclosed pursuant to subsection (2) of this section may disclose the test results to another person except as authorized by that subsection.

(4) The release of sexually transmitted disease information regarding an offender or detained person, except as provided in subsection (2)(d) of this section, is governed as follows:

(a) The sexually transmitted disease status of a department of corrections offender who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 must be made available by department of corrections health care providers and local public health officers to the department of corrections health care administrator or infection control coordinator of the facility in which the offender is housed. The information made available to the health care administrator or the infection control coordinator under this subsection (4)(a) may be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities, including facilities that are not under the department of corrections' jurisdiction according to the provisions of (d) and (e) of this subsection.

(b) The sexually transmitted disease status of a person detained in a jail who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 must be made available by the local public health officer to a jail health care administrator or infection control coordinator. The information made available to a health care administrator under this subsection (4)(b) may be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, detainees, and the public. The information may be submitted to transporting officers and receiving facilities according to the provisions of (d) and (e) of this subsection.

(c) Information regarding the sexually transmitted disease status of an offender or detained person is confidential and may be disclosed by a correctional health care adminis-

trator or infection control coordinator or local jail health care administrator or infection control coordinator only as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. Unauthorized disclosure of this information to any person may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080 or any other penalties as may be prescribed by law.

(d) Notwithstanding the limitations on disclosure contained in (a), (b), and (c) of this subsection, whenever any member of a jail staff or department of corrections staff has been substantially exposed to the bodily fluids of an offender or detained person, then the results of any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370, must be immediately disclosed to the staff person in accordance with the Washington Administrative Code rules governing employees' occupational exposure to blood-borne pathogens. Disclosure must be accompanied by appropriate counseling for the staff member, including information regarding follow-up testing and treatment. Disclosure must also include notice that subsequent disclosure of the information in violation of this chapter or use of the information to harass or discriminate against the offender or detainee may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080, and imposition of other penalties prescribed by law.

(e) The staff member must also be informed whether the offender or detained person had any other communicable disease, as defined in RCW 72.09.251(3), when the staff person was substantially exposed to the offender's or detainee's bodily fluids.

(f) The test results of voluntary and anonymous HIV testing or HIV-related condition, as defined in RCW 70.24.017, may not be disclosed to a staff person except as provided in this section and RCW 70.02.050(1)(d) and 70.24.340(4). A health care administrator or infection control coordinator may provide the staff member with information about how to obtain the offender's or detainee's test results under this section and RCW 70.02.050(1)(d) and 70.24.340(4).

(5) The requirements of this section do not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor do they apply within health care facilities where there is a need for access to confidential medical information to fulfill professional duties.

(6) Upon request of the victim, disclosure of test results under this section to victims of sexual offenses under chapter 9A.44 RCW must be made if the result is negative or positive. The county prosecuting attorney shall notify the victim of the right to such disclosure. The disclosure must be accompanied by appropriate counseling, including information regarding follow-up testing.

(7) A person, including a health care facility or health care provider, shall disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease and information and records related to sexually transmitted diseases to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with

state or federal certification or registration rules or laws; or when needed to protect the public health. Any health care information obtained under this subsection is exempt from public inspection and copying pursuant to chapter 42.56 RCW. [2017 c 298 § 4; 2013 c 200 § 6.]

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.220 Sexually transmitted diseases—Permitted and mandatory disclosures. (Effective July 1, 2018.) (1)

No person may disclose or be compelled to disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease, except as authorized by this section, RCW 70.02.210, or chapter 70.24 RCW.

(2) No person may disclose or be compelled to disclose information and records related to sexually transmitted diseases, except as authorized by this section, RCW 70.02.210, 70.02.205, or chapter 70.24 RCW. A person may disclose information related to sexually transmitted diseases about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is to:

(a) The subject of the test or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor fourteen years of age or over and otherwise competent;

(b) The state public health officer as defined in RCW 70.24.017, a local public health officer, or the centers for disease control of the United States public health service in accordance with reporting requirements for a diagnosed case of a sexually transmitted disease;

(c) A health facility or health care provider that procures, processes, distributes, or uses: (i) A human body part, tissue, or blood from a deceased person with respect to medical information regarding that person; (ii) semen, including that was provided prior to March 23, 1988, for the purpose of artificial insemination; or (iii) blood specimens;

(d) Any state or local public health officer conducting an investigation pursuant to RCW 70.24.024, so long as the record was obtained by means of court-ordered HIV testing pursuant to RCW 70.24.340 or 70.24.024;

(e) A person allowed access to the record by a court order granted after application showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of the order, the court, in determining the extent to which any disclosure of all or any part of the record of any such test is necessary, shall impose appropriate safeguards against unauthorized disclosure. An order authorizing disclosure must: (i) Limit disclosure to those parts of the patient's record deemed essential to fulfill the objective for which the order was granted; (ii) limit disclosure to those persons whose need for information is the basis for the order; and (iii) include any other appropriate measures to keep disclosure to a minimum for the protection of the patient, the physician-patient relationship, and the treatment services;

(f) Persons who, because of their behavioral interaction with the infected individual, have been placed at risk for acquisition of a sexually transmitted disease, as provided in

RCW 70.24.022, if the health officer or authorized representative believes that the exposed person was unaware that a risk of disease exposure existed and that the disclosure of the identity of the infected person is necessary;

(g) A law enforcement officer, firefighter, health care provider, health care facility staff person, department of correction's staff person, jail staff person, or other persons as defined by the board of health in rule pursuant to RCW 70.24.340(4), who has requested a test of a person whose bodily fluids he or she has been substantially exposed to, pursuant to RCW 70.24.340(4), if a state or local public health officer performs the test;

(h) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state administered health care claims payer, or any other payer of health care claims where such disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims. Information released under this subsection must be confidential and may not be released or available to persons who are not involved in handling or determining medical claims payment; and

(i) A department of children, youth, and families worker, a child placing agency worker, or a guardian ad litem who is responsible for making or reviewing placement or case-planning decisions or recommendations to the court regarding a child, who is less than fourteen years of age, has a sexually transmitted disease, and is in the custody of the department of children, youth, and families or a licensed child placing agency. This information may also be received by a person responsible for providing residential care for such a child when the department of social and health services, the department of children, youth, and families, or a licensed child placing agency determines that it is necessary for the provision of child care services.

(3) No person to whom the results of a test for a sexually transmitted disease have been disclosed pursuant to subsection (2) of this section may disclose the test results to another person except as authorized by that subsection.

(4) The release of sexually transmitted disease information regarding an offender or detained person, except as provided in subsection (2)(d) of this section, is governed as follows:

(a) The sexually transmitted disease status of a department of corrections offender who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 must be made available by department of corrections health care providers and local public health officers to the department of corrections health care administrator or infection control coordinator of the facility in which the offender is housed. The information made available to the health care administrator or the infection control coordinator under this subsection (4)(a) may be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities, including facilities that are not under the department of corrections' jurisdiction according to the provisions of (d) and (e) of this subsection.

(b) The sexually transmitted disease status of a person detained in a jail who has had a mandatory test conducted

pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 must be made available by the local public health officer to a jail health care administrator or infection control coordinator. The information made available to a health care administrator under this subsection (4)(b) may be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, detainees, and the public. The information may be submitted to transporting officers and receiving facilities according to the provisions of (d) and (e) of this subsection.

(c) Information regarding the sexually transmitted disease status of an offender or detained person is confidential and may be disclosed by a correctional health care administrator or infection control coordinator or local jail health care administrator or infection control coordinator only as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. Unauthorized disclosure of this information to any person may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080 or any other penalties as may be prescribed by law.

(d) Notwithstanding the limitations on disclosure contained in (a), (b), and (c) of this subsection, whenever any member of a jail staff or department of corrections staff has been substantially exposed to the bodily fluids of an offender or detained person, then the results of any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370, must be immediately disclosed to the staff person in accordance with the Washington Administrative Code rules governing employees' occupational exposure to blood-borne pathogens. Disclosure must be accompanied by appropriate counseling for the staff member, including information regarding follow-up testing and treatment. Disclosure must also include notice that subsequent disclosure of the information in violation of this chapter or use of the information to harass or discriminate against the offender or detainee may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080, and imposition of other penalties prescribed by law.

(e) The staff member must also be informed whether the offender or detained person had any other communicable disease, as defined in RCW 72.09.251(3), when the staff person was substantially exposed to the offender's or detainee's bodily fluids.

(f) The test results of voluntary and anonymous HIV testing or HIV-related condition, as defined in RCW 70.24.017, may not be disclosed to a staff person except as provided in this section and RCW 70.02.050(1)(d) and 70.24.340(4). A health care administrator or infection control coordinator may provide the staff member with information about how to obtain the offender's or detainee's test results under this section and RCW 70.02.050(1)(d) and 70.24.340(4).

(5) The requirements of this section do not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor do they apply within health care facilities where there is a need for access to confidential medical information to fulfill professional duties.

(6) Upon request of the victim, disclosure of test results under this section to victims of sexual offenses under chapter

9A.44 RCW must be made if the result is negative or positive. The county prosecuting attorney shall notify the victim of the right to such disclosure. The disclosure must be accompanied by appropriate counseling, including information regarding follow-up testing.

(7) A person, including a health care facility or health care provider, shall disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease and information and records related to sexually transmitted diseases to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal certification or registration rules or laws; or when needed to protect the public health. Any health care information obtained under this subsection is exempt from public inspection and copying pursuant to chapter 42.56 RCW. [2017 3rd sp.s. c 6 § 332; 2017 c 298 § 4; 2013 c 200 § 6.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.230 Mental health services, confidentiality of records—Permitted disclosures. (Effective until April 1, 2018.) (1) Except as provided in this section, RCW 70.02.050, 71.05.445, 74.09.295, 70.02.210, 70.02.240, 70.02.250, and 70.02.260, or pursuant to a valid authorization under RCW 70.02.030, the fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies must be confidential.

(2) Information and records related to mental health services, other than those obtained through treatment under chapter 71.34 RCW, may be disclosed only:

(a) In communications between qualified professional persons to meet the requirements of chapter 71.05 RCW, in the provision of services or appropriate referrals, or in the course of guardianship proceedings if provided to a professional person:

- (i) Employed by the facility;
- (ii) Who has medical responsibility for the patient's care;
- (iii) Who is a designated mental health professional;
- (iv) Who is providing services under chapter 71.24

RCW;

(v) Who is employed by a state or local correctional facility where the person is confined or supervised; or

(vi) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW;

(b) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside;

(c)(i) When the person receiving services, or his or her guardian, designates persons to whom information or records

may be released, or if the person is a minor, when his or her parents make such a designation;

(ii) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

(A) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(B) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, personal representative, guardian, or conservator; and

(iii) Other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator;

(d)(i) To the courts as necessary to the administration of chapter 71.05 RCW or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW.

(ii) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(iii) Disclosure under this subsection is mandatory for the purpose of the federal health insurance portability and accountability act;

(e)(i) When a mental health professional is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the mental health professional shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. The written report must be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(f) To the attorney of the detained person;

(g) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2), 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information must be disclosed only after giving notice to the committed person and the person's counsel;

(h)(i) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the

professional person in charge of the public or private agency or his or her designee and must include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(i)(i) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act;

(j) To the persons designated in RCW 71.05.425 for the purposes described in those sections;

(k) Upon the death of a person. The person's next of kin, personal representative, guardian, or conservator, if any, must be notified. Next of kin who are of legal age and competent must be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient are governed by RCW 70.02.140;

(l) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient;

(m) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(iii). The extent of information that may be released is limited as follows:

(i) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(ii) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(iii);

(iii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(n) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of the disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision

of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee;

(o) Pursuant to lawful order of a court;

(p) To qualified staff members of the department, to the director of behavioral health organizations, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility;

(q) Within the mental health service agency where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties;

(r) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department;

(s) To a licensed physician or psychiatric advanced registered nurse practitioner who has determined that the life or health of the person is in danger and that treatment without the information and records related to mental health services could be injurious to the patient's health. Disclosure must be limited to the portions of the records necessary to meet the medical emergency;

(t)(i) Consistent with the requirements of the federal health insurance portability and accountability act, to:

(A) A health care provider who is providing care to a patient, or to whom a patient has been referred for evaluation or treatment; or

(B) Any other person who is working in a care coordinator role for a health care facility or health care provider or is under an agreement pursuant to the federal health insurance portability and accountability act with a health care facility or a health care provider and requires the information and records to assure coordinated care and treatment of that patient.

(ii) A person authorized to use or disclose information and records related to mental health services under this subsection (2)(t) must take appropriate steps to protect the information and records relating to mental health services.

(iii) Psychotherapy notes may not be released without authorization of the patient who is the subject of the request for release of information;

(u) To administrative and office support staff designated to obtain medical records for those licensed professionals listed in (t) of this subsection;

(v) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one evaluation and treatment facility to another. The release of records under this subsection is limited to the information and records related to mental health services required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the

treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record;

(w) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW;

(x) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information must notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information;

(y) To all current treating providers of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. For purposes of coordinating health care, the department may release without written authorization of the patient, information acquired for billing and collection purposes as described in RCW 70.02.050(1)(d). The department shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. The department may not release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client;

(z)(i) To the secretary of social and health services for either program evaluation or research, or both so long as the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, , agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/"

(ii) Nothing in this chapter may be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary;

(aa) To any person if the conditions in RCW 70.02.205 are met.

(3) Whenever federal law or federal regulations restrict the release of information contained in the information and records related to mental health services of any patient who receives treatment for chemical dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations.

(4) Civil liability and immunity for the release of information about a particular person who is committed to the department of social and health services under RCW *71.05.280(3) and **71.05.320(4)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(5) The fact of admission to a provider of mental health services, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to chapter 71.05 RCW are not admissible as evidence in any legal proceeding outside that chapter without the written authorization of the person who was the subject of the proceeding except as provided in RCW 70.02.260, in a subsequent criminal prosecution of a person committed pursuant to RCW *71.05.280(3) or **71.05.320(4)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to chapter 71.05 RCW must be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

(6)(a) Except as provided in RCW 4.24.550, any person may bring an action against an individual who has willfully released confidential information or records concerning him or her in violation of the provisions of this section, for the greater of the following amounts:

(i) One thousand dollars; or

(ii) Three times the amount of actual damages sustained, if any.

(b) It is not a prerequisite to recovery under this subsection that the plaintiff suffered or was threatened with special, as contrasted with general, damages.

(c) Any person may bring an action to enjoin the release of confidential information or records concerning him or her or his or her ward, in violation of the provisions of this section, and may in the same action seek damages as provided in this subsection.

(d) The court may award to the plaintiff, should he or she prevail in any action authorized by this subsection, reasonable attorney fees in addition to those otherwise provided by law.

(e) If an action is brought under this subsection, no action may be brought under RCW 70.02.170. [2017 c 325 § 1; 2017 c 298 § 5. Prior: 2014 c 225 § 71; 2014 c 220 § 9; 2013 c 200 § 7.]

Reviser's note: *(1) RCW 71.05.280 was amended by 2013 c 289 § 4, substantially modifying the provisions of subsection (3).

***(2) RCW 71.05.320 was amended by 2013 c 289 § 5, substantially modifying the provisions of subsection (4)(c).

(3) This section was amended by 2017 c 298 § 5 and by 2017 c 325 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2017 c 325 § 1: "Section 1 of this act expires April 1, 2018." [2017 c 325 § 3.]

Expiration date—2017 c 298 § 5: "Section 5 of this act expires April 1, 2018." [2017 c 298 § 8.]

Effective date—2014 c 225: See note following RCW 71.24.016.

Effective date—2014 c 220: See note following RCW 70.02.290.

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.230 Mental health services, confidentiality of records—Permitted disclosures. (Effective April 1, 2018, until July 1, 2018.) (1) Except as provided in this section, RCW 70.02.050, 71.05.445, 74.09.295, 70.02.210, 70.02.240, 70.02.250, and 70.02.260, or pursuant to a valid authorization under RCW 70.02.030, the fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies must be confidential.

(2) Information and records related to mental health services, other than those obtained through treatment under chapter 71.34 RCW, may be disclosed only:

(a) In communications between qualified professional persons to meet the requirements of chapter 71.05 RCW, in the provision of services or appropriate referrals, or in the course of guardianship proceedings if provided to a professional person:

- (i) Employed by the facility;
- (ii) Who has medical responsibility for the patient's care;
- (iii) Who is a designated crisis responder;
- (iv) Who is providing services under chapter 71.24 RCW;

(v) Who is employed by a state or local correctional facility where the person is confined or supervised; or

(vi) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW;

(b) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside;

(c)(i) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such a designation;

(ii) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

(A) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(B) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, personal representative, guardian, or conservator; and

(iii) Other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator;

(d)(i) To the courts as necessary to the administration of chapter 71.05 RCW or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW.

(ii) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(iii) Disclosure under this subsection is mandatory for the purpose of the federal health insurance portability and accountability act;

(e)(i) When a mental health professional or designated crisis responder is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the mental health professional or designated crisis responder shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. The written report must be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(f) To the attorney of the detained person;

(g) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2), 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information must be disclosed only after giving notice to the committed person and the person's counsel;

(h)(i) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the deci-

sion to disclose or not, so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(i)(i) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act;

(j) To the persons designated in RCW 71.05.425 for the purposes described in those sections;

(k) Upon the death of a person. The person's next of kin, personal representative, guardian, or conservator, if any, must be notified. Next of kin who are of legal age and competent must be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient are governed by RCW 70.02.140;

(l) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient;

(m) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(iii). The extent of information that may be released is limited as follows:

(i) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(ii) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(iii);

(iii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(n) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of the disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee;

(o) Pursuant to lawful order of a court;

(p) To qualified staff members of the department, to the director of behavioral health organizations, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility;

(q) Within the mental health service agency where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties;

(r) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department;

(s) To a licensed physician or psychiatric advanced registered nurse practitioner who has determined that the life or health of the person is in danger and that treatment without the information and records related to mental health services could be injurious to the patient's health. Disclosure must be limited to the portions of the records necessary to meet the medical emergency;

(t)(i) Consistent with the requirements of the federal health insurance portability and accountability act, to:

(A) A health care provider who is providing care to a patient, or to whom a patient has been referred for evaluation or treatment; or

(B) Any other person who is working in a care coordinator role for a health care facility or health care provider or is under an agreement pursuant to the federal health insurance portability and accountability act with a health care facility or a health care provider and requires the information and records to assure coordinated care and treatment of that patient.

(ii) A person authorized to use or disclose information and records related to mental health services under this subsection (2)(t) must take appropriate steps to protect the information and records relating to mental health services.

(iii) Psychotherapy notes may not be released without authorization of the patient who is the subject of the request for release of information;

(u) To administrative and office support staff designated to obtain medical records for those licensed professionals listed in (t) of this subsection;

(v) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one evaluation and treatment facility to another. The release of records under this subsection is limited to the information and records related to mental health services required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record;

(w) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations,

appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW;

(x) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information must notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information;

(y) To all current treating providers of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. For purposes of coordinating health care, the department may release without written authorization of the patient, information acquired for billing and collection purposes as described in RCW 70.02.050(1)(d). The department shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. The department may not release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client;

(z)(i) To the secretary of social and health services for either program evaluation or research, or both so long as the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/"

(ii) Nothing in this chapter may be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary;

(aa) To any person if the conditions in RCW 70.02.205 are met.

(3) Whenever federal law or federal regulations restrict the release of information contained in the information and records related to mental health services of any patient who receives treatment for chemical dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations.

(4) Civil liability and immunity for the release of information about a particular person who is committed to the department of social and health services under RCW *71.05.280(3) and **71.05.320(4)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(5) The fact of admission to a provider of mental health services, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to chapter 71.05 RCW are not admissible as evidence in any legal proceeding outside that chapter without the written authorization of the person who was the subject of the proceeding except as provided in RCW 70.02.260, in a subsequent criminal prosecution of a person committed pursuant to RCW *71.05.280(3) or **71.05.320(4)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to chapter 71.05 RCW must be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

(6)(a) Except as provided in RCW 4.24.550, any person may bring an action against an individual who has willfully released confidential information or records concerning him or her in violation of the provisions of this section, for the greater of the following amounts:

(i) One thousand dollars; or

(ii) Three times the amount of actual damages sustained, if any.

(b) It is not a prerequisite to recovery under this subsection that the plaintiff suffered or was threatened with special, as contrasted with general, damages.

(c) Any person may bring an action to enjoin the release of confidential information or records concerning him or her or his or her ward, in violation of the provisions of this section, and may in the same action seek damages as provided in this subsection.

(d) The court may award to the plaintiff, should he or she prevail in any action authorized by this subsection, reasonable attorney fees in addition to those otherwise provided by law.

(e) If an action is brought under this subsection, no action may be brought under RCW 70.02.170. [2017 c 325 § 2; 2017 c 298 § 6; 2016 sp.s. c 29 § 417. Prior: 2014 c 225 § 71; 2014 c 220 § 9; 2013 c 200 § 7.]

Reviser's note: *(1) RCW 71.05.280 was amended by 2013 c 289 § 4, substantially modifying the provisions of subsection (3).

** (2) RCW 71.05.320 was amended by 2013 c 289 § 5, substantially modifying the provisions of subsection (4)(c).

(3) This section was amended by 2017 c 298 § 6 and by 2017 c 325 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2017 c 325 § 2: "Section 2 of this act takes effect April 1, 2018." [2017 c 325 § 4.]

Effective date—2017 c 298 § 6: "Section 6 of this act takes effect April 1, 2018." [2017 c 298 § 7.]

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Effective date—2014 c 225: See note following RCW 71.24.016.

Effective date—2014 c 220: See note following RCW 70.02.290.

Effective date—2013 c 200: See note following RCW 70.02.010.

70.02.230 Mental health services, confidentiality of records—Permitted disclosures. (Effective July 1, 2018.)

(1) Except as provided in this section, RCW 70.02.050, 71.05.445, 74.09.295, 70.02.210, 70.02.240, 70.02.250, and 70.02.260, or pursuant to a valid authorization under RCW 70.02.030, the fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies must be confidential.

(2) Information and records related to mental health services, other than those obtained through treatment under chapter 71.34 RCW, may be disclosed only:

(a) In communications between qualified professional persons to meet the requirements of chapter 71.05 RCW, in the provision of services or appropriate referrals, or in the course of guardianship proceedings if provided to a professional person:

- (i) Employed by the facility;
- (ii) Who has medical responsibility for the patient's care;
- (iii) Who is a designated crisis responder;
- (iv) Who is providing services under chapter 71.24 RCW;

(v) Who is employed by a state or local correctional facility where the person is confined or supervised; or

(vi) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW;

(b) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside;

(c)(i) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such a designation;

(ii) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

(A) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(B) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested

by the next of kin, attorney, personal representative, guardian, or conservator; and

(ii) Other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator;

(d)(i) To the courts as necessary to the administration of chapter 71.05 RCW or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW.

(ii) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(iii) Disclosure under this subsection is mandatory for the purpose of the federal health insurance portability and accountability act;

(e)(i) When a mental health professional or designated crisis responder is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the mental health professional or designated crisis responder shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. The written report must be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(f) To the attorney of the detained person;

(g) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2), 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information must be disclosed only after giving notice to the committed person and the person's counsel;

(h)(i) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(i)(i) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act;

(j) To the persons designated in RCW 71.05.425 for the purposes described in those sections;

(k) Upon the death of a person. The person's next of kin, personal representative, guardian, or conservator, if any, must be notified. Next of kin who are of legal age and competent must be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient are governed by RCW 70.02.140;

(l) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient;

(m) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(iii). The extent of information that may be released is limited as follows:

(i) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(ii) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(iii);

(iii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(n) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of the disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee;

(o) Pursuant to lawful order of a court;

(p) To qualified staff members of the department, to the director of behavioral health organizations, to resource man-

agement services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility;

(q) Within the mental health service agency where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties;

(r) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department;

(s) Between the department of social and health services, the department of children, youth, and families, and the health care authority as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department of social and health services or the department of children, youth, and families;

(t) To a licensed physician or psychiatric advanced registered nurse practitioner who has determined that the life or health of the person is in danger and that treatment without the information and records related to mental health services could be injurious to the patient's health. Disclosure must be limited to the portions of the records necessary to meet the medical emergency;

(u)(i) Consistent with the requirements of the federal health insurance portability and accountability act, to:

(A) A health care provider who is providing care to a patient, or to whom a patient has been referred for evaluation or treatment; or

(B) Any other person who is working in a care coordinator role for a health care facility or health care provider or is under an agreement pursuant to the federal health insurance portability and accountability act with a health care facility or a health care provider and requires the information and records to assure coordinated care and treatment of that patient.

(ii) A person authorized to use or disclose information and records related to mental health services under this subsection (2)(u) must take appropriate steps to protect the information and records relating to mental health services.

(iii) Psychotherapy notes may not be released without authorization of the patient who is the subject of the request for release of information;

(v) To administrative and office support staff designated to obtain medical records for those licensed professionals listed in (u) of this subsection;

(w) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one evaluation and treatment facility to another. The release of records under this subsection is limited to the information and records related to mental health services required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been pro-

vided, and recommendation for future treatment, but may not include the patient's complete treatment record;

(x) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW;

(y) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information must notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information;

(z) To all current treating providers of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. For purposes of coordinating health care, the department may release without written authorization of the patient, information acquired for billing and collection purposes as described in RCW 70.02.050(1)(d). The department shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. The department may not release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client;

(aa)(i) To the secretary of social and health services for either program evaluation or research, or both so long as the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, , agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/"

(ii) Nothing in this chapter may be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary;

(bb) To any person if the conditions in RCW 70.02.205 are met.

(3) Whenever federal law or federal regulations restrict the release of information contained in the information and records related to mental health services of any patient who receives treatment for chemical dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations.

(4) Civil liability and immunity for the release of information about a particular person who is committed to the department of social and health services under RCW *71.05.280(3) and **71.05.320(4)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(5) The fact of admission to a provider of mental health services, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to chapter 71.05 RCW are not admissible as evidence in any legal proceeding outside that chapter without the written authorization of the person who was the subject of the proceeding except as provided in RCW 70.02.260, in a subsequent criminal prosecution of a person committed pursuant to RCW *71.05.280(3) or **71.05.320(4)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to chapter 71.05 RCW must be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

(6)(a) Except as provided in RCW 4.24.550, any person may bring an action against an individual who has willfully released confidential information or records concerning him or her in violation of the provisions of this section, for the greater of the following amounts:

(i) One thousand dollars; or

(ii) Three times the amount of actual damages sustained, if any.

(b) It is not a prerequisite to recovery under this subsection that the plaintiff suffered or was threatened with special, as contrasted with general, damages.

(c) Any person may bring an action to enjoin the release of confidential information or records concerning him or her or his or her ward, in violation of the provisions of this section, and may in the same action seek damages as provided in this subsection.

(d) The court may award to the plaintiff, should he or she prevail in any action authorized by this subsection, reasonable attorney fees in addition to those otherwise provided by law.

(e) If an action is brought under this subsection, no action may be brought under RCW 70.02.170. [2017 3rd sp.s. c 6 § 816. Prior: 2017 c 325 § 2; 2017 c 298 § 6; 2016 sp.s. c 29 § 417; prior: 2014 c 225 § 71; 2014 c 220 § 9; 2013 c 200 § 7.]

Reviser's note: *(1) RCW 71.05.280 was amended by 2013 c 289 § 4, substantially modifying the provisions of subsection (3).

** (2) RCW 71.05.320 was amended by 2013 c 289 § 5, substantially modifying the provisions of subsection (4)(c).

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—2017 c 325 § 2: "Section 2 of this act takes effect April 1, 2018." [2017 c 325 § 4.]

Effective date—2017 c 298 § 6: "Section 6 of this act takes effect April 1, 2018." [2017 c 298 § 7.]

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Effective date—2014 c 225: See note following RCW 71.24.016.

Effective date—2014 c 220: See note following RCW 70.02.290.

Effective date—2013 c 200: See note following RCW 70.02.010.

Chapter 70.05 RCW

LOCAL HEALTH DEPARTMENTS, BOARDS, OFFICERS—REGULATIONS

Sections

70.05.200 On-site sewage system self-inspection.

70.05.200 On-site sewage system self-inspection.

Nothing in this chapter prohibits a county from relying on self-inspection of on-site sewage systems consistent with RCW 36.70A.690 or eliminates the requirement that counties protect water quality consistent with RCW 36.70A.070 (1) and (5). [2017 c 105 § 3.]

Chapter 70.22 RCW

MOSQUITO CONTROL

Sections

70.22.005 Repealed.

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

Chapter 70.38 RCW

HEALTH PLANNING AND DEVELOPMENT

Sections

70.38.111 Certificates of need—Exemptions.
70.38.260 Certain hospitals not subject to certificate of need requirements for the addition of the number of new psychiatric beds. (*Expires June 30, 2022.*)

70.38.111 Certificates of need—Exemptions. (1) The department shall not require a certificate of need for the offering of an inpatient tertiary health service by:

(a) A health maintenance organization or a combination of health maintenance organizations if (i) the organization or

combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination;

(b) A health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations which has, in the service area of the organization or service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iv) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination; or

(c) A health care facility (or portion thereof) if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals and, on the date the application is submitted under subsection (2) of this section, at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization; if, with respect to such offering or obligation by a nursing home, the department has, upon application under subsection (2) of this section, granted an exemption from such requirement to the organization, combination of organizations, or facility.

(2) A health maintenance organization, combination of health maintenance organizations, or health care facility shall not be exempt under subsection (1) of this section from obtaining a certificate of need before offering a tertiary health service unless:

(a) It has submitted at least thirty days prior to the offering of services reviewable under RCW 70.38.105(4)(d) an application for such exemption; and

(b) The application contains such information respecting the organization, combination, or facility and the proposed offering or obligation by a nursing home as the department may require to determine if the organization or combination meets the requirements of subsection (1) of this section or the facility meets or will meet such requirements; and

(c) The department approves such application. The department shall approve or disapprove an application for exemption within thirty days of receipt of a completed application. In the case of a proposed health care facility (or portion thereof) which has not begun to provide tertiary health services on the date an application is submitted under this

subsection with respect to such facility (or portion), the facility (or portion) shall meet the applicable requirements of subsection (1) of this section when the facility first provides such services. The department shall approve an application submitted under this subsection if it determines that the applicable requirements of subsection (1) of this section are met.

(3) A health care facility (or any part thereof) with respect to which an exemption was granted under subsection (1) of this section may not be sold or leased and a controlling interest in such facility or in a lease of such facility may not be acquired and a health care facility described in (1)(c) which was granted an exemption under subsection (1) of this section may not be used by any person other than the lessee described in (1)(c) unless:

(a) The department issues a certificate of need approving the sale, lease, acquisition, or use; or

(b) The department determines, upon application, that (i) the entity to which the facility is proposed to be sold or leased, which intends to acquire the controlling interest, or which intends to use the facility is a health maintenance organization or a combination of health maintenance organizations which meets the requirements of (1)(a)(i), and (ii) with respect to such facility, meets the requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i) and (ii).

(4) In the case of a health maintenance organization, an ambulatory care facility, or a health care facility, which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, the department may under the program apply its certificate of need requirements to the offering of inpatient tertiary health services to the extent that such offering is not exempt under the provisions of this section or RCW 70.38.105(7).

(5)(a) The department shall not require a certificate of need for the construction, development, or other establishment of a nursing home, or the addition of beds to an existing nursing home, that is owned and operated by a continuing care retirement community that:

(i) Offers services only to contractual members;

(ii) Provides its members a contractually guaranteed range of services from independent living through skilled nursing, including some assistance with daily living activities;

(iii) Contractually assumes responsibility for the cost of services exceeding the member's financial responsibility under the contract, so that no third party, with the exception of insurance purchased by the retirement community or its members, but including the medicaid program, is liable for costs of care even if the member depletes his or her personal resources;

(iv) Has offered continuing care contracts and operated a nursing home continuously since January 1, 1988, or has obtained a certificate of need to establish a nursing home;

(v) Maintains a binding agreement with the state assuring that financial liability for services to members, including nursing home services, will not fall upon the state;

(vi) Does not operate, and has not undertaken a project that would result in a number of nursing home beds in excess of one for every four living units operated by the continuing care retirement community, exclusive of nursing home beds; and

(vii) Has obtained a professional review of pricing and long-term solvency within the prior five years which was fully disclosed to members.

(b) A continuing care retirement community shall not be exempt under this subsection from obtaining a certificate of need unless:

(i) It has submitted an application for exemption at least thirty days prior to commencing construction of, is submitting an application for the licensure of, or is commencing operation of a nursing home, whichever comes first; and

(ii) The application documents to the department that the continuing care retirement community qualifies for exemption.

(c) The sale, lease, acquisition, or use of part or all of a continuing care retirement community nursing home that qualifies for exemption under this subsection shall require prior certificate of need approval to qualify for licensure as a nursing home unless the department determines such sale, lease, acquisition, or use is by a continuing care retirement community that meets the conditions of (a) of this subsection.

(6) A rural hospital, as defined by the department, reducing the number of licensed beds to become a rural primary care hospital under the provisions of Part A Title XVIII of the Social Security Act Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction of beds licensed under chapter 70.41 RCW, increase the number of licensed beds to no more than the previously licensed number without being subject to the provisions of this chapter.

(7) A rural health care facility licensed under RCW 70.175.100 formerly licensed as a hospital under chapter 70.41 RCW may, within three years of the effective date of the rural health care facility license, apply to the department for a hospital license and not be subject to the requirements of RCW 70.38.105(4)(a) as the construction, development, or other establishment of a new hospital, provided there is no increase in the number of beds previously licensed under chapter 70.41 RCW and there is no redistribution in the number of beds used for acute care or long-term care, the rural health care facility has been in continuous operation, and the rural health care facility has not been purchased or leased.

(8) A rural hospital determined to no longer meet critical access hospital status for state law purposes as a result of participation in the Washington rural health access preservation pilot identified by the state office of rural health and formerly licensed as a hospital under chapter 70.41 RCW may apply to the department to renew its hospital license and not be subject to the requirements of RCW 70.38.105(4)(a) as the construction, development, or other establishment of a new hospital, provided there is no increase in the number of beds previously licensed under chapter 70.41 RCW. If all or part of a formerly licensed rural hospital is sold, purchased, or leased during the period the rural hospital does not meet critical access hospital status as a result of participation in the Washington rural health access preservation pilot and the new owner or lessor applies to renew the rural hospital's license, then the sale, purchase, or lease of part or all of the rural hospital is subject to the provisions of this chapter.

(9)(a) A nursing home that voluntarily reduces the number of its licensed beds to provide assisted living, licensed assisted living facility care, adult day care, adult day health, respite care, hospice, outpatient therapy services, congregate

meals, home health, or senior wellness clinic, or to reduce to one or two the number of beds per room or to otherwise enhance the quality of life for residents in the nursing home, may convert the original facility or portion of the facility back, and thereby increase the number of nursing home beds to no more than the previously licensed number of nursing home beds without obtaining a certificate of need under this chapter, provided the facility has been in continuous operation and has not been purchased or leased. Any conversion to the original licensed bed capacity, or to any portion thereof, shall comply with the same life and safety code requirements as existed at the time the nursing home voluntarily reduced its licensed beds; unless waivers from such requirements were issued, in which case the converted beds shall reflect the conditions or standards that then existed pursuant to the approved waivers.

(b) To convert beds back to nursing home beds under this subsection, the nursing home must:

(i) Give notice of its intent to preserve conversion options to the department of health no later than thirty days after the effective date of the license reduction; and

(ii) Give notice to the department of health and to the department of social and health services of the intent to convert beds back. If construction is required for the conversion of beds back, the notice of intent to convert beds back must be given, at a minimum, one year prior to the effective date of license modification reflecting the restored beds; otherwise, the notice must be given a minimum of ninety days prior to the effective date of license modification reflecting the restored beds. Prior to any license modification to convert beds back to nursing home beds under this section, the licensee must demonstrate that the nursing home meets the certificate of need exemption requirements of this section.

The term "construction," as used in (b)(ii) of this subsection, is limited to those projects that are expected to equal or exceed the expenditure minimum amount, as determined under this chapter.

(c) Conversion of beds back under this subsection must be completed no later than four years after the effective date of the license reduction. However, for good cause shown, the four-year period for conversion may be extended by the department of health for one additional four-year period.

(d) Nursing home beds that have been voluntarily reduced under this section shall be counted as available nursing home beds for the purpose of evaluating need under RCW 70.38.115(2) (a) and (k) so long as the facility retains the ability to convert them back to nursing home use under the terms of this section.

(e) When a building owner has secured an interest in the nursing home beds, which are intended to be voluntarily reduced by the licensee under (a) of this subsection, the applicant shall provide the department with a written statement indicating the building owner's approval of the bed reduction.

(10)(a) The department shall not require a certificate of need for a hospice agency if:

(i) The hospice agency is designed to serve the unique religious or cultural needs of a religious group or an ethnic minority and commits to furnishing hospice services in a manner specifically aimed at meeting the unique religious or cultural needs of the religious group or ethnic minority;

(ii) The hospice agency is operated by an organization that:

(A) Operates a facility, or group of facilities, that offers a comprehensive continuum of long-term care services, including, at a minimum, a licensed, medicare-certified nursing home, assisted living, independent living, day health, and various community-based support services, designed to meet the unique social, cultural, and religious needs of a specific cultural and ethnic minority group;

(B) Has operated the facility or group of facilities for at least ten continuous years prior to the establishment of the hospice agency;

(iii) The hospice agency commits to coordinating with existing hospice programs in its community when appropriate;

(iv) The hospice agency has a census of no more than forty patients;

(v) The hospice agency commits to obtaining and maintaining medicare certification;

(vi) The hospice agency only serves patients located in the same county as the majority of the long-term care services offered by the organization that operates the agency; and

(vii) The hospice agency is not sold or transferred to another agency.

(b) The department shall include the patient census for an agency exempted under this subsection (10) in its calculations for future certificate of need applications.

(11) To alleviate the need to board psychiatric patients in emergency departments, for the period of time from May 5, 2017, through June 30, 2019:

(a) The department shall suspend the certificate of need requirement for a hospital licensed under chapter 70.41 RCW that changes the use of licensed beds to increase the number of beds to provide psychiatric services, including involuntary treatment services. A certificate of need exemption under this subsection (11)(a) shall be valid for two years.

(b) The department may not require a certificate of need for:

(i) The addition of beds as described in RCW 70.38.260 (2) and (3); or

(ii) The construction, development, or establishment of a psychiatric hospital licensed as an establishment under chapter 71.12 RCW that will have no more than sixteen beds and provide treatment to adults on ninety or one hundred eighty-day involuntary commitment orders, as described in RCW 70.38.260(4). [2017 c 199 § 1; 2016 sp.s. c 31 § 4; 2014 c 225 § 106; 2012 c 10 § 48. Prior: 2009 c 315 § 2; 2009 c 89 § 1; 1997 c 210 § 1; 1995 1st sp.s. c 18 § 71; 1993 c 508 § 5; 1992 c 27 § 2; 1991 c 158 § 2; 1989 1st ex.s. c 9 § 604; 1982 c 119 § 3; 1980 c 139 § 9.]

Effective date—2017 c 199: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 2017]." [2017 c 199 § 3.]

Finding—Intent—2016 sp.s. c 31: See note following RCW 74.09.5225.

Application—2012 c 10: See note following RCW 18.20.010.

Additional notes found at www.leg.wa.gov

70.38.260 Certain hospitals not subject to certificate of need requirements for the addition of the number of

new psychiatric beds. (Expires June 30, 2022.) (1) For a grant awarded during fiscal years 2016 and 2017 by the department of commerce under this section, hospitals licensed under chapter 70.41 RCW and psychiatric hospitals licensed as establishments under chapter 71.12 RCW are not subject to certificate of need requirements for the addition of the number of new psychiatric beds indicated in the grant. The department of commerce may not make a prior approval of a certificate of need application a condition for a grant application under this section. The period during which an approved hospital or psychiatric hospital project qualifies for a certificate of need exemption under this section is two years from the date of the grant award.

(2)(a) Until June 30, 2019, a hospital licensed under chapter 70.41 RCW is exempt from certificate of need requirements for the addition of new psychiatric beds.

(b) A hospital that adds new psychiatric beds under this subsection (2) must:

(i) Notify the department of the addition of new psychiatric beds. The department shall provide the hospital with a notice of exemption within thirty days; and

(ii) Commence the project within two years of the date of receipt of the notice of exemption.

(c) Beds granted an exemption under RCW 70.38.111(11)(b) must remain psychiatric beds unless a certificate of need is granted to change their use or the hospital voluntarily reduces its licensed capacity.

(3)(a) Until June 30, 2019, a psychiatric hospital licensed as an establishment under chapter 71.12 RCW is exempt from certificate of need requirements for the one-time addition of up to thirty new psychiatric beds, if it demonstrates to the satisfaction of the department:

(i) That its most recent two years of publicly available fiscal year-end report data as required under RCW *70.170.100 and 43.70.050 reported to the department by the psychiatric hospital, show a payer mix of a minimum of fifty percent medicare and medicaid based on a calculation using patient days; and

(ii) A commitment to maintaining the payer mix in (a) of this subsection for a period of five consecutive years after the beds are made available for use by patients.

(b) A psychiatric hospital that adds new psychiatric beds under this subsection (3) must:

(i) Notify the department of the addition of new psychiatric beds. The department shall provide the psychiatric hospital with a notice of exemption within thirty days; and

(ii) Commence the project within two years of the date of receipt of the notice of exemption.

(c) Beds granted an exemption under RCW 70.38.111(11)(b) must remain psychiatric beds unless a certificate of need is granted to change their use or the psychiatric hospital voluntarily reduces its licensed capacity.

(4)(a) Until June 30, 2019, an entity seeking to construct, develop, or establish a psychiatric hospital licensed as an establishment under chapter 71.12 RCW is exempt from certificate of need requirements if the proposed psychiatric hospital will have no more than sixteen beds and dedicate a portion of the beds to providing treatment to adults on ninety or one hundred eighty-day involuntary commitment orders. The psychiatric hospital may also provide treatment to adults on a

seventy-two hour detention or fourteen-day involuntary commitment order.

(b) An entity that seeks to construct, develop, or establish a psychiatric hospital under this subsection (4) must:

(i) Notify the department of the addition of construction, development, or establishment. The department shall provide the entity with a notice of exemption within thirty days; and

(ii) Commence the project within two years of the date of receipt of the notice of exemption.

(c) Entities granted an exemption under RCW 70.38.111(11)(b)(ii) may not exceed sixteen beds unless a certificate of need is granted to increase the psychiatric hospital's capacity.

(5) This section expires June 30, 2022. [2017 c 199 § 2; 2015 3rd sp.s. c 22 § 2.]

***Reviser's note:** The reference to RCW 70.170.100 appears to be erroneous. RCW 70.170.100 was repealed by 1995 c 265 § 27 and by 1995 c 267 § 12.

Effective date—2017 c 199: See note following RCW 70.38.111.

Intent—2015 3rd sp.s. c 22: "To accommodate the urgent need for inpatient psychiatric services and to facilitate state compliance with the Washington state supreme court decision, *In re the Detention of D.W.*, No. 90110-4, August 7, 2014, which prohibits the practice of psychiatric boarding, the legislature intends to exempt certain hospital mental health projects provided grant funding by the department of commerce from certificate of need requirements." [2015 3rd sp.s. c 22 § 1.]

Effective date—2015 3rd sp.s. c 22: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 6, 2015]." [2015 3rd sp.s. c 22 § 4.]

Chapter 70.41 RCW

HOSPITAL LICENSING AND REGULATION

Sections

70.41.420	Nurse staffing committee. (<i>Effective until June 1, 2023.</i>)
70.41.420	Nurse staffing committee. (<i>Effective June 1, 2023.</i>)
70.41.425	Nurse staffing—Department investigations. (<i>Expires June 1, 2023.</i>)

70.41.420 Nurse staffing committee. (Effective until June 1, 2023.) (1) By September 1, 2008, each hospital shall establish a nurse staffing committee, either by creating a new committee or assigning the functions of a nurse staffing committee to an existing committee. At least one-half of the members of the nurse staffing committee shall be registered nurses currently providing direct patient care and up to one-half of the members shall be determined by the hospital administration. The selection of the registered nurses providing direct patient care shall be according to the collective bargaining agreement if there is one in effect at the hospital. If there is no applicable collective bargaining agreement, the members of the nurse staffing committee who are registered nurses providing direct patient care shall be selected by their peers.

(2) Participation in the nurse staffing committee by a hospital employee shall be on scheduled work time and compensated at the appropriate rate of pay. Nurse staffing committee members shall be relieved of all other work duties during meetings of the committee.

(3) Primary responsibilities of the nurse staffing committee shall include:

(a) Development and oversight of an annual patient care unit and shift-based nurse staffing plan, based on the needs of patients, to be used as the primary component of the staffing budget. Factors to be considered in the development of the plan should include, but are not limited to:

(i) Census, including total numbers of patients on the unit on each shift and activity such as patient discharges, admissions, and transfers;

(ii) Level of intensity of all patients and nature of the care to be delivered on each shift;

(iii) Skill mix;

(iv) Level of experience and specialty certification or training of nursing personnel providing care;

(v) The need for specialized or intensive equipment;

(vi) The architecture and geography of the patient care unit, including but not limited to placement of patient rooms, treatment areas, nursing stations, medication preparation areas, and equipment;

(vii) Staffing guidelines adopted or published by national nursing professional associations, specialty nursing organizations, and other health professional organizations;

(viii) Availability of other personnel supporting nursing services on the unit; and

(ix) Strategies to enable registered nurses to take meal and rest breaks as required by law or the terms of an applicable collective bargaining agreement, if any, between the hospital and a representative of the nursing staff;

(b) Semiannual review of the staffing plan against patient need and known evidence-based staffing information, including the nursing sensitive quality indicators collected by the hospital;

(c) Review, assessment, and response to staffing variations or concerns presented to the committee.

(4) In addition to the factors listed in subsection (3)(a) of this section, hospital finances and resources must be taken into account in the development of the nurse staffing plan.

(5) The staffing plan must not diminish other standards contained in state or federal law and rules, or the terms of an applicable collective bargaining agreement, if any, between the hospital and a representative of the nursing staff.

(6) The committee will produce the hospital's annual nurse staffing plan. If this staffing plan is not adopted by the hospital, the chief executive officer shall provide a written explanation of the reasons why the plan was not adopted to the committee. The chief executive officer must then either: (a) Identify those elements of the proposed plan being changed prior to adoption of the plan by the hospital or (b) prepare an alternate annual staffing plan that must be adopted by the hospital. Beginning January 1, 2019, each hospital shall submit its staffing plan to the department and thereafter on an annual basis and at any time in between that the plan is updated.

(7) Beginning January 1, 2019, each hospital shall implement the staffing plan and assign nursing personnel to each patient care unit in accordance with the plan.

(a) A registered nurse may report to the staffing committee any variations where the nurse personnel assignment in a patient care unit is not in accordance with the adopted staffing plan and may make a complaint to the committee based on the variations.

(b) Shift-to-shift adjustments in staffing levels required by the plan may be made by the appropriate hospital personnel overseeing patient care operations. If a registered nurse on a patient care unit objects to a shift-to-shift adjustment, the registered nurse may submit the complaint to the staffing committee.

(c) Staffing committees shall develop a process to examine and respond to data submitted under (a) and (b) of this subsection, including the ability to determine if a specific complaint is resolved or dismissing a complaint based on unsubstantiated data.

(8) Each hospital shall post, in a public area on each patient care unit, the nurse staffing plan and the nurse staffing schedule for that shift on that unit, as well as the relevant clinical staffing for that shift. The staffing plan and current staffing levels must also be made available to patients and visitors upon request.

(9) A hospital may not retaliate against or engage in any form of intimidation of:

(a) An employee for performing any duties or responsibilities in connection with the nurse staffing committee; or

(b) An employee, patient, or other individual who notifies the nurse staffing committee or the hospital administration of his or her concerns on nurse staffing.

(10) This section is not intended to create unreasonable burdens on critical access hospitals under 42 U.S.C. Sec. 1395i-4. Critical access hospitals may develop flexible approaches to accomplish the requirements of this section that may include but are not limited to having nurse staffing committees work by telephone or email. [2017 c 249 § 2; 2008 c 47 § 3.]

Findings—Short title—Expiration date—2017 c 249: See notes following RCW 70.41.425.

Findings—Intent—2008 c 47: See note following RCW 70.41.410.

70.41.420 Nurse staffing committee. (Effective June 1, 2023.) (1) By September 1, 2008, each hospital shall establish a nurse staffing committee, either by creating a new committee or assigning the functions of a nurse staffing committee to an existing committee. At least one-half of the members of the nurse staffing committee shall be registered nurses currently providing direct patient care and up to one-half of the members shall be determined by the hospital administration. The selection of the registered nurses providing direct patient care shall be according to the collective bargaining agreement if there is one in effect at the hospital. If there is no applicable collective bargaining agreement, the members of the nurse staffing committee who are registered nurses providing direct patient care shall be selected by their peers.

(2) Participation in the nurse staffing committee by a hospital employee shall be on scheduled work time and compensated at the appropriate rate of pay. Nurse staffing committee members shall be relieved of all other work duties during meetings of the committee.

(3) Primary responsibilities of the nurse staffing committee shall include:

(a) Development and oversight of an annual patient care unit and shift-based nurse staffing plan, based on the needs of patients, to be used as the primary component of the staffing

budget. Factors to be considered in the development of the plan should include, but are not limited to:

- (i) Census, including total numbers of patients on the unit on each shift and activity such as patient discharges, admissions, and transfers;
 - (ii) Level of intensity of all patients and nature of the care to be delivered on each shift;
 - (iii) Skill mix;
 - (iv) Level of experience and specialty certification or training of nursing personnel providing care;
 - (v) The need for specialized or intensive equipment;
 - (vi) The architecture and geography of the patient care unit, including but not limited to placement of patient rooms, treatment areas, nursing stations, medication preparation areas, and equipment; and
 - (vii) Staffing guidelines adopted or published by national nursing professional associations, specialty nursing organizations, and other health professional organizations;
- (b) Semiannual review of the staffing plan against patient need and known evidence-based staffing information, including the nursing sensitive quality indicators collected by the hospital;

(c) Review, assessment, and response to staffing concerns presented to the committee.

(4) In addition to the factors listed in subsection (3)(a) of this section, hospital finances and resources may be taken into account in the development of the nurse staffing plan.

(5) The staffing plan must not diminish other standards contained in state or federal law and rules, or the terms of an applicable collective bargaining agreement, if any, between the hospital and a representative of the nursing staff.

(6) The committee will produce the hospital's annual nurse staffing plan. If this staffing plan is not adopted by the hospital, the chief executive officer shall provide a written explanation of the reasons why to the committee.

(7) Each hospital shall post, in a public area on each patient care unit, the nurse staffing plan and the nurse staffing schedule for that shift on that unit, as well as the relevant clinical staffing for that shift. The staffing plan and current staffing levels must also be made available to patients and visitors upon request.

(8) A hospital may not retaliate against or engage in any form of intimidation of:

- (a) An employee for performing any duties or responsibilities in connection with the nurse staffing committee; or
- (b) An employee, patient, or other individual who notifies the nurse staffing committee or the hospital administration of his or her concerns on nurse staffing.

(9) This section is not intended to create unreasonable burdens on critical access hospitals under 42 U.S.C. Sec. 1395i-4. Critical access hospitals may develop flexible approaches to accomplish the requirements of this section that may include but are not limited to having nurse staffing committees work by telephone or electronic mail. [2008 c 47 § 3.]

Findings—Intent—2008 c 47: See note following RCW 70.41.410.

70.41.425 Nurse staffing—Department investigations. (Expires June 1, 2023.) (1)(a) The department shall investigate a complaint submitted under this section for vio-

lation of RCW 70.41.420 following receipt of a complaint with documented evidence of failure to:

- (i) Form or establish a staffing committee;
- (ii) Conduct a semiannual review of a nurse staffing plan;
- (iii) Submit a nurse staffing plan on an annual basis and any updates; or
- (iv)(A) Follow the nursing personnel assignments in a patient care unit in violation of RCW 70.41.420(7)(a) or shift-to-shift adjustments in staffing levels in violation of RCW 70.41.420(7)(b).

(B) The department may only investigate a complaint under this subsection (1)(a)(iv) after making an assessment that the submitted evidence indicates a continuing pattern of unresolved violations of RCW 70.41.420(7) (a) or (b), that were submitted to the nurse staffing committee excluding complaints determined by the nurse staffing committee to be resolved or dismissed. The submitted evidence must include the aggregate data contained in the complaints submitted to the hospital's nurse staffing committee that indicate a continuing pattern of unresolved violations for a minimum sixty-day continuous period leading up to receipt of the complaint by the department.

(C) The department may not investigate a complaint under this subsection (1)(a)(iv) in the event of unforeseeable emergency circumstances or if the hospital, after consultation with the nurse staffing committee, documents it has made reasonable efforts to obtain staffing to meet required assignments but has been unable to do so.

(b) After an investigation conducted under (a) of this subsection, if the department determines that there has been a violation, the department shall require the hospital to submit a corrective plan of action within forty-five days of the presentation of findings from the department to the hospital.

(2) In the event that a hospital fails to submit or submits but fails to follow such a corrective plan of action in response to a violation or violations found by the department based on a complaint filed pursuant to subsection (1) of this section, the department may impose, for all violations asserted against a hospital at any time, a civil penalty of one hundred dollars per day until the hospital submits or begins to follow a corrective plan of action or takes other action agreed to by the department.

(3) The department shall maintain for public inspection records of any civil penalties, administrative actions, or license suspensions or revocations imposed on hospitals under this section.

(4) For purposes of this section, "unforeseeable emergency circumstance" means:

- (a) Any unforeseen national, state, or municipal emergency;
- (b) When a hospital disaster plan is activated;
- (c) Any unforeseen disaster or other catastrophic event that substantially affects or increases the need for health care services; or
- (d) When a hospital is diverting patients to another hospital or hospitals for treatment or the hospital is receiving patients who are from another hospital or hospitals.

(5) Nothing in this section shall be construed to preclude the ability to otherwise submit a complaint to the department for failure to follow RCW 70.41.420.

(6) The department shall submit a report to the legislature on December 31, 2020. This report shall include the number of complaints submitted to the department under this section, the disposition of these complaints, the number of investigations conducted, the associated costs for complaint investigations, and recommendations for any needed statutory changes. The department shall also project, based on experience, the impact, if any, on hospital licensing fees over the next four years. Prior to the submission of the report, the secretary shall convene a stakeholder group consisting of the Washington state hospital association, the Washington state nurses association, service employees international union healthcare 1199NW, and united food and commercial workers 21. The stakeholder group shall review the report prior to its submission to review findings and jointly develop any legislative recommendations to be included in the report.

(7) No fees shall be increased to implement chapter 249, Laws of 2017 prior to July 1, 2021. [2017 c 249 § 3.]

Findings—2017 c 249: "The legislature finds that:

(1) Research demonstrates that registered nurses play a critical role in improving patient safety and quality of care;

(2) Appropriate staffing of hospital personnel including registered nurses available for patient care assists in reducing errors, complications, and adverse patient care events and can improve staff safety and satisfaction and reduce incidences of workplace injuries;

(3) Health care professional, technical, and support staff comprise vital components of the patient care team, bringing their particular skills and services to ensuring quality patient care;

(4) Assuring sufficient staffing of hospital personnel, including registered nurses, is an urgent public policy priority in order to protect patients and support greater retention of registered nurses and safer working conditions; and

(5) Steps should be taken to promote evidence-based nurse staffing and increase transparency of health care data and decision making based on the data." [2017 c 249 § 1.]

Expiration date—2017 c 249: "This act expires June 1, 2023." [2017 c 249 § 4.]

Short title—2017 c 249: "This act may be known and cited as the Washington state patient safety act." [2017 c 249 § 5.]

Chapter 70.47A RCW

SMALL EMPLOYER HEALTH INSURANCE PARTNERSHIP PROGRAM

Sections

- 70.47A.010 Repealed.
- 70.47A.020 Repealed.
- 70.47A.030 Repealed.
- 70.47A.040 Repealed.
- 70.47A.050 Repealed.
- 70.47A.060 Repealed.
- 70.47A.070 Repealed.
- 70.47A.080 Repealed.
- 70.47A.090 Repealed.
- 70.47A.100 Repealed.
- 70.47A.110 Repealed.
- 70.47A.901 Repealed.

70.47A.010 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.47A.020 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.47A.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.47A.040 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.47A.050 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.47A.060 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.47A.070 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.47A.080 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.47A.090 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.47A.100 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.47A.110 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.47A.901 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 70.87 RCW

ELEVATORS, LIFTING DEVICES, AND MOVING WALKS

Sections

70.87.210 Deposit of moneys from chapter.

70.87.210 Deposit of moneys from chapter. All moneys, except fines and penalties, received or collected under the terms of this chapter shall be deposited in the construction registration inspection account. All fines and penalties received or collected under the terms of this chapter shall be deposited in the general fund. [2017 3rd sp.s. c 11 § 3; 1963 c 26 § 21.]

Effective date—2017 3rd sp.s. c 11: See note following RCW 51.44.190.

Chapter 70.90 RCW

WATER RECREATION FACILITIES

Sections

70.90.120 Adoption of rules governing safety, sanitation, and water quality—Exceptions.

70.90.250 Application of chapter.

70.90.120 Adoption of rules governing safety, sanitation, and water quality—Exceptions. (1) The board shall adopt rules under the administrative procedure act, chapter 34.05 RCW, governing safety, sanitation, and water quality for water recreation facilities. The rules shall include but not be limited to requirements for design; operation; injury and illness reporting; biological and chemical contamination standards; water quality monitoring; inspection; permit application and issuance; and enforcement procedures. However, a water recreation facility intended for the exclusive use of

residents of any apartment house complex or of a group of rental housing units of less than fifteen living units, or of a mobile home park, or of a condominium complex or any group or association of less than fifteen homeowners shall not be subject to preconstruction design review, routine inspection, or permit or fee requirements; and water treatment of hydroelectric reservoirs or natural streams, creeks, lakes, or irrigation canals shall not be required.

(2) In adopting rules under subsection (1) of this section regarding the operation or design of a recreational water contact facility, the board shall review and consider the most recent version of the United States centers for disease control and prevention's model aquatic health code. [2017 c 102 § 1; 1987 c 222 § 5; 1986 c 236 § 3.]

70.90.250 Application of chapter. This chapter applies to all water recreation facilities regardless of whether ownership is public or private and regardless of whether the intended use is commercial or private, except that this chapter shall not apply to:

- (1) Any water recreation facility for the sole use of residents and invited guests at a single-family dwelling;
- (2) Therapeutic water facilities operated exclusively for physical therapy;
- (3) Steam baths and saunas; and
- (4) Inflatable equipment operated at a temporary event, including inflatable water slides, that do not allow water to pool more than six inches and do not recirculate water. [2017 c 102 § 2; 1987 c 222 § 3.]

Chapter 70.93 RCW

WASTE REDUCTION, RECYCLING, AND MODEL LITTER CONTROL ACT

Sections

- 70.93.180 Waste reduction, recycling, and litter control account—Distribution. (*Effective until June 30, 2019.*)
- 70.93.180 Waste reduction, recycling, and litter control account—Distribution. (*Effective June 30, 2019.*)

70.93.180 Waste reduction, recycling, and litter control account—Distribution. (*Effective until June 30, 2019.*) (1) There is hereby created an account within the state treasury to be known as the waste reduction, recycling, and litter control account. Moneys in the account may be spent only after appropriation. Expenditures from the waste reduction, recycling, and litter control account shall be used as follows:

(a) Fifty percent to the department of ecology, for use by the departments of ecology, natural resources, revenue, transportation, and corrections, and the parks and recreation commission, for use in litter collection programs, to be distributed under RCW 70.93.220. The amount to the department of ecology shall also be used for a central coordination function for litter control efforts statewide; for statewide public awareness programs under RCW 70.93.200(7); and to support employment of youth in litter cleanup as intended in RCW 70.93.020, and for litter pick up using other authorized agencies. The amount to the department shall also be used to defray the costs of administering the funding, coordination, and oversight of local government programs for waste reduction, litter control, recycling, and composting, so that local

governments can apply one hundred percent of their funding to achieving program goals. The amount to the department of revenue shall be used to enforce compliance with the litter tax imposed in chapter 82.19 RCW;

(b)(i) Twenty percent to the department for local government funding programs for waste reduction, litter control, recycling activities, and composting activities by cities and counties under RCW 70.93.250, to be administered by the department of ecology; (ii) any unspent funds under (b)(i) of this subsection may be used to create and pay for a matching fund competitive grant program to provide funding to qualified local governments and nonprofit organizations for local or statewide education programs designed to help the public with litter control, waste reduction, recycling, and composting of primarily the products taxed under chapter 82.19 RCW. Grants must adhere to the following requirements: (A) No grant may exceed sixty thousand dollars; (B) grant recipients shall match the grant funding allocated by the department by an amount equal to twenty-five percent of eligible expenses. A local government's share of these costs may be met by cash or contributed services; (C) the obligation of the department to make grant payments is contingent upon the availability of the amount of money appropriated for this subsection (1)(b); and (D) grants are managed under the guidelines for existing grant programs; and

(c) Thirty percent to the department of ecology to: (i) Implement activities under RCW 70.93.200 for waste reduction, recycling, and composting efforts; (ii) provide technical assistance to local governments for commercial business and residential recycling and composting programs primarily for the products taxed under chapter 82.19 RCW designed to educate the public about waste reduction, litter control, and recyclable and compostable products and programs; and (iii) increase access to waste reduction, composting, and recycling programs, particularly for food packaging and plastic bags and appropriate composting techniques.

(2) All moneys directed to the waste reduction, recycling, and litter control account under RCW 82.19.040 and fines and bail forfeitures collected or received pursuant to this chapter shall be deposited in the account and used for the programs under subsection (1) of this section.

(3) Not less than five percent and no more than ten percent of the amount appropriated into the waste reduction, recycling, and litter control account every biennium shall be reserved for capital needs, including the purchase of vehicles for transporting crews and for collecting litter and solid waste. Capital funds shall be distributed among state agencies and local governments according to the same criteria provided in RCW 70.93.220 for the remainder of the funds, so that the most effective waste reduction, litter control, recycling, and composting programs receive the most funding. The intent of this subsection is to provide funds for the purchase of equipment that will enable the department to account for the greatest return on investment in terms of reaching a zero litter goal.

(4) Funds in the waste reduction, recycling, and litter control account, collected under chapter 82.19 RCW, must be prioritized for the products identified under RCW 82.19.020 solely for the purposes of waste reduction, recycling, composting, and litter collection, reduction, and control programs. [2015 c 15 § 2. Prior: 2013 2nd sp.s. c 15 § 6; 2013

2nd sp.s. c 4 § 989; 2011 1st sp.s. c 50 § 963; 2010 1st sp.s. c 37 § 945; 2009 c 564 § 950; 2005 c 518 § 939; 1998 c 257 § 5; 1992 c 175 § 8; 1991 sp.s. c 13 § 40; 1985 c 57 § 68; 1983 c 277 § 3; 1971 ex.s. c 307 § 18.]

Expiration date—2017 3rd sp.s. c 1; 2015 c 15 §§ 2 and 5: "Sections 2 and 5 of this act expire June 30, 2019." [2017 3rd sp.s. c 1 § 993; 2015 c 15 § 8.]

Effective date—Expiration date—2013 2nd sp.s. c 15 §§ 5-7: See notes following RCW 82.19.040.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2009 c 564: See note following RCW 2.68.020.

Additional notes found at www.leg.wa.gov

70.93.180 Waste reduction, recycling, and litter control account—Distribution. (Effective June 30, 2019.) (1) There is hereby created an account within the state treasury to be known as the waste reduction, recycling, and litter control account. Moneys in the account may be spent only after appropriation. Expenditures from the waste reduction, recycling, and litter control account shall be used as follows:

(a) Fifty percent to the department of ecology, for use by the departments of ecology, natural resources, revenue, transportation, and corrections, and the parks and recreation commission, for use in litter collection programs, to be distributed under RCW 70.93.220. The amount to the department of ecology shall also be used for a central coordination function for litter control efforts statewide; for statewide public awareness programs under RCW 70.93.200(7); and to support employment of youth in litter cleanup as intended in RCW 70.93.020, and for litter pick up using other authorized agencies. The amount to the department shall also be used to defray the costs of administering the funding, coordination, and oversight of local government programs for waste reduction, litter control, recycling, and composting so that local governments can apply one hundred percent of their funding to achieving program goals. The amount to the department of revenue shall be used to enforce compliance with the litter tax imposed in chapter 82.19 RCW;

(b)(i) Twenty percent to the department for local government funding programs for waste reduction, litter control, recycling activities, and composting activities by cities and counties under RCW 70.93.250, to be administered by the department of ecology; (ii) any unspent funds under (b)(i) of this subsection may be used to create and pay for a matching fund competitive grant program to be used by local governments and nonprofit organizations for local or statewide education programs designed to help the public with litter control, waste reduction, recycling, and composting of primarily the products taxed under chapter 82.19 RCW. Grants must adhere to the following requirements: (A) No grant may exceed sixty thousand dollars; (B) grant recipients shall match the grant funding allocated by the department by an amount equal to twenty-five percent of eligible expenses. A local government's share of these costs may be met by cash or contributed services; (C) the obligation of the department to make grant payments is contingent upon the availability of

the amount of money appropriated for this subsection (1)(b); and (D) grants are managed under the guidelines for existing grant programs; and

(c) Thirty percent to the department of ecology to: (i) Implement activities under RCW 70.93.200 for waste reduction, recycling, and composting efforts; (ii) provide technical assistance to local governments for commercial business and residential recycling programs primarily for the products taxed under chapter 82.19 RCW designed to educate citizens about waste reduction, litter control, and recyclable and compostable products and programs; and (iii) increase access to waste reduction, composting, and recycling programs, particularly for food packaging and plastic bags and appropriate composting techniques.

(2) All taxes imposed in RCW 82.19.010 and fines and bail forfeitures collected or received pursuant to this chapter shall be deposited in the waste reduction, recycling, and litter control account and used for the programs under subsection (1) of this section.

(3) Not less than five percent and no more than ten percent of the amount appropriated into the waste reduction, recycling, and litter control account every biennium shall be reserved for capital needs, including the purchase of vehicles for transporting crews and for collecting litter and solid waste. Capital funds shall be distributed among state agencies and local governments according to the same criteria provided in RCW 70.93.220 for the remainder of the funds, so that the most effective waste reduction, litter control, recycling, and composting programs receive the most funding. The intent of this subsection is to provide funds for the purchase of equipment that will enable the department to account for the greatest return on investment in terms of reaching a zero litter goal.

(4) Funds in the waste reduction, recycling, and litter control account, collected under chapter 82.19 RCW, must be prioritized for the products identified under RCW 82.19.020 solely for the purposes of recycling, composting, and litter collection, reduction, and control programs. [2015 c 15 § 3; 2013 2nd sp.s. c 4 § 989; 2011 1st sp.s. c 50 § 963; 2010 1st sp.s. c 37 § 945; 2009 c 564 § 950; 2005 c 518 § 939; 1998 c 257 § 5; 1992 c 175 § 8; 1991 sp.s. c 13 § 40; 1985 c 57 § 68; 1983 c 277 § 3; 1971 ex.s. c 307 § 18.]

Effective date—2017 3rd sp.s. c 1; 2015 c 15 §§ 3 and 6: "Sections 3 and 6 of this act take effect June 30, 2019." [2017 3rd sp.s. c 1 § 994; 2015 c 15 § 9.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2009 c 564: See note following RCW 2.68.020.

Additional notes found at www.leg.wa.gov

Chapter 70.94 RCW

WASHINGTON CLEAN AIR ACT

Sections

70.94.120	City selection committees—Meetings, notice, recording officer—Alternative mail balloting—Notice.
70.94.505	Repealed.

70.94.640 Odors or fugitive dust caused by agricultural activities consistent with good agricultural practices exempt from chapter.

70.94.120 City selection committees—Meetings, notice, recording officer—Alternative mail balloting—Notice. (1) The city selection committee of each county which is included within an authority shall meet within one month after the activation of such authority for the purpose of making its initial appointments to the board of such authority and thereafter whenever necessary for the purpose of making succeeding appointments. All meetings shall be held upon at least two weeks written notice to each member of the city selection committee of each county and he or she shall give such notice upon request of any member of such committee. A similar notice shall be given to the general public by a publication of such notice in a newspaper of general circulation in such authority. The authority shall act as recording officer, maintain its records, and give appropriate notice of its proceedings and actions.

(2) As an alternative to meeting in accordance with subsection (1) of this section, the authority may administer the appointment process through the mail.

(a) At least four months prior to the expiration of the term of office, the authority must mail a request to each of the members of the city selection committee seeking nominations to the office. The members of the selection committee shall return the nomination to the authority at its official address within fourteen days.

(b) If an unexpected vacancy occurs, the authority must, within thirty days after becoming aware of the vacancy, mail a request to each of the members of the city selection committee seeking nominations to the office. The members of the city selection committee shall return the nomination to the authority at its official address within fourteen days after the request was made.

(c) Within five business days of the close of the nomination period, the authority will mail ballots by certified mail to each of the members of the city selection committee, specifying the date by which to return the completed ballot which is the last day of the third month prior to the expiration of the term of office. Each mayor who chooses to participate in the balloting shall mark the choice for appointment, sign the ballot, and return the ballot to the authority. Each completed ballot shall be date-stamped upon receipt by the mayor or staff of the mayor of the city or town. The timely return of completed ballots by a majority of the members of each city selection committee constitutes a quorum and the common choice by a majority of the quorum constitutes a valid appointment.

(3) At least two weeks' written notice must be given by the authority to each member of the city selection committee prior to the nomination process. A similar notice shall be given to the general public by publication in a newspaper of general circulation in the authority. A single notice is sufficient for both the nomination process and the balloting process. [2017 c 37 § 6; 2012 c 117 § 406; 2009 c 254 § 2; 1995 c 261 § 2; 1969 ex.s. c 168 § 14; 1967 c 238 § 23; 1957 c 232 § 12.]

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

70.94.640 Odors or fugitive dust caused by agricultural activities consistent with good agricultural practices exempt from chapter. (1) Odors or fugitive dust caused by agricultural activity consistent with good agricultural practices on agricultural land are exempt from the requirements of this chapter unless they have a substantial adverse effect on public health. In determining whether agricultural activity is consistent with good agricultural practices, the department of ecology or board of any authority shall consult with a recognized third-party expert in the activity prior to issuing any notice of violation.

(2) Any notice of violation issued under this chapter pertaining to odors or fugitive dust caused by agricultural activity shall include a detailed statement with evidence as to why the activity is inconsistent with good agricultural practices, or a detailed statement with evidence that the odors or fugitive dust shall have substantial adverse effect on public health.

(3) In any appeal to the pollution control hearings board or any judicial appeal, the agency issuing a final order pertaining to odors or fugitive dust caused by agricultural activity shall prove the activity is inconsistent with good agricultural practices or that the odors or fugitive dust have a substantial adverse impact on public health.

(4) If a person engaged in agricultural activity on a contiguous piece of agricultural land sells or has sold a portion of that land for residential purposes, the exemption of this section shall not apply.

(5) As used in this section:

(a) "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, shellfish, grain, mint, hay, and dairy products. "Agricultural activity" also includes the growing, raising, or production of cattle at cattle feedlots.

(b) "Good agricultural practices" means economically feasible practices which are customary among or appropriate to farms and ranches of a similar nature in the local area and for cattle feedlots means implementing best management practices pursuant to a fugitive dust control plan that conforms to the fugitive dust control guidelines for beef cattle feedlots, best management practices, and plan development and approval procedures that were approved by the department of ecology in December 1995 or in updates to those guidelines that are mutually agreed to by the department of ecology and by the Washington cattle feeders association or a successor organization on behalf of cattle feedlots.

(c) "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock, agricultural commodities, or cultured aquatic products.

(d) "Fugitive dust" means a particulate emission made airborne by human activity, forces of wind, or both, and which do not pass through a stack, chimney, vent, or other functionally equivalent opening.

(6) The exemption for fugitive dust provided in subsection (1) of this section does not apply to facilities subject to RCW 70.94.151 as specified in WAC 173-400-100 as of July 24, 2005, 70.94.152, or 70.94.161. The exemption for fugitive dust provided in subsection (1) of this section applies to cattle feedlots with operational facilities which have an inventory of one thousand or more cattle in operation between June 1st and October 1st, where vegetation forage growth is not sustained over the majority of the lot during the

normal growing season; except that the cattle feedlots must comply with applicable requirements included in the approved state implementation plan for air quality as of July 23, 2017; and except if an area in which a cattle feedlot is located is at any time in the future designated nonattainment for a national ambient air quality standard for particulate matter, additional control measures may be required for cattle feedlots as part of a state implementation plan's control strategy for that area and as necessary to ensure the area returns to attainment. [2017 c 217 § 1; 2005 c 511 § 4; 1981 c 297 § 30.]

Legislative finding, intent—1981 c 297: "The legislature finds that agricultural land is essential to providing citizens with food and fiber and to insuring aesthetic values through the preservation of open spaces in our state. The legislature further finds that government regulations can cause agricultural land to be converted to nonagricultural uses. The legislature intends that agricultural activity consistent with good practices be protected from government over-regulation." [1981 c 297 § 29.]

Reviser's note: The above legislative finding and intent section apparently applies to sections 30 and 31 of chapter 297, Laws of 1981, which sections have been codified pursuant to legislative direction as RCW 70.94.640 and 90.48.450, respectively.

Additional notes found at www.leg.wa.gov

Chapter 70.95 RCW

SOLID WASTE MANAGEMENT—REDUCTION AND RECYCLING

Sections

70.95.532 Waste tire removal account—Use of moneys—Transfer of any balance in excess of one million dollars to the motor vehicle account.

70.95.532 Waste tire removal account—Use of moneys—Transfer of any balance in excess of one million dollars to the motor vehicle account. (1) All receipts from tire fees imposed under RCW 70.95.510, except as provided in subsection (2) of this section, must be deposited in the waste tire removal account created under RCW 70.95.521. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used for the cleanup of unauthorized waste tire piles and measures that prevent future accumulation of unauthorized waste tire piles.

(2) On September 1st of odd-numbered years, the state treasurer must transfer any cash balance in excess of one million dollars from the waste tire removal account created under RCW 70.95.521 to the motor vehicle account for the purpose of road wear related maintenance on state and local public highways. [2017 3rd sp.s. c 25 § 10; 2010 c 247 § 704; 2009 c 261 § 4.]

Effective date—2010 c 247: See note following RCW 43.19.642.

Intent—2009 c 261: See note following RCW 70.95.510.

Chapter 70.95A RCW

POLLUTION CONTROL—MUNICIPAL BONDING AUTHORITY

Sections

70.95A.020 Definitions.

70.95A.020 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Department" shall mean the state department of ecology;

(2) "Facility" or "facilities" shall mean any land, building, structure, machinery, system, fixture, appurtenance, equipment or any combination thereof, or any interest therein, and all real and personal properties deemed necessary in connection therewith whether or not now in existence, which is used or to be used by any person, corporation or municipality in furtherance of the purpose of abating, controlling or preventing pollution;

(3) "Governing body" shall mean the body or bodies in which the legislative powers of the municipality are vested;

(4) "Mortgage" shall mean a mortgage or a mortgage and deed of trust or other security device;

(5) "Municipality" shall mean any city, town, county, port district, or water-sewer district in the state; and

(6) "Pollution" shall mean any form of environmental pollution, including but not limited to water pollution, air pollution, land pollution, solid waste disposal, thermal pollution, radiation contamination, or noise pollution. [2017 c 314 § 3; 1973 c 132 § 3.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Chapter 70.95B RCW

DOMESTIC WASTE TREATMENT PLANTS—OPERATORS

Sections

70.95B.150 Repealed.

70.95B.151 Wastewater treatment plant operator certification account—Administration of chapter—Receipts.

70.95B.150 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.95B.151 Wastewater treatment plant operator certification account—Administration of chapter—Receipts. The wastewater treatment plant operator certification account is created in the state treasury. All fees paid pursuant to RCW 70.95B.095 and any other receipts realized in the administration of this chapter must be deposited into the account. Moneys in the account may be spent only after appropriation. Moneys from the account must be used by the department to carry out the purposes of the wastewater treatment plant operator certification program. [2017 c 35 § 1.]

Chapter 70.95H RCW

CLEAN WASHINGTON CENTER

Sections

70.95H.005 Repealed.

70.95H.007 Repealed.

70.95H.010 Repealed.

70.95H.030 Repealed.

70.95H.040 Repealed.

70.95H.050 Repealed.

70.95H.900 Repealed.

70.95H.005 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.95H.007 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.95H.010 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.95H.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.95H.040 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.95H.050 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

70.95H.900 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 70.95N RCW

ELECTRONIC PRODUCT RECYCLING

Sections

70.95N.270 Repealed.

70.95N.270 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 70.96A RCW

TREATMENT FOR ALCOHOLISM, INTOXICATION, AND DRUG ADDICTION

Sections

70.96A.140 Involuntary commitment. (*Effective until April 1, 2018.*)

70.96A.140 Involuntary commitment. (*Effective until April 1, 2018.*) (1)(a) When a designated chemical dependency specialist receives information alleging that a person presents a likelihood of serious harm or is gravely disabled as a result of a substance use disorder, the designated chemical dependency specialist, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the information, may file a petition for commitment of such person with the superior court, district court, or in another court permitted by court rule.

If a petition for commitment is not filed in the case of a minor, the parent, guardian, or custodian who has custody of the minor may seek review of that decision made by the designated chemical dependency specialist in superior or district court. The parent, guardian, or custodian shall file notice with the court and provide a copy of the designated chemical dependency specialist's report.

If the designated chemical dependency specialist finds that the initial needs of such person would be better served by placement within the mental health system, the person shall be referred to either a designated mental health professional or an evaluation and treatment facility as defined in RCW 71.05.020 or 71.34.020.

(b) If placement in a substance use disorder treatment program is available and deemed appropriate, the petition shall allege that: The person is chemically dependent and presents a likelihood of serious harm or is gravely disabled by

alcohol or drug addiction, or that the person has twice before in the preceding twelve months been admitted for withdrawal management, sobering services, or substance use disorder treatment pursuant to RCW 70.96A.110 or 70.96A.120, and is in need of a more sustained treatment program, or that the person has a substance use disorder and has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed. A refusal to undergo treatment, by itself, does not constitute evidence of lack of judgment as to the need for treatment.

(c) If involuntary detention is sought, the petition must state facts that support a finding of the grounds identified in (b) of this subsection and that there are no less restrictive alternatives to detention in the best interest of such person or others. The petition must state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate. If an involuntary less restrictive alternative is sought, the petition must state facts that support a finding of the grounds for commitment identified in (b) of this subsection and set forth the proposed less restrictive alternative.

(d)(i) The petition must be signed by:

(A) One physician, physician assistant, or advanced registered nurse practitioner; and

(B) One physician, physician assistant, advanced registered nurse practitioner, or designated chemical dependency specialist.

(2) Upon filing the petition, the court shall fix a date for a hearing no less than two and no more than seven days after the date the petition was filed unless the person petitioned against is presently being detained in a program, pursuant to RCW 70.96A.120, 71.05.210, or 71.34.710, in which case the hearing shall be held within seventy-two hours of the filing of the petition. The seventy-two hours shall be computed by excluding Saturdays, Sundays, and holidays. The court may, upon motion of the person whose commitment is sought, or upon motion of petitioner with written permission of the person whose commitment is sought, or his or her counsel and, upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served on the person whose commitment is sought, his or her next of kin, a parent or his or her legal guardian if he or she is a minor, and any other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony including, if possible, the testimony, which may be telephonic, of at least one licensed physician, psychiatric advanced registered nurse practitioner, physician assistant, or designated chemical dependency specialist who has examined the person whose commitment is sought. Communications otherwise deemed privileged under the laws of this state are deemed to be waived in proceedings under this chapter when a court of competent jurisdiction in its discretion determines that the waiver is necessary to protect either the detained person or the public. The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person, or on its own motion, the court shall examine a record or testimony

sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical, nursing, or psychological records of detained persons so long as the requirements of RCW 5.45.020 are met, except that portions of the record that contain opinions as to whether the detained person has a substance use disorder shall be deleted from the records unless the person offering the opinions is available for cross-examination. The person shall be present unless the court believes that his or her presence is likely to be injurious to him or her; in this event the court may deem it appropriate to appoint a guardian ad litem to represent him or her throughout the proceeding. If deemed advisable, the court may examine the person out of courtroom. If the person has refused to be examined by a licensed physician, psychiatric advanced registered nurse practitioner, physician assistant, or designated chemical dependency specialist, he or she shall be given an opportunity to be examined by a court appointed licensed physician, psychiatric advanced registered nurse practitioner, physician assistant, or other professional person qualified to provide such services. If he or she refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him or her to the department for a period of not more than five days for purposes of a diagnostic examination.

(4)(a) If, after hearing all relevant evidence, including the results of any diagnostic examination, the court finds that grounds for involuntary commitment have been established by a preponderance of the evidence and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interest of the person or others, it shall make an order of commitment to an approved substance use disorder treatment program. It shall not order commitment of a person unless it determines that an approved substance use disorder treatment program is available and able to provide adequate and appropriate treatment for him or her.

(b) If the court finds that the grounds for commitment have been established by a preponderance of the evidence, but that treatment in a less restrictive setting than detention is in the best interest of such person or others, the court shall order an appropriate less restrictive course of treatment. The less restrictive order may impose treatment conditions and other conditions that are in the best interest of the respondent and others. A copy of the less restrictive order must be given to the respondent, the designated chemical dependency specialist, and any program designated to provide less restrictive treatment. If the program designated to provide the less restrictive treatment is other than the program providing the initial involuntary treatment, the program so designated must agree in writing to assume such responsibility. The court may not order commitment of a person to a less restrictive course of treatment unless it determines that an approved substance use disorder treatment program is available and able to provide adequate and appropriate treatment for him or her.

(5) A person committed to inpatient treatment under this section shall remain in the program for treatment for a period of fourteen days unless sooner discharged. A person committed to a less restrictive course of treatment under this section

shall remain in the program of treatment for a period of ninety days unless sooner discharged. At the end of the fourteen-day period, or ninety-day period in the case of a less restrictive alternative to inpatient treatment, he or she shall be discharged automatically unless the program or the designated chemical dependency specialist, before expiration of the period, files a petition for his or her recommitment upon the grounds set forth in subsection (1) of this section for a further period of ninety days of inpatient treatment or ninety days of less restrictive alternative treatment unless sooner discharged. The petition for ninety-day inpatient or less restrictive alternative treatment must be filed with the clerk of the court at least three days before expiration of the fourteen-day period of intensive treatment.

If a petition for recommitment is not filed in the case of a minor, the parent, guardian, or custodian who has custody of the minor may seek review of that decision made by the designated chemical dependency specialist in superior or district court. The parent, guardian, or custodian shall file notice with the court and provide a copy of the treatment progress report.

If a person has been committed because he or she has a substance use disorder and is likely to inflict physical harm on another, the program or designated chemical dependency specialist shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) Upon the filing of a petition for recommitment under subsection (5) of this section, the court shall fix a date for hearing no less than two and no more than seven days after the date the petition was filed. The court may, upon motion of the person whose commitment is sought and upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served by the treatment program on the person whose commitment is sought, his or her next of kin, the original petitioner under subsection (1) of this section if different from the petitioner for recommitment, one of his or her parents or his or her legal guardian if he or she is a minor, and his or her attorney and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsections (3) and (4) of this section, except that the burden of proof upon a hearing for recommitment must be proof by clear, cogent, and convincing evidence.

(7) The approved substance use disorder treatment program shall provide for adequate and appropriate treatment of a person committed to its custody on an inpatient or outpatient basis. A person committed under this section may be transferred from one approved public treatment program to another if transfer is medically advisable.

(8) A person committed to a program for treatment shall be discharged at any time before the end of the period for which he or she has been committed and he or she shall be discharged by order of the court if either of the following conditions are met:

(a) In case of a person with a substance use disorder committed on the grounds of likelihood of infliction of physical harm upon himself, herself, or another, the likelihood no longer exists; or further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(b) In case of a person with a substance use disorder committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists.

(9) The court shall inform the person whose commitment or recommitment is sought of his or her right to contest the application, be represented by counsel at every stage of any proceedings relating to his or her commitment and recommitment, and have counsel appointed by the court or provided by the court, if he or she wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him or her regardless of his or her wishes. The person shall, if he or she is financially able, bear the costs of such legal service; otherwise such legal service shall be at public expense. The person whose commitment or recommitment is sought shall be informed of his or her right to be examined by a licensed physician, psychiatric advanced registered nurse practitioner, physician assistant, designated chemical dependency specialist, or other professional person of his or her choice who is qualified to provide such services. If the person is unable to obtain a qualified person and requests an examination, the court shall employ a licensed physician, psychiatric advanced registered nurse practitioner, physician assistant, designated chemical dependency specialist, or other professional person to conduct an examination and testify on behalf of the person.

(10) A person committed under this chapter may at any time seek to be discharged from commitment by writ of habeas corpus in a court of competent jurisdiction.

(11) The venue for proceedings under this section is the county in which person to be committed resides or is present.

(12) When in the opinion of the professional person in charge of the program providing involuntary inpatient treatment under this chapter, the committed patient can be appropriately served by less restrictive treatment before expiration of the period of commitment, then the less restrictive care may be required as a condition for early release for a period which, when added to the initial treatment period, does not exceed the period of commitment. If the program designated to provide the less restrictive treatment is other than the program providing the initial involuntary treatment, the program so designated must agree in writing to assume such responsibility. A copy of the conditions for early release shall be given to the patient, the designated chemical dependency specialist of original commitment, and the court of original commitment. The program designated to provide less restrictive care may modify the conditions for continued release when the modifications are in the best interests of the patient. If the program providing less restrictive care and the designated chemical dependency specialist determine that a conditionally released patient is failing to adhere to the terms and conditions of his or her release, or that substantial deterioration in the patient's functioning has occurred, then the designated chemical dependency specialist shall notify the court of original commitment and request a hearing to be held no less than two and no more than seven days after the date of the request to determine whether or not the person should be returned to more restrictive care. The designated chemical dependency specialist shall file a petition with the court stating the facts substantiating the need for the hearing along with the treatment recommendations. The patient shall have the same

rights with respect to notice, hearing, and counsel as for the original involuntary treatment proceedings. The issues to be determined at the hearing are whether the conditionally released patient did or did not adhere to the terms and conditions of his or her release to less restrictive care or that substantial deterioration of the patient's functioning has occurred and whether the conditions of release should be modified or the person should be returned to a more restrictive program. The hearing may be waived by the patient and his or her counsel and his or her guardian or conservator, if any, but may not be waived unless all such persons agree to the waiver. Upon waiver, the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions. The grounds and procedures for revocation of less restrictive alternative treatment ordered by the court must be the same as those set forth in this section for less restrictive care arranged by an approved substance use disorder treatment program as a condition for early release. [2017 3rd sp.s. c 14 § 13; 2016 sp.s. c 29 § 102; 2014 c 225 § 29; 2001 c 13 § 3; 1995 c 312 § 49; 1993 c 362 § 1; 1991 c 364 § 10; 1990 c 151 § 3; 1989 c 271 § 307; 1987 c 439 § 14; 1977 ex.s. c 129 § 1; 1974 ex.s. c 175 § 2; 1972 ex.s. c 122 § 14.]

Effective date—2017 3rd sp.s. c 14 § 13: "Section 13 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 6, 2017]." [2017 3rd sp.s. c 14 § 22.]

Expiration date—2017 3rd sp.s. c 14 §§ 8, 11, and 13: See note following RCW 71.05.590.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Effective date—2014 c 225: See note following RCW 71.24.016.

Purpose—Construction—1993 c 362: "The purpose of this act is solely to provide authority for the involuntary commitment of persons suffering from chemical dependency within available funds and current programs and facilities. Nothing in this act shall be construed to require the addition of new facilities nor affect the department of social and health services' authority for the uses of existing programs and facilities authorized by law." [1993 c 362 § 2.]

Findings—Construction—Conflict with federal requirements—1991 c 364: See notes following RCW 70.96A.020.

Additional notes found at www.leg.wa.gov

Chapter 70.104 RCW

PESTICIDES—HEALTH HAZARDS

Sections

70.104.070 Repealed.

70.104.090 Repealed.

70.104.100 Repealed.

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

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

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

**Chapter 70.105A RCW
HAZARDOUS WASTE FEES**

Sections

70.105A.035 Repealed.

70.105A.035 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 70.105D RCW
HAZARDOUS WASTE CLEANUP—MODEL TOXICS
CONTROL ACT**

Sections

70.105D.070 Toxics control accounts.

70.105D.070 Toxics control accounts. (1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2)(a) Moneys collected under RCW 82.21.030 must be deposited as follows: Fifty-six percent to the state toxics control account under subsection (3) of this section and forty-four percent to the local toxics control account under subsection (4) of this section. When the cumulative amount of deposits made to the state and local toxics control accounts under this section reaches the limit during a fiscal year as established in (b) of this subsection, the remainder of the moneys collected under RCW 82.21.030 during that fiscal year must be deposited into the environmental legacy stewardship account created in RCW 70.105D.170.

(b) The limit on distributions of moneys collected under RCW 82.21.030 to the state and local toxics control accounts for the fiscal year beginning July 1, 2013, is one hundred forty million dollars.

(c) In addition to the funds required under (a) of this subsection, the following moneys must be deposited into the state toxics control account: (i) The costs of remedial actions recovered under this chapter or *chapter 70.105A RCW; (ii) penalties collected or recovered under this chapter; and (iii) any other money appropriated or transferred to the account by the legislature.

(3) Moneys in the state toxics control account must be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(a) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(b) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(c) The hazardous waste clean-up program required under this chapter;

(d) State matching funds required under federal cleanup law;

(e) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(f) State government programs for the safe reduction, recycling, or disposal of paint and hazardous wastes from households, small businesses, and agriculture;

(g) Oil and hazardous materials spill prevention, preparedness, training, and response activities;

(h) Water and environmental health protection and monitoring programs;

(i) Programs authorized under chapter 70.146 RCW;

(j) A public participation program;

(k) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with clean-up standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both: (i) A substantially more expeditious or enhanced cleanup than would otherwise occur; and (ii) the prevention or mitigation of unfair economic hardship;

(l) Development and demonstration of alternative management technologies designed to carry out the hazardous waste management priorities of RCW 70.105.150;

(m) State agriculture and health programs for the safe use, reduction, recycling, or disposal of pesticides;

(n) Stormwater pollution control projects and activities that protect or preserve existing remedial actions or prevent hazardous clean-up sites;

(o) Funding requirements to maintain receipt of federal funds under the federal solid waste disposal act (42 U.S.C. Sec. 6901 et seq.);

(p) Air quality programs and actions for reducing public exposure to toxic air pollution;

(q) Public funding to assist prospective purchasers to pay for the costs of remedial action in compliance with clean-up standards under RCW 70.105D.030(2)(e) if:

(i) The facility is located within a redevelopment opportunity zone designated under RCW 70.105D.150;

(ii) The amount and terms of the funding are established under a settlement agreement under RCW 70.105D.040(5); and

(iii) The director has found the funding meets any additional criteria established in rule by the department, will achieve a substantially more expeditious or enhanced cleanup than would otherwise occur, and will provide a public benefit in addition to cleanup commensurate with the scope of the public funding;

(r) Petroleum-based plastic or expanded polystyrene foam debris cleanup activities in fresh or marine waters;

(s) Appropriations to the local toxics control account or the environmental legacy stewardship account created in RCW 70.105D.170, if the legislature determines that priorities for spending exceed available funds in those accounts;

(t) During the 2015-2017 and 2017-2019 fiscal biennia, the department of ecology's water quality, shorelands, environmental assessment, administration, and air quality programs;

(u) During the 2013-2015 fiscal biennium, actions at the state conservation commission to improve water quality for shellfish;

(v) During the 2013-2015 and 2015-2017 fiscal biennia, actions at the University of Washington for reducing ocean acidification;

(w) During the 2015-2017 and 2017-2019 fiscal biennia, for the University of Washington Tacoma soil remediation project;

(x) For the 2013-2015 fiscal biennium, moneys in the state toxics control account may be spent on projects in section 3160, chapter 19, Laws of 2013 2nd sp. sess. and for transfer to the local toxics control account;

(y) For the 2013-2015 fiscal biennium, moneys in the state toxics control account may be transferred to the radioactive mixed waste account; and

(z) For the 2015-2017 and 2017-2019 fiscal biennia, forest practices regulation at the department of natural resources.

(4)(a) The department shall use moneys deposited in the local toxics control account for grants or loans to local governments for the following purposes in descending order of priority:

(i) Extended grant agreements entered into under (e)(i) of this subsection;

(ii) Remedial actions, including planning for adaptive reuse of properties as provided for under (e)(iv) of this subsection. The department must prioritize funding of remedial actions at:

(A) Facilities on the department's hazardous sites list with a high hazard ranking for which there is an approved remedial action work plan or an equivalent document under federal cleanup law;

(B) Brownfield properties within a redevelopment opportunity zone if the local government is a prospective purchaser of the property and there is a department-approved remedial action work plan or equivalent document under the federal cleanup law;

(iii) Stormwater pollution source projects that: (A) Work in conjunction with a remedial action; (B) protect completed remedial actions against recontamination; or (C) prevent hazardous clean-up sites;

(iv) Hazardous waste plans and programs under chapter 70.105 RCW;

(v) Solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) Petroleum-based plastic or expanded polystyrene foam debris cleanup activities in fresh or marine waters; and

(vii) Appropriations to the state toxics control account or the environmental legacy stewardship account created in RCW 70.105D.170, if the legislature determines that priorities for spending exceed available funds in those accounts.

(b) Funds for plans and programs must be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW.

(c) During the 2013-2015 fiscal biennium, the local toxics control account may also be used for local government stormwater planning and implementation activities.

(d) During the 2013-2015 fiscal biennium, the legislature may transfer from the local toxics control account to the state general fund, such amounts as reflect the excess fund balance in the account.

(e) To expedite cleanups throughout the state, the department may use the following strategies when providing grants to local governments under this subsection:

(i) Enter into an extended grant agreement with a local government conducting remedial actions at a facility where those actions extend over multiple biennia and the total eligible cost of those actions exceeds twenty million dollars. The agreement is subject to the following limitations:

(A) The initial duration of such an agreement may not exceed ten years. The department may extend the duration of such an agreement upon finding substantial progress has been made on remedial actions at the facility;

(B) Extended grant agreements may not exceed fifty percent of the total eligible remedial action costs at the facility; and

(C) The department may not allocate future funding to an extended grant agreement unless the local government has demonstrated to the department that funds awarded under the agreement during the previous biennium have been substantially expended or contracts have been entered into to substantially expend the funds;

(ii) Enter into a grant agreement with a local government conducting a remedial action that provides for periodic reimbursement of remedial action costs as they are incurred as established in the agreement;

(iii) Enter into a grant agreement with a local government prior to it acquiring a property or obtaining necessary access to conduct remedial actions, provided the agreement is conditioned upon the local government acquiring the property or obtaining the access in accordance with a schedule specified in the agreement;

(iv) Provide integrated planning grants to local governments to fund studies necessary to facilitate remedial actions at brownfield properties and adaptive reuse of properties following remediation. Eligible activities include, but are not limited to: Environmental site assessments; remedial investigations; health assessments; feasibility studies; site planning; community involvement; land use and regulatory analyses; building and infrastructure assessments; economic and fiscal analyses; and any environmental analyses under chapter 43.21C RCW;

(v) Provide grants to local governments for remedial actions related to area-wide groundwater contamination. To receive the funding, the local government does not need to be a potentially liable person or be required to seek reimbursement of grant funds from a potentially liable person;

(vi) The director may alter grant matching requirements to create incentives for local governments to expedite cleanups when one of the following conditions exists:

(A) Funding would prevent or mitigate unfair economic hardship imposed by the clean-up liability;

(B) Funding would create new substantial economic development, public recreational opportunities, or habitat restoration opportunities that would not otherwise occur; or

(C) Funding would create an opportunity for acquisition and redevelopment of brownfield property under RCW 70.105D.040(5) that would not otherwise occur;

(vii) When pending grant applications under (e)(iv) and (v) of this subsection (4) exceed the amount of funds available, designated redevelopment opportunity zones must receive priority for distribution of available funds.

(f) To expedite multiparty clean-up efforts, the department may purchase remedial action cost-cap insurance. For the 2013-2015 fiscal biennium, moneys in the local toxics control account may be spent on projects in sections 3024, 3035, 3036, and 3059, chapter 19, Laws of 2013 2nd sp. sess.

(5) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local

toxics control accounts may be spent only after appropriation by statute.

(6) No moneys deposited into either the state or local toxics control account may be used for: Natural disasters where there is no hazardous substance contamination; high performance buildings; solid waste incinerator facility feasibility studies, construction, maintenance, or operation; or after January 1, 2010, for projects designed to address the restoration of Puget Sound, funded in a competitive grant process, that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. However, this subsection does not prevent an appropriation from the state toxics control account to the department of revenue to enforce compliance with the hazardous substance tax imposed in chapter 82.21 RCW.

(7) Except during the 2011-2013 and the 2015-2017 fiscal biennia, one percent of the moneys collected under RCW 82.21.030 shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation that are not expended at the close of any biennium revert to the state toxics control account.

(8) The department shall adopt rules for grant or loan issuance and performance. To accelerate both remedial action and economic recovery, the department may expedite the adoption of rules necessary to implement chapter 1, Laws of 2013 2nd sp. sess. using the expedited procedures in RCW 34.05.353. The department shall initiate the award of financial assistance by August 1, 2013. To ensure the adoption of rules will not delay financial assistance, the department may administer the award of financial assistance through interpretive guidance pending the adoption of rules through July 1, 2014.

(9) Except as provided under subsection (3)(k) and (q) of this section, nothing in chapter 1, Laws of 2013 2nd sp. sess. affects the ability of a potentially liable person to receive public funding.

(10) During the 2015-2017 fiscal biennium the local toxics control account may also be used for the centennial clean water program and for the stormwater financial assistance program administered by the department of ecology.

(11) During the 2017-2019 biennium the state toxics control account, the local toxics control account, and the environmental legacy stewardship account may be used for interchangeable purposes and funds may be transferred between accounts to accomplish those purposes. [2017 3rd sp.s. c 1 § 980; 2016 sp.s. c 36 § 943. Prior: 2015 3rd sp.s. c 4 § 969; 2015 3rd sp.s. c 3 § 7035; prior: 2013 2nd sp.s. c 19 § 7033; 2013 2nd sp.s. c 4 § 992; 2013 2nd sp.s. c 1 § 9; 2012 2nd sp.s. c 7 § 920; 2012 2nd sp.s. c 2 § 6005; prior: 2011 1st sp.s. c 50 § 964; 2010 1st sp.s. c 37 § 942; 2009 c 564 § 951; 2009 c 187 § 5; prior: 2008 c 329 § 921; 2008 c 329 § 920; 2008 c 329 § 919; 2008 c 328 § 6009; prior: 2007 c 522 § 954; 2007 c 520 § 6033; 2007 c 446 § 2; 2007 c 341 § 30;

2005 c 488 § 926; 2003 1st sp.s. c 25 § 933; 2001 c 27 § 2; 2000 2nd sp.s. c 1 § 912; 1999 c 309 § 923; prior: 1998 c 346 § 905; 1998 c 81 § 2; 1997 c 406 § 5; 1994 c 252 § 5; 1991 sp.s. c 13 § 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

***Reviser's note:** The only section left in chapter 70.105A RCW, RCW 70.105A.035, was repealed by 2017 3rd sp.s. c 25 § 9.

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective date—2015 3rd sp.s. c 3: See note following RCW 43.160.080.

Effective date—2013 2nd sp.s. c 19: See note following RCW 43.34.080.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Findings—Intent—Effective date—2013 2nd sp.s. c 1: See notes following RCW 70.105D.020.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 2: See note following RCW 43.155.050.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Part headings not law—Severability—Effective date—2007 c 520: See notes following RCW 43.19.125.

Effective date—2007 c 341: See RCW 90.71.907.

Finding—2001 c 27: "The legislature finds that there is an increasing number of derelict vessels that have been abandoned in the waters along the shorelines of the state. These vessels pose hazards to navigation and threaten the environment with the potential release of hazardous materials. There is no current federal program that comprehensively addresses this problem, and the legislature recognizes that the state must assist in providing a solution to this increasing hazard." [2001 c 27 § 1.]

Finding—Effective date—1994 c 252: See notes following RCW 70.119A.020.

Additional notes found at www.leg.wa.gov

Chapter 70.118A RCW

ON-SITE SEWAGE DISPOSAL SYSTEMS—MARINE RECOVERY AREAS

Sections

70.118A.100 Self-inspection of systems.

70.118A.100 Self-inspection of systems. Nothing in this chapter prohibits a county from relying on self-inspection of on-site sewage systems consistent with RCW 36.70A.690 or eliminates the requirement that counties protect water quality consistent with RCW 36.70A.070 (1) and (5). [2017 c 105 § 2.]

Chapter 70.149 RCW

**PETROLEUM STORAGE TANK SYSTEMS—
POLLUTION LIABILITY PROTECTION ACT**

(Formerly: Heating oil pollution liability protection act)

Sections

70.149.010	Intent—Findings. (<i>Expires July 1, 2030.</i>)
70.149.020	Short title. (<i>Expires July 1, 2030.</i>)
70.149.030	Definitions. (<i>Expires July 1, 2030.</i>)
70.149.040	Duties of director. (<i>Expires July 1, 2030.</i>)
70.149.070	Heating oil pollution liability trust account. (<i>Expires July 1, 2030.</i>)
70.149.800	Technical advice and assistance program expansion—Interpretive guidance pending rules. (<i>Expires July 1, 2030.</i>)
70.149.801	Technical advice and assistance program expansion—Timeline. (<i>Expires July 1, 2030.</i>)

70.149.010 Intent—Findings. (*Expires July 1, 2030.*)

It is the intent of the legislature to establish a temporary regulatory program to assist owners and operators of petroleum storage tank systems. The legislature finds that it is in the best interests of all citizens for petroleum storage tank systems to be operated safely and for tank leaks or spills to be dealt with expeditiously. The legislature further finds that it is necessary to protect tank owners from the financial hardship related to damaged heating oil tanks. The problem is especially acute because owners and operators of heating oil tanks used for space heating have been unable to obtain pollution liability insurance or insurance has been unaffordable. [2017 c 23 § 1; 1995 c 20 § 1.]

70.149.020 Short title. (*Expires July 1, 2030.*) This chapter may be known and cited as the Washington state pollution liability protection act. [2017 c 23 § 2; 1995 c 20 § 2.]

70.149.030 Definitions. (*Expires July 1, 2030.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Accidental release" means a sudden or nonsudden release of heating oil, occurring after July 23, 1995, from operating a heating oil tank that results in bodily injury, property damage, or a need for corrective action, neither expected nor intended by the owner or operator.

(2) "Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from the injury, sickness, or disease.

(3)(a) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with a statute, ordinance, rule, regulation, directive, order, or similar legal requirement, in effect at the time of an accidental release, of the United States, the state of Washington, or a political subdivision of the United States or the state of Washington. "Corrective action" includes, where agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release.

(b) "Corrective action" does not include:

(i) Replacement or repair of heating oil tanks or other receptacles; or

(ii) Replacement or repair of piping, connections, and valves of tanks or other receptacles.

(4) "Defense costs" include the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:

(a) The United States, the state of Washington, or a political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or

(b) A third party for bodily injury or property damage caused by an accidental release.

(5) "Director" means the director of the Washington state pollution liability insurance agency or the director's appointed representative.

(6) "Environmental covenant" has the same meaning as defined in RCW 64.70.020.

(7) "Facility" has the same meaning as defined in RCW 70.105D.020.

(8) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters, and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuels in motor vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or for industrial processing or the generation of electrical energy.

(9) "Heating oil tank" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located. "Heating oil tank" does not include a decommissioned or abandoned heating oil tank, or a tank used solely for industrial process heating purposes or generation of electrical energy.

(10) "Independent remedial action" has the same meaning as defined in RCW 70.105D.020.

(11) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from a heating oil tank.

(12) "Owner or operator" means a person in control of, or having responsibility for, the daily operation of a petroleum storage tank system.

(13) "Petroleum" means any petroleum-based substance including crude oil or any fraction that is liquid at standard conditions of temperature and pressure. The term "petroleum" includes, but is not limited to, petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, used oils, and heating oils. The term "petroleum" does not include propane, asphalt, or any other petroleum product that is not liquid at standard conditions of temperature and pressure. Standard conditions of temperature and pressure are at sixty degrees Fahrenheit and 14.7 pounds per square inch absolute.

(14) "Petroleum storage tank system" means a storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other substances. The systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, used oils, and heating oils. "Petroleum storage tank system"

does not include any storage tank system regulated under chapter 70.105 RCW.

(15) "Pollution liability insurance agency" means the Washington state pollution liability insurance agency.

(16) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

(17) "Release" means a spill, leak, emission, escape, or leaching into the environment.

(18) "Remedial action" has the same meaning as defined in RCW 70.105D.020.

(19) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action.

(20) "Tank" means a stationary device, designed to contain an accumulation of heating oil, that is constructed primarily of nonearthen materials such as concrete, steel, fiberglass, or plastic that provides structural support.

(21) "Third-party liability" means the liability of a heating oil tank owner to another person due to property damage or personal injury that results from a leak or spill. [2017 c 23 § 3; 1995 c 20 § 3.]

70.149.040 Duties of director. (Expires July 1, 2030.)

The director shall:

(1) Design a program, consistent with RCW 70.149.120, for providing pollution liability insurance for heating oil tanks that provides up to sixty thousand dollars per occurrence coverage and aggregate limits, and protects the state of Washington from unwanted or unanticipated liability for accidental release claims;

(2) Administer, implement, and enforce the provisions of this chapter. To assist in administration of the program, the director is authorized to appoint up to two employees who are exempt from the civil service law, chapter 41.06 RCW, and who shall serve at the pleasure of the director;

(3) Administer the heating oil pollution liability trust account, as established under RCW 70.149.070;

(4) Employ and discharge, at his or her discretion, agents, attorneys, consultants, companies, organizations, and employees as deemed necessary, and to prescribe their duties and powers, and fix their compensation;

(5) Adopt rules under chapter 34.05 RCW as necessary to carry out the provisions of this chapter;

(6) Design and from time to time revise a reinsurance contract providing coverage to an insurer or insurers meeting the requirements of this chapter. The director is authorized to provide reinsurance through the pollution liability insurance program trust account;

(7) Solicit bids from insurers and select an insurer to provide pollution liability insurance for third-party bodily injury and property damage, and corrective action to owners and operators of heating oil tanks;

(8) Register, and design a means of accounting for, operating heating oil tanks;

(9) Implement a program to provide advice and technical assistance on the administrative and technical requirements

of this chapter and chapter 70.105D RCW to persons who are conducting or otherwise interested in independent remedial actions at facilities where there is a suspected or confirmed release from the following petroleum storage tank systems: A heating oil tank; a decommissioned heating oil tank; an abandoned heating oil tank; or a petroleum storage tank system identified by the department of ecology based on the relative risk posed by the release to human health and the environment, as determined under chapter 70.105D RCW, or other factors identified by the department of ecology.

(a) Such advice or assistance is advisory only, and is not binding on the pollution liability insurance agency or the department of ecology. As part of this advice and assistance, the pollution liability insurance agency may provide written opinions on whether independent remedial actions or proposals for these actions meet the substantive requirements of chapter 70.105D RCW, or whether the pollution liability insurance agency believes further remedial action is necessary at the facility. As part of this advice and assistance, the pollution liability insurance agency may also observe independent remedial actions.

(b) The agency is authorized to collect, from persons requesting advice and assistance, the costs incurred by the agency in providing such advice and assistance. The costs may include travel costs and expenses associated with review of reports and preparation of written opinions and conclusions. Funds from cost reimbursement must be deposited in the heating oil pollution liability trust account.

(c) The state of Washington, the pollution liability insurance agency, and its officers and employees are immune from all liability, and no cause of action arises from any act or omission in providing, or failing to provide, such advice, opinion, conclusion, or assistance;

(10) Establish a public information program to provide information regarding liability, technical, and environmental requirements associated with active and abandoned heating oil tanks;

(11) Monitor agency expenditures and seek to minimize costs and maximize benefits to ensure responsible financial stewardship;

(12) Study if appropriate user fees to supplement program funding are necessary and develop recommendations for legislation to authorize such fees;

(13) Establish requirements, including deadlines not to exceed ninety days, for reporting to the pollution liability insurance agency a suspected or confirmed release from a heating oil tank, including a decommissioned or abandoned heating oil tank, that may pose a threat to human health or the environment by the owner or operator of the heating oil tank or the owner of the property where the release occurred;

(14) Within ninety days of receiving information and having a reasonable basis to believe that there may be a release from a heating oil tank, including decommissioned or abandoned heating oil tanks, that may pose a threat to human health or the environment, perform an initial investigation to determine at a minimum whether such a release has occurred and whether further remedial action is necessary under chapter 70.105D RCW. The initial investigation may include, but is not limited to, inspecting, sampling, or testing. The director may retain contractors to perform an initial investigation on the agency's behalf;

(15) For any written opinion issued under subsection (9) of this section requiring an environmental covenant as part of the remedial action, consult with, and seek comment from, a city or county department with land use planning authority for real property subject to the environmental covenant prior to the property owner recording the environmental covenant; and

(16) For any property where an environmental covenant has been established as part of the remedial action approved under subsection (9) of this section, periodically review the environmental covenant for effectiveness. The director shall perform a review at least once every five years after an environmental covenant is recorded. [2017 c 23 § 4; 2009 c 560 § 11; 2007 c 240 § 1; 2004 c 203 § 1; 1997 c 8 § 1; 1995 c 20 § 4.]

Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560: See notes following RCW 18.06.080.

Application—2007 c 240: See note following RCW 70.149.120.

70.149.070 Heating oil pollution liability trust account. (Expires July 1, 2030.) (1) The heating oil pollution liability trust account is created in the custody of the state treasurer. All receipts from the pollution liability insurance fee collected under RCW 70.149.080 and reinsurance premiums shall be deposited into the account. Expenditures from the account may be used only for the purposes set out under this chapter. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(2) Money in the account may be used by the director for the following purposes:

- (a) Corrective action costs;
- (b) Third-party liability claims;
- (c) Costs associated with claims administration;
- (d) Purchase of an insurance policy to cover all registered heating oil tanks, and reinsurance of the policy; and
- (e) Administrative expenses of the program, including personnel, equipment, supplies, and providing advice and technical assistance. [2017 c 23 § 5; 2004 c 203 § 2; 1997 c 8 § 2; 1995 c 20 § 7.]

70.149.800 Technical advice and assistance program expansion—Interpretive guidance pending rules. (Expires July 1, 2030.) To ensure the adoption of rules will not delay the implementation of remedial actions, the pollution liability insurance agency may implement the technical advice and assistance program expansion to include petroleum storage tank systems through interpretive guidance pending adoption of rules. [2017 c 23 § 7.]

70.149.801 Technical advice and assistance program expansion—Timeline. (Expires July 1, 2030.) The pollution liability insurance agency may not expand the technical advice and assistance program to include petroleum storage tank systems until January 1, 2018. The pollution liability insurance agency may include heating oil tanks, including abandoned and decommissioned tanks, in the technical advice and assistance program as of July 23, 2017. [2017 c 23 § 8.]

Chapter 70.220 RCW

WASHINGTON ACADEMY OF SCIENCES

Sections

70.220.060 Repealed.

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

Chapter 70.225 RCW

PRESCRIPTION MONITORING PROGRAM

Sections

70.225.040 Confidentiality of prescription information—Procedures—Immunity when acting in good faith.

70.225.045 Annual report.

70.225.040 Confidentiality of prescription information—Procedures—Immunity when acting in good faith.

(1) Prescription information submitted to the department must be confidential, in compliance with chapter 70.02 RCW and federal health care information privacy requirements and not subject to disclosure, except as provided in subsections (3), (4), and (5) of this section.

(2) The department must maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed to persons except as in subsections (3), (4), and (5) of this section.

(3) The department may provide data in the prescription monitoring program to the following persons:

(a) Persons authorized to prescribe or dispense controlled substances or legend drugs, for the purpose of providing medical or pharmaceutical care for their patients;

(b) An individual who requests the individual's own prescription monitoring information;

(c) Health professional licensing, certification, or regulatory agency or entity;

(d) Appropriate law enforcement or prosecutorial officials, including local, state, and federal officials and officials of federally recognized tribes, who are engaged in a bona fide specific investigation involving a designated person;

(e) Authorized practitioners of the department of social and health services and the health care authority regarding medicaid program recipients;

(f) The director or the director's designee within the health care authority regarding medicaid clients for the purposes of quality improvement, patient safety, and care coordination. The information may not be used for contracting or value-based purchasing decisions;

(g) The director or director's designee within the department of labor and industries regarding workers' compensation claimants;

(h) The director or the director's designee within the department of corrections regarding offenders committed to the department of corrections;

(i) Other entities under grand jury subpoena or court order;

(j) Personnel of the department for purposes of:

(i) Assessing prescribing practices, including controlled substances related to mortality and morbidity;

(ii) Providing quality improvement feedback to providers, including comparison of their respective data to aggregate data for providers with the same type of license and same specialty; and

(iii) Administration and enforcement of this chapter or chapter 69.50 RCW;

(k) Personnel of a test site that meet the standards under RCW 70.225.070 pursuant to an agreement between the test site and a person identified in (a) of this subsection to provide assistance in determining which medications are being used by an identified patient who is under the care of that person;

(l) A health care facility or entity for the purpose of providing medical or pharmaceutical care to the patients of the facility or entity, or for quality improvement purposes if:

(i) The facility or entity is licensed by the department or is operated by the federal government or a federally recognized Indian tribe; and

(ii) The facility or entity is a trading partner with the state's health information exchange;

(m) A health care provider group of five or more providers for purposes of providing medical or pharmaceutical care to the patients of the provider group, or for quality improvement purposes if:

(i) All the providers in the provider group are licensed by the department or the provider group is operated by the federal government or a federally recognized Indian tribe; and

(ii) The provider group is a trading partner with the state's health information exchange;

(n) The local health officer of a local health jurisdiction for the purposes of patient follow-up and care coordination following a controlled substance overdose event. For the purposes of this subsection "local health officer" has the same meaning as in RCW 70.05.010; and

(o) The coordinated care electronic tracking program developed in response to section 213, chapter 7, Laws of 2012 2nd sp. sess., commonly referred to as the seven best practices in emergency medicine, for the purposes of providing:

(i) Prescription monitoring program data to emergency department personnel when the patient registers in the emergency department; and

(ii) Notice to providers, appropriate care coordination staff, and prescribers listed in the patient's prescription monitoring program record that the patient has experienced a controlled substance overdose event. The department shall determine the content and format of the notice in consultation with the Washington state hospital association, Washington state medical association, and Washington state health care authority, and the notice may be modified as necessary to reflect current needs and best practices.

(4) The department shall, on at least a quarterly basis, and pursuant to a schedule determined by the department, provide a facility or entity identified under subsection (3)(l) of this section or a provider group identified under subsection (3)(m) of this section with facility or entity and individual prescriber information if the facility, entity, or provider group:

(a) Uses the information only for internal quality improvement and individual prescriber quality improvement feedback purposes and does not use the information as the

sole basis for any medical staff sanction or adverse employment action; and

(b) Provides to the department a standardized list of current prescribers of the facility, entity, or provider group. The specific facility, entity, or provider group information provided pursuant to this subsection and the requirements under this subsection must be determined by the department in consultation with the Washington state hospital association, Washington state medical association, and Washington state health care authority, and may be modified as necessary to reflect current needs and best practices.

(5)(a) The department may provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients, dispensers, prescribers, and persons who received prescriptions from dispensers.

(b)(i) The department may provide dispenser and prescriber data and data that includes indirect patient identifiers to the Washington state hospital association for use solely in connection with its coordinated quality improvement program maintained under RCW 43.70.510 after entering into a data use agreement as specified in RCW 43.70.052(8) with the association.

(ii) For the purposes of this subsection, "indirect patient identifiers" means data that may include: Hospital or provider identifiers, a five-digit zip code, county, state, and country of resident; dates that include month and year; age in years; and race and ethnicity; but does not include the patient's first name; middle name; last name; social security number; control or medical record number; zip code plus four digits; dates that include day, month, and year; or admission and discharge date in combination.

(6) Persons authorized in subsections (3), (4), and (5) of this section to receive data in the prescription monitoring program from the department, acting in good faith, are immune from any civil, criminal, disciplinary, or administrative liability that might otherwise be incurred or imposed for acting under this chapter. [2017 c 297 § 9; 2016 c 104 § 1. Prior: 2015 c 259 § 1; 2015 c 49 § 1; 2011 1st sp.s. c 15 § 87; 2007 c 259 § 45.]

Findings—Intent—2017 c 297: See note following RCW 18.22.800.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

70.225.045 Annual report. Beginning November 15, 2017, the department shall annually report to the governor and the appropriate committees of the legislature on the number of facilities, entities, or provider groups identified in RCW 70.225.040(3) (l) and (m) that have integrated their federally certified electronic health records with the prescription monitoring program utilizing the state health information exchange. [2017 c 297 § 10.]

Findings—Intent—2017 c 297: See note following RCW 18.22.800.

Chapter 70.275 RCW
MERCURY-CONTAINING LIGHTS—PROPER DISPOSAL

Sections

- 70.275.040 Submission of proposed product stewardship plans—Department to establish rules—Public review—Plan update—Annual report.
 70.275.050 Environmental handling charge—Annual fee.
 70.275.130 Product stewardship programs account—Refund of fees.

70.275.040 Submission of proposed product stewardship plans—Department to establish rules—Public review—Plan update—Annual report. (1) On June 1st of the year prior to implementation, each producer must ensure that a stewardship organization submits a proposed product stewardship plan on the producer's behalf to the department for approval. Plans approved by the department must be implemented by January 1st of the following calendar year.

(2) The department shall establish rules for plan content. Plans must include but are not limited to:

(a) All necessary information to inform the department about the plan operator and participating producers and their brands;

(b) The management and organization of the product stewardship program that will oversee the collection, transportation, and processing services;

(c) The identity of collection, transportation, and processing service providers, including a description of the consideration given to existing residential curbside collection infrastructure and mail-back systems as an appropriate collection mechanism;

(d) How the product stewardship program will seek to use businesses within the state, including transportation services, retailers, collection sites and services, existing curbside collection services, existing mail-back services, and processing facilities;

(e) A description of how the public will be informed about the product stewardship program, including how consumers will be provided with information describing collection opportunities for unwanted mercury-containing lights from covered entities and safe handling of mercury-containing lights, waste prevention, and recycling. The description must also include information to make consumers aware that an environmental handling charge has been added to the purchase price of mercury-containing lights sold at retail to fund the mercury-containing light stewardship programs in the state. The environmental handling charge may not be described as a department recycling fee or charge at the point of retail sale;

(f) A description of the financing system required under RCW 70.275.050;

(g) How mercury and other hazardous substances will be handled for collection through final disposition;

(h) A public review and comment process; and

(i) Any other information deemed necessary by the department to ensure an effective mercury light product stewardship program that is in compliance with all applicable laws and rules.

(3) All plans submitted to the department must be made available for public review on the department's web site and at the department's headquarters.

(4) At least two years from the start of the product stewardship program and once every four years thereafter, each stewardship organization operating a product stewardship program must update its product stewardship plan and submit the updated plan to the department for review and approval according to rules adopted by the department.

(5) By June 1, 2016, and each June 1st thereafter, each stewardship organization must submit an annual report to the department describing the results of implementing the stewardship organization's plan for the prior calendar year, including an independent financial audit once every two years. The department may adopt rules for reporting requirements. Financial information included in the annual report must include but is not limited to:

(a) The amount of the environmental handling charge assessed on mercury-containing lights and the revenue generated;

(b) Identification of confidential information pursuant to RCW 43.21A.160 submitted in the annual report; and

(c) The cost of the mercury-containing lights product stewardship program, including line item costs for:

(i) Program operations;

(ii) Communications, including media, printing and fulfillment, public relations, and other education and outreach projects;

(iii) Administration, including administrative personnel costs, travel, compliance and auditing, legal services, banking services, insurance, and other administrative services and supplies, and stewardship organization corporate expenses; and

(iv) Amount of unallocated reserve funds.

(6) Beginning in 2023 every stewardship organization must include in its annual report an analysis of the percent of total sales of lights sold at retail to covered entities in Washington that mercury-containing lights constitute, the estimated number of mercury-containing lights in use by covered entities in the state, and the projected number of unwanted mercury-containing lights to be recycled in future years.

(7) All plans and reports submitted to the department must be made available for public review, excluding sections determined to be confidential pursuant to RCW 43.21A.160, on the department's web site and at the department's headquarters. [2017 c 254 § 2; 2014 c 119 § 4; 2010 c 130 § 4.]

Sunset Act application: See note following chapter digest.

Finding—2014 c 119: See note following RCW 70.275.020.

70.275.050 Environmental handling charge—Annual fee. (1) Each stewardship organization must recommend to the department an environmental handling charge to be added to the price of each mercury-containing light sold in or into the state of Washington for sale at retail. The environmental handling charge must be designed to provide revenue necessary and sufficient to cover all administrative and operational costs associated with the stewardship program described in the department-approved product stewardship plan for that organization, including the department's annual fee required by subsection (5) of this section, and a prudent reserve. The stewardship organization must consult with collectors, retailers, recyclers, and each of its participating producers in developing its recommended environmental handling charge. The environmental handling charge may, but is

not required to, vary by the type of mercury-containing light. In developing its recommended environmental handling charge, the stewardship organization must take into consideration and report to the department:

(a) The anticipated number of mercury-containing lights that will be sold to covered entities in the state at retail during the relevant period;

(b) The number of unwanted mercury-containing lights delivered from covered entities expected to be recycled during the relevant period;

(c) The operational costs of the stewardship organization as described in RCW 70.275.030(2);

(d) The administrative costs of the stewardship organization including the department's annual fee, described in subsection (5) of this section; and

(e) The cost of other stewardship program elements including public outreach.

(2) The department must review, adjust if necessary, and approve the stewardship organization's recommended environmental handling charge within sixty days of submittal. In making its determination, the department shall review the product stewardship plan and may consult with the producers, the stewardship organization, retailers, collectors, recyclers, and other entities.

(3) No sooner than January 1, 2015:

(a) The mercury-containing light environmental handling charge must be added to the purchase price of all mercury-containing lights sold to Washington retailers for sale at retail, and each Washington retailer shall add the charge to the purchase price of all mercury-containing lights sold at retail in this state, and the producer shall remit the environmental handling charge to the stewardship organization in the manner provided for in the stewardship plan; or

(b) Each Washington retailer must add the mercury-containing light environmental handling charge to the purchase price of all mercury-containing lights sold at retail in this state, where the retailer, by voluntary binding agreement with the producer, arranges to remit the environmental handling charge to the stewardship organization on behalf of the producer in the manner provided for in the stewardship plan. Producers may not require retailers to opt for this provision via contract, marketing practice, or any other means. The stewardship organization must allow retailers to retain a portion of the environmental handling charge as reimbursement for any costs associated with the collection and remittance of the charge.

(4) At any time, a stewardship organization may submit to the department a recommendation for an adjusted environmental handling charge for the department's review, adjustment, if necessary, and approval under subsection (2) of this section to ensure that there is sufficient revenue to fund the cost of the program, current deficits, or projected needed reserves for the next year. The department must review the stewardship organization's recommended environmental handling charge and must adjust or approve the recommended charge within thirty days of submittal if the department determines that the charge is reasonably designed to meet the criteria described in subsection (1) of this section.

(5) Beginning March 1, 2015, and each year thereafter, each stewardship organization shall pay to the department an annual fee equivalent to three thousand dollars for each par-

ticipating producer to cover the department's administrative and enforcement costs. The amount paid under this section must be deposited into the product stewardship programs account created in RCW 70.275.130. [2017 c 254 § 1; 2014 c 119 § 5; 2010 c 130 § 5.]

Sunset Act application: See note following chapter digest.

Finding—2014 c 119: See note following RCW 70.275.020.

70.275.130 Product stewardship programs account—Refund of fees. The product stewardship programs account is created in the custody of the state treasurer. All funds received from producers under this chapter and penalties collected under this chapter must be deposited in the account. Expenditures from the account may be used only for administering this chapter. The department may not retain fees in excess of the estimated amount necessary to cover the agency's administrative costs over the coming year related to the mercury light stewardship program under this chapter. Beginning with the state fiscal year 2018, by October 1st after the closing of each state fiscal year, the department shall refund any fees collected in excess of its estimated administrative costs to any approved stewardship organization under this chapter. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2017 c 254 § 3; 2010 c 130 § 13.]

Sunset Act application: See note following chapter digest.

Chapter 70.285 RCW

BRAKE FRICTION MATERIAL

Sections

- 70.285.030 Prohibition on the sale of certain brake friction material—Exemptions.
- 70.285.050 Finding that alternative brake friction material is available—Report.
- 70.285.100 Adoption of rules.

70.285.030 Prohibition on the sale of certain brake friction material—Exemptions. (1) No manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing any of the following constituents in an amount exceeding the specified concentrations:

- (a) Asbestiform fibers, 0.1 percent by weight.
- (b) Cadmium and its compounds, 0.01 percent by weight.
- (c) Chromium(VI)-salts, 0.1 percent by weight.
- (d) Lead and its compounds, 0.1 percent by weight.
- (e) Mercury and its compounds, 0.1 percent by weight.

(2) Beginning January 1, 2021, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing more than five percent copper and its compounds by weight.

(3) Beginning January 1, 2025, no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing more than 0.5 percent copper and its compounds by weight.

(4) Brake friction material manufactured prior to 2015 is exempt from subsection (1) of this section for the purposes of clearing inventory. This exemption expires January 1, 2025.

(5) Brake friction material manufactured prior to 2021 is exempt from subsection (2) of this section for the purposes of clearing inventory. This exemption expires January 1, 2031.

(6) Brake friction material manufactured prior to 2025 is exempt from subsection (3) of this section for the purposes of clearing inventory. This exemption expires January 1, 2035.

(7) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2015, is exempt from subsection (1) of this section.

(8) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2021, is exempt from subsection (2) of this section.

(9) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2025, is exempt from subsection (3) of this section. [2017 c 204 § 1; 2010 c 147 § 3.]

70.285.050 Finding that alternative brake friction material is available—Report. If, pursuant to RCW 70.285.040, the department finds that alternative brake friction material is available:

(1)(a) By December 31st of the year in which the finding is made, the department shall publish the information required by RCW 70.285.040 in the Washington State Register and present it in a report to the appropriate committees of the legislature; and

(b) The report must include recommendations for exemptions on original equipment service and brake friction material manufactured prior to dates specified in this section and may include recommendations for other exemptions.

(2) Beginning January 1, 2025, and consistent with RCW 70.285.030(3), no manufacturer, wholesaler, retailer, or distributor may sell or offer for sale brake friction material in Washington state containing more than 0.5 percent copper and its compounds by weight, as specified in the report in subsection (1) of this section. [2017 c 204 § 2; 2010 c 147 § 5.]

70.285.100 Adoption of rules. The department may adopt rules necessary to implement this chapter. Rules adopted by the department under this section may not exceed the terms explicitly established by this chapter. [2017 c 204 § 3; 2010 c 147 § 10.]

Chapter 70.320 RCW

SERVICE COORDINATION ORGANIZATIONS— ACCOUNTABILITY MEASURES

Sections

70.320.020 Contract performance measures developed under RCW 70.320.030 based on outcomes—Integration.

70.320.020 Contract performance measures developed under RCW 70.320.030 based on outcomes—Integration. (1) The authority and the department shall base contract performance measures developed under RCW

[2017 RCW Supp—page 780]

70.320.030 on the following outcomes when contracting with service contracting entities: Improvements in client health status and wellness; increases in client participation in meaningful activities; reductions in client involvement with criminal justice systems; reductions in avoidable costs in hospitals, emergency rooms, crisis services, and jails and prisons; increases in stable housing in the community; improvements in client satisfaction with quality of life; and reductions in population-level health disparities.

(2) The performance measures must demonstrate the manner in which the following principles are achieved within each of the outcomes under subsection (1) of this section:

(a) Maximization of the use of evidence-based practices will be given priority over the use of research-based and promising practices, and research-based practices will be given priority over the use of promising practices. The agencies will develop strategies to identify programs that are effective with ethnically diverse clients and to consult with tribal governments, experts within ethnically diverse communities and community organizations that serve diverse communities;

(b) The maximization of the client's independence, recovery, and employment;

(c) The maximization of the client's participation in treatment decisions; and

(d) The collaboration between consumer-based support programs in providing services to the client.

(3) In developing performance measures under RCW 70.320.030, the authority and the department shall consider expected outcomes relevant to the general populations that each agency serves. The authority and the department may adapt the outcomes to account for the unique needs and characteristics of discrete subcategories of populations receiving services, including ethnically diverse communities.

(4) The authority and the department shall coordinate the establishment of the expected outcomes and the performance measures between each agency as well as each program to identify expected outcomes and performance measures that are common to the clients enrolled in multiple programs and to eliminate conflicting standards among the agencies and programs.

(5)(a) The authority and the department shall establish timelines and mechanisms for service contracting entities to report data related to performance measures and outcomes, including phased implementation of public reporting of outcome and performance measures in a form that allows for comparison of performance measures and levels of improvement between geographic regions of Washington.

(b) The authority and the department may not release any public reports of client outcomes unless the data has been deidentified and aggregated in such a way that the identity of individual clients cannot be determined through directly identifiable data or the combination of multiple data elements.

(6) The authority and department must establish a performance measure to be integrated into the statewide common measure set which tracks effective integration practices of behavioral health services in primary care settings. [2017 c 226 § 8; 2014 c 225 § 107; 2013 c 320 § 2.]

Sustainable solutions for the integration of behavioral and physical health—2017 c 226: See note following RCW 74.09.497.

Chapter 70.340 RCW

UNDERGROUND STORAGE TANK REVOLVING
LOAN AND GRANT PROGRAM

Sections

70.340.130 Pollution liability insurance program trust account—Transfers to revolving account.

70.340.130 Pollution liability insurance program trust account—Transfers to revolving account. (1) On July 1, 2016, if the cash balance amount in the pollution liability insurance program trust account exceeds seven million five hundred thousand dollars after excluding the reserves under RCW 70.148.020(2), the state treasurer shall transfer the amount exceeding seven million five hundred thousand dollars, up to a transfer of ten million dollars, from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account. If ten million dollars is not available to be transferred on July 1, 2016, then by the end of fiscal year 2017, if the cash balance amount in the pollution liability insurance program trust account exceeds seven million five hundred thousand dollars after excluding the reserves under RCW 70.148.020(2), the state treasurer shall transfer the amount exceeding seven million five hundred thousand dollars from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account. The total amount transferred in fiscal year 2017 from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account may not exceed ten million dollars.

(2) On July 1, 2017, and every two years thereafter at the start of each successive biennium, if the cash balance amount in the pollution liability insurance program trust account exceeds seven million five hundred thousand dollars, the state treasurer shall transfer the amount exceeding seven million five hundred thousand dollars after excluding the reserves under RCW 70.148.020(2), up to a transfer of twenty million dollars, from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account. If twenty million dollars is not available to be transferred at the beginning of the first fiscal year of the biennium, by the end of the subsequent fiscal year, if the cash balance amount in the pollution liability insurance program trust account exceeds seven million five hundred thousand dollars after excluding the reserves under RCW 70.148.020(2), the state treasurer shall transfer the amount exceeding seven million five hundred thousand dollars from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account. The total amount transferred in a biennium from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account may not exceed twenty million dollars. [2017 3rd sp.s. c 4 § 6015; 2016 c 161 § 21.]

Effective date—2017 3rd sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 1, 2017]." [2017 3rd sp.s. c 4 § 7014.]

Chapter 70.345 RCW
VAPOR PRODUCTS

Sections

70.345.080 Vendor assistance required for sales—Exception.

70.345.080 Vendor assistance required for sales—Exception. (1) No person may offer a vapor product for sale in an open, unsecured display that is accessible to the public without the intervention of a store employee.

(2) It is unlawful to sell or distribute vapor products from self-service displays.

(3) Retail establishments are exempt from subsections (1) and (2) of this section if minors are not allowed in the store and such prohibition is posted clearly on all entrances. [2017 c 210 § 1; 2016 sp.s. c 38 § 16.]

Chapter 70.350 RCW

DENTAL HEALTH AIDE THERAPISTS

Sections

70.350.010 Definitions.

70.350.020 Authorization—Conditions.

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

(1) "Dental health aide therapist" means a person who has met the training and education requirements, and satisfies other conditions, to be certified as a dental health aide therapist by a federal community health aide program certification board or by a federally recognized Indian tribe that has adopted certification standards that meet or exceed the requirements of a federal community health aide program certification board.

(2) "Federal community health aide program" means a program operated by the Indian health service under the applicable provisions of the Indian health care improvement act, 25 U.S.C. Sec. 1616l.

(3) "Indian health program" has the same meaning as the definition provided in the Indian health care improvement act, 25 U.S.C. Sec. 1603, as that definition existed on July 23, 2017. [2017 c 5 § 3.]

Findings—2017 c 5: "(1) The legislature finds that American Indians and Alaska Natives have very limited access to health care services and are disproportionately affected by oral health disparities. These disparities are directly attributed to the lack of dental health professionals in Indian communities. This has caused a serious access issue and backlog of dental treatment among American Indians and Alaska Natives. The legislature also finds that tribal leaders face a significant challenge in recruiting dental health professionals to work in Indian communities that results in further challenges in ensuring oral health care for tribal members.

(2) The legislature finds further that there is a strong history of government-to-government efforts with tribes in Washington to improve oral health among tribal members and to reduce the disproportionate number of American Indians and Alaska Natives affected by oral disease. One of the goals in the 2010-2013 American Indian health care delivery plan developed jointly by the department of health and the American Indian health commission is to improve the oral health of tribal members and the ability of tribes to provide comprehensive dental services in their communities. A critical objective to achieving that goal is "to explore options for the use of trained/certified expanded function personnel in order to increase oral health care services in tribal communities."

(3) The legislature finds further that sovereign tribal governments are in the best position to determine which strategies can effectively extend the ability of dental health professionals to provide care for children and others

at risk of oral disease and increase access to oral health care for tribal members. The legislature does not intend to prescribe the general practice of dental health aide therapists in the state." [2017 c 5 § 1.]

70.350.020 Authorization—Conditions. (1) Dental health aide therapist services are authorized by this chapter under the following conditions:

(a) The person providing services is certified as a dental health aide therapist by:

(i) A federal community health aide program certification board; or

(ii) A federally recognized Indian tribe that has adopted certification standards that meet or exceed the requirements of a federal community health aide program certification board;

(b) All services are performed:

(i) In a practice setting within the exterior boundaries of a tribal reservation and operated by an Indian health program;

(ii) In accordance with the standards adopted by the certifying body in (a) of this subsection, including scope of practice, training, supervision, and continuing education;

(iii) Pursuant to any applicable written standing orders by a supervising dentist; and

(iv) On persons who are members of a federally recognized tribe or otherwise eligible for services under Indian health service criteria, pursuant to the Indian health care improvement act, 25 U.S.C. Sec. 1601 et seq.

(2) The performance of dental health aide therapist services is authorized for a person when working within the scope, supervision, and direction of a dental health aide therapy training program that is certified by an entity described in subsection (1) of this section.

(3) All services performed within the scope of subsection (1) or (2) of this section, including the employment or supervision of such services, are exempt from licensing requirements under chapters 18.29, 18.32, 18.260, and 18.350 RCW. [2017 c 5 § 2.]

Findings—2017 c 5: See note following RCW 70.350.010.

Chapter 70.355 RCW

PHOTOVOLTAIC MODULE STEWARDSHIP AND TAKEBACK PROGRAM

Sections

70.355.010 Photovoltaic module stewardship and takeback program—Definitions—Requirements—Enforcement—Fees—Rule making.

70.355.010 Photovoltaic module stewardship and takeback program—Definitions—Requirements—Enforcement—Fees—Rule making. (1) **Findings.** The legislature finds that a convenient, safe, and environmentally sound system for the recycling of photovoltaic modules, minimization of hazardous waste, and recovery of commercially valuable materials must be established. The legislature further finds that the responsibility for this system must be shared among all stakeholders, with manufacturers financing the takeback and recycling system.

(2) **Definitions.** For purposes of this section the following definitions apply:

[2017 RCW Supp—page 782]

(a) "Consumer electronic device" means any device containing an electronic circuit board that is intended for everyday use by individuals, such as a watch or calculator.

(b) "Department" means the department of ecology.

(c) "Manufacturer" means any person in business or no longer in business but having a successor in interest who, irrespective of the selling technique used, including by means of distance or remote sale:

(i) Manufactures or has manufactured a photovoltaic module under its own brand names for sale in or into this state;

(ii) Assembles or has assembled a photovoltaic module that uses parts manufactured by others for sale in or into this state under the assembler's brand names;

(iii) Resells or has resold in or into this state under its own brand names a photovoltaic module produced by other suppliers, including retail establishments that sell photovoltaic modules under their own brand names;

(iv) Manufactures or has manufactured a cobranded photovoltaic module product for sale in or into this state that carries the name of both the manufacturer and a retailer;

(v) Imports or has imported a photovoltaic module into the United States that is sold in or into this state. However, if the imported photovoltaic module is manufactured by any person with a presence in the United States meeting the criteria of manufacturer under (a) through (d) of this subsection, that person is the manufacturer;

(vi) Sells at retail a photovoltaic module acquired from an importer that is the manufacturer and elects to register as the manufacturer for those products; or

(vii) Elects to assume the responsibility and register in lieu of a manufacturer as defined under (b)(i) through (vi) of this subsection.

(d) "Photovoltaic module" means the smallest nondivisible, environmentally protected assembly of photovoltaic cells or other photovoltaic collector technology and ancillary parts intended to generate electrical power under sunlight, except that "photovoltaic module" does not include a photovoltaic cell that is part of a consumer electronic device for which it provides electricity needed to make the consumer electronic device function. "Photovoltaic module" includes but is not limited to interconnections, terminals, and protective devices such as diodes that:

(i) Are installed on, connected to, or integral with buildings; or

(ii) Are used as components of freestanding, off-grid, power generation systems, such as for powering water pumping stations, electric vehicle charging stations, fencing, street and signage lights, and other commercial or agricultural purposes.

(e) "Rare earth element" means lanthanum, cerium, praseodymium, neodymium, promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, lutetium, yttrium, or scandium.

(f) "Reuse" means any operation by which a photovoltaic module or a component of a photovoltaic module changes ownership and is used for the same purpose for which it was originally purchased.

(g) "Stewardship plan" means the plan developed by a manufacturer or its designated stewardship organization for a self-directed stewardship program.

(h) "Stewardship program" means the activities conducted by a manufacturer or a stewardship organization to fulfill the requirements of this chapter and implement the activities described in its stewardship plan.

(3) **Program guidance, review, and approval.** The department must develop guidance for a photovoltaic module stewardship and takeback program to guide manufacturers in preparing and implementing a self-directed program to ensure the convenient, safe, and environmentally sound takeback and recycling of photovoltaic modules and their components and materials. By January 1, 2018, the department must establish a process to develop guidance for photovoltaic module stewardship plans by working with manufacturers, stewardship organizations, and other stakeholders on the content, review, and approval of stewardship plans. The department's process must be fully implemented and stewardship plan guidance completed by July 1, 2019.

(4) **Stewardship organization as agent of manufacturer.** A stewardship organization may be designated to act as an agent on behalf of a manufacturer or manufacturers in operating and implementing the stewardship program required under this chapter. Any stewardship organization that has obtained such designation must provide to the department a list of the manufacturers and brand names that the stewardship organization represents within sixty days of its designation by a manufacturer as its agent, or within sixty days of removal of such designation.

(5) **Stewardship plans.** Each manufacturer must prepare and submit a stewardship plan to the department by the later of January 1, 2020, or within thirty days of its first sale of a photovoltaic module in or into the state.

(a) A stewardship plan must, at a minimum:

(i) Describe how manufacturers will finance the takeback and recycling system, and include an adequate funding mechanism to finance the costs of collection, management, and recycling of photovoltaic modules and residuals sold in or into the state by the manufacturer with a mechanism that ensures that photovoltaic modules can be delivered to takeback locations without cost to the last owner or holder;

(ii) Accept all photovoltaic modules sold in or into the state after July 1, 2017;

(iii) Describe how the program will minimize the release of hazardous substances into the environment and maximize the recovery of other components, including rare earth elements and commercially valuable materials;

(iv) Provide for takeback of photovoltaic modules at locations that are within the region of the state in which the photovoltaic modules were used and are as convenient as reasonably practicable, and if no such location within the region of the state exists, include an explanation for the lack of such location;

(v) Identify how relevant stakeholders, including consumers, installers, building demolition firms, and recycling and treatment facilities, will receive information required in order for them to properly dismantle, transport, and treat the end-of-life photovoltaic modules in a manner consistent with the objectives described in (a)(iii) of this subsection;

(vi) Establish performance goals, including a goal for the rate of combined reuse and recycling of collected photovoltaic modules as a percentage of the total weight of photovol-

taic modules collected, which rate must be no less than eighty-five percent.

(b) A manufacturer must implement the stewardship plan.

(c) A manufacturer may periodically amend its stewardship plan. The department must approve the amendment if it meets the requirements for plan approval outlined in the department's guidance. When submitting proposed amendments, the manufacturer must include an explanation of why such amendments are necessary.

(6) **Plan approval.** The department must approve a stewardship plan if it determines the plan addresses each element outlined in the department's guidance.

(7) **Annual report.** (a) Beginning April 1, 2022, and by April 1st in each subsequent year, a manufacturer, or its designated stewardship organization, must provide to the department a report for the previous calendar year that documents implementation of the plan and assesses achievement of the performance goals established in subsection (5)(a)(vi) of this section.

(b) The report may include any recommendations to the department or the legislature on modifications to the program that would enhance the effectiveness of the program, including management of program costs and mitigation of environmental impacts of photovoltaic modules.

(c) The manufacturer or stewardship organization must post this report on a publicly accessible web site.

(8) **Enforcement.** Beginning January 1, 2021, no manufacturer may sell or offer for sale a photovoltaic module in or into the state unless the manufacturer has submitted to the department a stewardship plan and received plan approval. The department must send a written warning to a manufacturer that is not participating in a plan. The written warning must inform the manufacturer that it must submit a plan or participate in a plan within thirty days of the notice. The department may assess a penalty of up to ten thousand dollars for each sale of a photovoltaic module in or into the state that occurs after the initial written warning. A manufacturer may appeal a penalty issued under this section to the superior court of Thurston county within one hundred eighty days of receipt of the notice.

(9) **Fee.** The department may collect a flat fee from participating manufacturers to recover costs associated with the plan guidance, review, and approval process described in subsection (3) of this section. Other administrative costs incurred by the department for program implementation activities, including stewardship plan review and approval, enforcement, and any rule making, may be recovered by charging every manufacturer an annual fee calculated by dividing department administrative costs by the manufacturer's pro rata share of the Washington state photovoltaic module sales in the most recent preceding calendar year, based on best available information. The sole purpose of assessing the fees authorized in this subsection is to predictably and adequately fund the department's costs of administering the photovoltaic module recycling program.

(10) **Account.** The photovoltaic module recycling account is created in the custody of the state treasurer. All fees collected from manufacturers under this chapter must be deposited in the account. Expenditures from the account may be used only for administering this chapter. Only the director

of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Funds in the account may not be diverted for any purpose or activity other than those specified in this section.

(11) **Rule making.** The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

(12) **National program.** In lieu of preparing a stewardship plan and as provided by subsection (5) of this section, a manufacturer may participate in a national program for the convenient, safe, and environmentally sound takeback and recycling of photovoltaic modules and their components and materials, if substantially equivalent to the intent of the state program. The department may determine substantial equivalence if it determines that the national program adequately addresses and fulfills each of the elements of a stewardship plan outlined in subsection (5)(a) of this section and includes an enforcement mechanism reasonably calculated to ensure a manufacturer's compliance with the national program. Upon issuing a determination of substantial equivalence, the department must notify affected stakeholders including the manufacturer. If the national program is discontinued or the department determines the national program is no longer substantially equivalent to the state program in Washington, the department must notify the manufacturer and the manufacturer must provide a stewardship plan as described in subsection (5)(a) of this section to the department for approval within thirty days of notification. [2017 3rd sp.s. c 36 § 12.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

Title 71 MENTAL ILLNESS

Chapters

71.05	Mental illness.
71.12	Private establishments.
71.24	Community mental health services act.
71.34	Mental health services for minors.

Chapter 71.05 RCW MENTAL ILLNESS

Sections

71.05.020	Definitions. <i>(Effective April 1, 2018.)</i>
71.05.154	Detention of persons with mental disorders—Evaluation—Consultation with emergency room physician. <i>(Effective until April 1, 2018.)</i>
71.05.154	Detention of persons with mental disorders—Evaluation—Consultation with emergency room physician. <i>(Effective April 1, 2018.)</i>
71.05.201	Decision not to detain—Petition for detention by family member, guardian, or conservator—Court review. <i>(Effective until April 1, 2018.)</i>
71.05.201	Decision not to detain—Petition for detention by family member, guardian, or conservator—Court review. <i>(Effective April 1, 2018.)</i>
71.05.203	Notice—Petition for detention by family member, guardian, or conservator. <i>(Effective until April 1, 2018.)</i>
71.05.203	Notice—Petition for detention by family member, guardian, or conservator. <i>(Effective April 1, 2018.)</i>
71.05.210	Evaluation—Treatment and care—Release or other disposition. <i>(Effective April 1, 2018, until July 1, 2026.)</i>
71.05.210	Evaluation—Treatment and care—Release or other disposition. <i>(Effective July 1, 2026.)</i>

71.05.230	Procedures for additional treatment. <i>(Effective April 1, 2018.)</i>
71.05.290	Petition for additional commitment—Affidavit. <i>(Effective April 1, 2018.)</i>
71.05.300	Filing of petition—Appearance—Notice—Advice as to rights—Appointment of attorney, expert, or professional person. <i>(Effective April 1, 2018.)</i>
71.05.360	Rights of involuntarily detained persons. <i>(Effective April 1, 2018.)</i>
71.05.590	Less restrictive alternative or conditional release orders—Enforcement, modification, or revocation. <i>(Effective until April 1, 2018.)</i>
71.05.590	Less restrictive alternative or conditional release orders—Enforcement, modification, or revocation. <i>(Effective April 1, 2018, until July 1, 2026.)</i>
71.05.590	Less restrictive alternative or conditional release orders—Enforcement, modification, or revocation. <i>(Effective July 1, 2026.)</i>
71.05.760	Designated crisis responders—Training—Transition process—Secure detoxification facility capacity. <i>(Effective April 1, 2018.)</i>
71.05.910	through 71.05.930 Decoded.

71.05.020 Definitions. *(Effective April 1, 2018.)* The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

(2) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning;

(3) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes, but is not limited to atypical antipsychotic medications;

(4) "Approved substance use disorder treatment program" means a program for persons with a substance use disorder provided by a treatment program certified by the department as meeting standards adopted under chapter 71.24 RCW;

(5) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(6) "Chemical dependency" means:

(a) Alcoholism;

(b) Drug addiction; or

(c) Dependence on alcohol and one or more psychoactive chemicals, as the context requires;

(7) "Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW;

(8) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(9) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(10) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, such as an evaluation and treatment facility or a hospital, which has been designed to

assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

(11) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment;

(12) "Department" means the department of social and health services;

(13) "Designated crisis responder" means a mental health professional appointed by the behavioral health organization to perform the duties specified in this chapter;

(14) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(15) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, physician assistant working with a supervising psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary;

(16) "Developmental disability" means that condition defined in RCW 71A.10.020(5);

(17) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

(18) "Drug addiction" means a disease, characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning;

(19) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is certified as such by the department. The department may certify single beds as temporary evaluation and treatment beds under RCW 71.05.745. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

(20) "Gravely disabled" means a condition in which a person, as a result of a mental disorder, or as a result of the use of alcohol or other psychoactive chemicals: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;

(21) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative ser-

vices include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct;

(22) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility, a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction;

(23) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(24) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for a person with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge or release, and a projected possible date for discharge or release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences;

(25) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.34 or 10.77 RCW, or somatic health care information;

(26) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals;

(27) "In need of assisted outpatient mental health treatment" means that a person, as a result of a mental disorder: (a) Has been committed by a court to detention for involuntary mental health treatment at least twice during the preceding thirty-six months, or, if the person is currently committed for involuntary mental health treatment, the person has been committed to detention for involuntary mental health treatment at least once during the thirty-six months preceding the date of initial detention of the current commitment cycle; (b) is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, in view of the person's treatment history or current behavior; (c) is unlikely to survive safely in the community without supervision; (d) is likely to benefit from less restrictive alternative treatment; and (e) requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of

serious harm or the person becoming gravely disabled within a reasonably short period of time. For purposes of (a) of this subsection, time spent in a mental health facility or in confinement as a result of a criminal conviction is excluded from the thirty-six month calculation;

(28) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(29) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public mental health and substance use disorder service providers under RCW 71.05.130;

(30) "Less restrictive alternative treatment" means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585;

(31) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington;

(32) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts;

(33) "Medical clearance" means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated crisis responder;

(34) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions;

(35) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(36) "Mental health service provider" means a public or private agency that provides mental health services to persons with mental disorders or substance use disorders as defined under this section and receives funding from public sources. This includes, but is not limited to, hospitals licensed under chapter 70.41 RCW, evaluation and treatment facilities as defined in this section, community mental health service delivery systems or behavioral health programs as defined in RCW 71.24.025, facilities conducting competency evaluations and restoration under chapter 10.77 RCW, approved substance use disorder treatment programs as defined in this section, secure detoxification facilities as defined in this section, and correctional facilities operated by state and local governments;

(37) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(38) "Physician assistant" means a person licensed as a physician assistant under chapter 18.57A or 18.71A RCW;

(39) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with mental illness, substance use disorders, or both mental illness and substance use disorders;

(40) "Professional person" means a mental health professional, chemical dependency professional, or designated crisis responder and shall also mean a physician, physician assistant, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(41) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

(42) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

(43) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(44) "Public agency" means any evaluation and treatment facility or institution, secure detoxification facility, approved substance use disorder treatment program, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with mental illness, substance use disorders, or both mental illness and substance use disorders, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments;

(45) "Registration records" include all the records of the department, behavioral health organizations, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness or substance use disorders;

(46) "Release" means legal termination of the commitment under the provisions of this chapter;

(47) "Resource management services" has the meaning given in chapter 71.24 RCW;

(48) "Secretary" means the secretary of the department of social and health services, or his or her designee;

(49) "Secure detoxification facility" means a facility operated by either a public or private agency or by the program of an agency that:

(a) Provides for intoxicated persons:

(i) Evaluation and assessment, provided by certified chemical dependency professionals;

(ii) Acute or subacute detoxification services; and

(iii) Discharge assistance provided by certified chemical dependency professionals, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Includes security measures sufficient to protect the patients, staff, and community; and

(c) Is certified as such by the department;

(50) "Serious violent offense" has the same meaning as provided in RCW 9.94A.030;

(51) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

(52) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances;

(53) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

(54) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by behavioral health organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, behavioral health organizations, or a treatment facility if the notes or records are not available to others;

(55) "Triage facility" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department of health residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

(56) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2017 3rd sp.s. c 14 § 14. Prior: 2016 sp.s. c 29 § 204; 2016 c 155 § 1; prior: 2015 c 269 § 14; (2015 c 269 § 13 expired April 1, 2016); 2015 c 250 § 2; (2015 c 250 § 1 expired April 1, 2016); prior: 2014 c 225 § 79; prior: 2011 c 148 § 1; 2011 c 89 § 14; prior: 2009 c 320 § 1; 2009 c 217 § 20; 2008 c 156 § 1; prior: 2007 c 375 § 6; 2007 c 191 § 2; 2005 c 504 § 104; 2000 c 94 § 1; 1999 c 13 § 5; 1998 c 297 §

3; 1997 c 112 § 3; prior: 1989 c 420 § 13; 1989 c 205 § 8; 1989 c 120 § 2; 1979 ex.s. c 215 § 5; 1973 1st ex.s. c 142 § 7.]

Effective date—2017 3rd sp.s. c 14 §§ 9, 12, 14, 15, and 17-21: See note following RCW 71.05.590.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Effective date—2015 c 269 §§ 10 and 14: See note following RCW 71.24.300.

Expiration dates—2015 c 269 §§ 9, 13, and 15: See note following RCW 71.24.300.

Effective date—2015 c 269 §§ 1-9 and 11-13: See note following RCW 71.05.010.

Effective date—2015 c 250 §§ 2, 15, and 19: "Sections 2, 15, and 19 of this act take effect April 1, 2016." [2015 c 250 § 23.]

Expiration date—2015 c 250 §§ 1, 14, and 18: "Sections 1, 14, and 18 of this act expire April 1, 2016." [2015 c 250 § 22.]

Effective date—2014 c 225: See note following RCW 71.24.016.

Certification of triage facilities—2011 c 148: "Facilities operating as triage facilities as defined in RCW 71.05.020, whether or not they are certified by the department of social and health services, as of April 22, 2011, are not required to relicense or recertify under any new rules governing licensure or certification of triage facilities. The department of social and health services shall work with the Washington association of counties and the Washington association of sheriffs and police chiefs in creating rules that establish standards for certification of triage facilities. The department of health rules must not require triage facilities to provide twenty-four hour nursing." [2011 c 148 § 6.]

Effective date—2011 c 148: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 22, 2011]." [2011 c 148 § 7.]

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Conflict with federal requirements—2009 c 320: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2009 c 320 § 6.]

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

Additional notes found at www.leg.wa.gov

71.05.154 Detention of persons with mental disorders—Evaluation—Consultation with emergency room physician. (Effective until April 1, 2018.) If a person subject to evaluation under RCW 71.05.150 or 71.05.153 is located in an emergency room at the time of evaluation, the designated mental health professional conducting the evaluation shall take serious consideration of observations and opinions by an examining emergency room physician, advanced registered nurse practitioner, or physician assistant in determining whether detention under this chapter is appropriate. The designated mental health professional must document his or her consultation with this professional, if the professional is available, or his or her review of the professional's written

observations or opinions regarding whether detention of the person is appropriate. [2017 3rd sp.s. c 14 § 11; 2013 c 334 § 1.]

Expiration date—2017 3rd sp.s. c 14 §§ 8, 11, and 13: See note following RCW 71.05.590.

71.05.154 Detention of persons with mental disorders—Evaluation—Consultation with emergency room physician. (Effective April 1, 2018.) If a person subject to evaluation under RCW 71.05.150 or 71.05.153 is located in an emergency room at the time of evaluation, the designated crisis responder conducting the evaluation shall take serious consideration of observations and opinions by an examining emergency room physician, advanced registered nurse practitioner, or physician assistant in determining whether detention under this chapter is appropriate. The designated crisis responder must document his or her consultation with this professional, if the professional is available, or his or her review of the professional's written observations or opinions regarding whether detention of the person is appropriate. [2017 3rd sp.s. c 14 § 12; 2016 sp.s. c 29 § 214; 2013 c 334 § 1.]

Effective date—2017 3rd sp.s. c 14 §§ 9, 12, 14, 15, and 17-21: See note following RCW 71.05.590.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

71.05.201 Decision not to detain—Petition for detention by family member, guardian, or conservator—Court review. (Effective until April 1, 2018.) (1) If a designated mental health professional decides not to detain a person for evaluation and treatment under RCW 71.05.150 or 71.05.153 or forty-eight hours have elapsed since a designated mental health professional received a request for investigation and the designated mental health professional has not taken action to have the person detained, an immediate family member or guardian or conservator of the person may petition the superior court for the person's initial detention.

(2) A petition under this section must be filed within ten calendar days following the designated mental health professional investigation or the request for a designated mental health professional investigation. If more than ten days have elapsed, the immediate family member, guardian, or conservator may request a new designated mental health professional investigation.

(3)(a) The petition must be filed in the county in which the designated mental health professional investigation occurred or was requested to occur and must be submitted on forms developed by the administrative office of the courts for this purpose. The petition must be accompanied by a sworn declaration from the petitioner, and other witnesses if desired, describing why the person should be detained for evaluation and treatment. The description of why the person should be detained may contain, but is not limited to, the information identified in RCW 71.05.212.

(b) The petition must contain:

(i) A description of the relationship between the petitioner and the person; and

(ii) The date on which an investigation was requested from the designated mental health professional.

(4) The court shall, within one judicial day, review the petition to determine whether the petition raises sufficient evidence to support the allegation. If the court so finds, it shall provide a copy of the petition to the designated mental health professional agency with an order for the agency to provide the court, within one judicial day, with a written sworn statement describing the basis for the decision not to seek initial detention and a copy of all information material to the designated mental health professional's current decision.

(5) Following the filing of the petition and before the court reaches a decision, any person, including a mental health professional, may submit a sworn declaration to the court in support of or in opposition to initial detention.

(6) The court shall dismiss the petition at any time if it finds that a designated mental health professional has filed a petition for the person's initial detention under RCW 71.05.150 or 71.05.153 or that the person has voluntarily accepted appropriate treatment.

(7) The court must issue a final ruling on the petition within five judicial days after it is filed. After reviewing all of the information provided to the court, the court may enter an order for initial detention if the court finds that: (a) There is probable cause to support a petition for detention; and (b) the person has refused or failed to accept appropriate evaluation and treatment voluntarily. The court shall transmit its final decision to the petitioner.

(8) If the court enters an order for initial detention, it shall provide the order to the designated mental health professional agency and issue a written order for apprehension of the person by a peace officer for delivery of the person to a facility or emergency room determined by the designated mental health professional. The designated mental health agency serving the jurisdiction of the court must collaborate and coordinate with law enforcement regarding apprehensions and detentions under this subsection, including sharing of information relating to risk and which would assist in locating the person. A person may not be detained to jail pursuant to a written order issued under this subsection. An order for detention under this section should contain the advisement of rights which the person would receive if the person were detained by a designated mental health professional. An order for initial detention under this section expires one hundred eighty days from issuance.

(9) Except as otherwise expressly stated in this chapter, all procedures must be followed as if the order had been entered under RCW 71.05.150. RCW 71.05.160 does not apply if detention was initiated under the process set forth in this section.

(10) For purposes of this section, "immediate family member" means a spouse, domestic partner, child, stepchild, parent, stepparent, grandparent, or sibling. [2017 3rd sp.s. c 14 § 1; 2016 c 107 § 1; 2015 c 258 § 2.]

Expiration date—2017 3rd sp.s. c 14 §§ 1 and 3: "Sections 1 and 3 of this act expire April 1, 2018." [2017 3rd sp.s. c 14 § 6.]

Short title—2015 c 258: "This act may be known and cited as Joel's Law." [2015 c 258 § 1.]

71.05.201 Decision not to detain—Petition for detention by family member, guardian, or conservator—Court review. (Effective April 1, 2018.) (1) If a designated crisis responder decides not to detain a person for evaluation and

treatment under RCW 71.05.150 or 71.05.153 or forty-eight hours have elapsed since a designated crisis responder received a request for investigation and the designated crisis responder has not taken action to have the person detained, an immediate family member or guardian or conservator of the person may petition the superior court for the person's initial detention.

(2) A petition under this section must be filed within ten calendar days following the designated crisis responder investigation or the request for a designated crisis responder investigation. If more than ten days have elapsed, the immediate family member, guardian, or conservator may request a new designated crisis responder investigation.

(3)(a) The petition must be filed in the county in which the designated crisis responder investigation occurred or was requested to occur and must be submitted on forms developed by the administrative office of the courts for this purpose. The petition must be accompanied by a sworn declaration from the petitioner, and other witnesses if desired, describing why the person should be detained for evaluation and treatment. The description of why the person should be detained may contain, but is not limited to, the information identified in RCW 71.05.212.

(b) The petition must contain:

(i) A description of the relationship between the petitioner and the person; and

(ii) The date on which an investigation was requested from the designated crisis responder.

(4) The court shall, within one judicial day, review the petition to determine whether the petition raises sufficient evidence to support the allegation. If the court so finds, it shall provide a copy of the petition to the designated crisis responder agency with an order for the agency to provide the court, within one judicial day, with a written sworn statement describing the basis for the decision not to seek initial detention and a copy of all information material to the designated crisis responder's current decision.

(5) Following the filing of the petition and before the court reaches a decision, any person, including a mental health professional, may submit a sworn declaration to the court in support of or in opposition to initial detention.

(6) The court shall dismiss the petition at any time if it finds that a designated crisis responder has filed a petition for the person's initial detention under RCW 71.05.150 or 71.05.153 or that the person has voluntarily accepted appropriate treatment.

(7) The court must issue a final ruling on the petition within five judicial days after it is filed. After reviewing all of the information provided to the court, the court may enter an order for initial detention if the court finds that: (a) There is probable cause to support a petition for detention; and (b) the person has refused or failed to accept appropriate evaluation and treatment voluntarily. The court shall transmit its final decision to the petitioner.

(8) If the court enters an order for initial detention, it shall provide the order to the designated crisis responder agency and issue a written order for apprehension of the person by a peace officer for delivery of the person to a facility or emergency room determined by the designated crisis responder. The designated crisis responder agency serving the jurisdiction of the court must collaborate and coordinate

with law enforcement regarding apprehensions and detentions under this subsection, including sharing of information relating to risk and which would assist in locating the person. A person may not be detained to jail pursuant to a written order issued under this subsection. An order for detention under this section should contain the advisement of rights which the person would receive if the person were detained by a designated crisis responder. An order for initial detention under this section expires one hundred eighty days from issuance.

(9) Except as otherwise expressly stated in this chapter, all procedures must be followed as if the order had been entered under RCW 71.05.150. RCW 71.05.160 does not apply if detention was initiated under the process set forth in this section.

(10) For purposes of this section, "immediate family member" means a spouse, domestic partner, child, stepchild, parent, stepparent, grandparent, or sibling. [2017 3rd sp.s. c 14 § 2. Prior: 2016 sp.s. c 29 § 222; 2016 c 107 § 1; 2015 c 258 § 2.]

Effective date—2017 3rd sp.s. c 14 §§ 2 and 4: "Sections 2 and 4 of this act take effect April 1, 2018." [2017 3rd sp.s. c 14 § 7.]

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Short title—2015 c 258: "This act may be known and cited as Joel's Law." [2015 c 258 § 1.]

71.05.203 Notice—Petition for detention by family member, guardian, or conservator. (Effective until April 1, 2018.) (1) The department and each behavioral health organization or agency employing designated mental health professionals shall publish information in an easily accessible format describing the process for an immediate family member, guardian, or conservator to petition for court review of a detention decision under RCW 71.05.201.

(2) A designated mental health professional or designated mental health professional agency that receives a request for investigation for possible detention under this chapter must inquire whether the request comes from an immediate family member, guardian, or conservator who would be eligible to petition under RCW 71.05.201. If the designated mental health professional decides not to detain the person for evaluation and treatment under RCW 71.05.150 or 71.05.153 or forty-eight hours have elapsed since the request for investigation was received and the designated mental health professional has not taken action to have the person detained, the designated mental health professional or designated mental health professional agency must inform the immediate family member, guardian, or conservator who made the request for investigation about the process to petition for court review under RCW 71.05.201 and, to the extent feasible, provide the immediate family member, guardian, or conservator with written or electronic information about the petition process. If provision of written or electronic information is not feasible, the designated mental health professional or designated mental health professional agency must refer the immediate family member, guardian, or conservator to a web site where published information on the petition process may be accessed. The designated mental health professional or designated mental health

professional agency must document the manner and date on which the information required under this subsection was provided to the immediate family member, guardian, or conservator.

(3) A designated mental health professional or designated mental health professional agency must, upon request, disclose the date of a designated mental health professional investigation under this chapter to an immediate family member, guardian, or conservator of a person to assist in the preparation of a petition under RCW 71.05.201. [2017 3rd sp.s. c 14 § 3; 2015 c 258 § 3.]

Expiration date—2017 3rd sp.s. c 14 §§ 1 and 3: See note following RCW 71.05.201.

Short title—2015 c 258: See note following RCW 71.05.201.

71.05.203 Notice—Petition for detention by family member, guardian, or conservator. (Effective April 1, 2018.) (1) The department and each behavioral health organization or agency employing designated crisis responders shall publish information in an easily accessible format describing the process for an immediate family member, guardian, or conservator to petition for court review of a detention decision under RCW 71.05.201.

(2) A designated crisis responder or designated crisis responder agency that receives a request for investigation for possible detention under this chapter must inquire whether the request comes from an immediate family member, guardian, or conservator who would be eligible to petition under RCW 71.05.201. If the designated crisis responder decides not to detain the person for evaluation and treatment under RCW 71.05.150 or 71.05.153 or forty-eight hours have elapsed since the request for investigation was received and the designated crisis responder has not taken action to have the person detained, the designated crisis responder or designated crisis responder agency must inform the immediate family member, guardian, or conservator who made the request for investigation about the process to petition for court review under RCW 71.05.201 and, to the extent feasible, provide the immediate family member, guardian, or conservator with written or electronic information about the petition process. If provision of written or electronic information is not feasible, the designated crisis responder or designated crisis responder agency must refer the immediate family member, guardian, or conservator to a web site where published information on the petition process may be accessed. The designated crisis responder or designated crisis responder agency must document the manner and date on which the information required under this subsection was provided to the immediate family member, guardian, or conservator.

(3) A designated crisis responder or designated crisis responder agency must, upon request, disclose the date of a designated crisis responder investigation under this chapter to an immediate family member, guardian, or conservator of a person to assist in the preparation of a petition under RCW 71.05.201. [2017 3rd sp.s. c 14 § 4; 2016 sp.s. c 29 § 223; 2015 c 258 § 3.]

Effective date—2017 3rd sp.s. c 14 §§ 2 and 4: See note following RCW 71.05.201.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Short title—2015 c 258: See note following RCW 71.05.201.

71.05.210 Evaluation—Treatment and care—Release or other disposition. (Effective April 1, 2018, until July 1, 2026.) (1) Each person involuntarily detained and accepted or admitted at an evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program:

(a) Shall, within twenty-four hours of his or her admission or acceptance at the facility, not counting time periods prior to medical clearance, be examined and evaluated by:

(i) One physician, physician assistant, or advanced registered nurse practitioner; and

(ii) One mental health professional. If the person is detained for substance use disorder evaluation and treatment, the person may be examined by a chemical dependency professional instead of a mental health professional; and

(b) Shall receive such treatment and care as his or her condition requires including treatment on an outpatient basis for the period that he or she is detained, except that, beginning twenty-four hours prior to a trial or hearing pursuant to RCW 71.05.215, 71.05.240, 71.05.310, 71.05.320, 71.05.590, or 71.05.217, the individual may refuse psychiatric medications, but may not refuse: (i) Any other medication previously prescribed by a person licensed under Title 18 RCW; or (ii) emergency lifesaving treatment, and the individual shall be informed at an appropriate time of his or her right of such refusal. The person shall be detained up to seventy-two hours, if, in the opinion of the professional person in charge of the facility, or his or her professional designee, the person presents a likelihood of serious harm, or is gravely disabled. A person who has been detained for seventy-two hours shall no later than the end of such period be released, unless referred for further care on a voluntary basis, or detained pursuant to court order for further treatment as provided in this chapter.

(2) If, after examination and evaluation, the mental health professional or chemical dependency professional and licensed physician, physician assistant, or psychiatric advanced registered nurse practitioner determine that the initial needs of the person, if detained to an evaluation and treatment facility, would be better served by placement in a substance use disorder treatment program, or, if detained to a secure detoxification facility or approved substance use disorder treatment program, would be better served in an evaluation and treatment facility then the person shall be referred to the more appropriate placement; however, a person may only be referred to a secure detoxification facility or approved substance use disorder treatment program if there is an available secure detoxification facility or approved substance use disorder treatment program with adequate space for the person.

(3) An evaluation and treatment center, secure detoxification facility, or approved substance use disorder treatment program admitting or accepting any person pursuant to this chapter whose physical condition reveals the need for hospitalization shall assure that such person is transferred to an appropriate hospital for evaluation or admission for treatment. Notice of such fact shall be given to the court, the des-

ignated attorney, and the designated crisis responder and the court shall order such continuance in proceedings under this chapter as may be necessary, but in no event may this continuance be more than fourteen days. [2017 3rd sp.s. c 14 § 15. Prior: 2016 sp.s. c 29 § 224; 2016 c 155 § 2; prior: 2015 c 269 § 7; 2015 c 250 § 20; 2009 c 217 § 1; 2000 c 94 § 6; 1998 c 297 § 12; 1997 c 112 § 15; 1994 sp.s. c 9 § 747; prior: 1991 c 364 § 11; 1991 c 105 § 4; 1989 c 120 § 6; 1987 c 439 § 2; 1975 1st ex.s. c 199 § 4; 1974 ex.s. c 145 § 14; 1973 1st ex.s. c 142 § 26.]

Effective date—2017 3rd sp.s. c 14 §§ 9, 12, 14, 15, and 17-21: See note following RCW 71.05.590.

Expiration date—2017 3rd sp.s. c 14 §§ 9 and 15: See note following RCW 71.05.590.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Effective date—2015 c 269 §§ 1-9 and 11-13: See note following RCW 71.05.010.

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

Findings—Construction—Conflict with federal requirements—1991 c 364: See notes following RCW 70.96A.020.

Additional notes found at www.leg.wa.gov

71.05.210 Evaluation—Treatment and care—Release or other disposition. (Effective July 1, 2026.) (1) Each person involuntarily detained and accepted or admitted at an evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program:

(a) Shall, within twenty-four hours of his or her admission or acceptance at the facility, not counting time periods prior to medical clearance, be examined and evaluated by:

(i) One physician, physician assistant, or advanced registered nurse practitioner; and

(ii) One mental health professional. If the person is detained for substance use disorder evaluation and treatment, the person may be examined by a chemical dependency professional instead of a mental health professional; and

(b) Shall receive such treatment and care as his or her condition requires including treatment on an outpatient basis for the period that he or she is detained, except that, beginning twenty-four hours prior to a trial or hearing pursuant to RCW 71.05.215, 71.05.240, 71.05.310, 71.05.320, 71.05.590, or 71.05.217, the individual may refuse psychiatric medications, but may not refuse: (i) Any other medication previously prescribed by a person licensed under Title 18 RCW; or (ii) emergency lifesaving treatment, and the individual shall be informed at an appropriate time of his or her right of such refusal. The person shall be detained up to seventy-two hours, if, in the opinion of the professional person in charge of the facility, or his or her professional designee, the person presents a likelihood of serious harm, or is gravely disabled. A person who has been detained for seventy-two hours shall no later than the end of such period be released, unless referred for further care on a voluntary basis, or detained pursuant to court order for further treatment as provided in this chapter.

(2) If, after examination and evaluation, the mental health professional or chemical dependency professional and

licensed physician, physician assistant, or psychiatric advanced registered nurse practitioner determine that the initial needs of the person, if detained to an evaluation and treatment facility, would be better served by placement in a substance use disorder treatment program, or, if detained to a secure detoxification facility or approved substance use disorder treatment program, would be better served in an evaluation and treatment facility then the person shall be referred to the more appropriate placement.

(3) An evaluation and treatment center, secure detoxification facility, or approved substance use disorder treatment program admitting or accepting any person pursuant to this chapter whose physical condition reveals the need for hospitalization shall assure that such person is transferred to an appropriate hospital for evaluation or admission for treatment. Notice of such fact shall be given to the court, the designated attorney, and the designated crisis responder and the court shall order such continuance in proceedings under this chapter as may be necessary, but in no event may this continuance be more than fourteen days. [2017 3rd sp.s. c 14 § 16; 2016 sp.s. c 29 § 225; 2016 sp.s. c 29 § 224; 2016 c 155 § 2. Prior: 2015 c 269 § 7; 2015 c 250 § 20; 2009 c 217 § 1; 2000 c 94 § 6; 1998 c 297 § 12; 1997 c 112 § 15; 1994 sp.s. c 9 § 747; prior: 1991 c 364 § 11; 1991 c 105 § 4; 1989 c 120 § 6; 1987 c 439 § 2; 1975 1st ex.s. c 199 § 4; 1974 ex.s. c 145 § 14; 1973 1st ex.s. c 142 § 26.]

Effective date—2017 3rd sp.s. c 14 §§ 10 and 16: See note following RCW 71.05.590.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Effective date—2015 c 269 §§ 1-9 and 11-13: See note following RCW 71.05.010.

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

Findings—Construction—Conflict with federal requirements—1991 c 364: See notes following RCW 70.96A.020.

Additional notes found at www.leg.wa.gov

71.05.230 Procedures for additional treatment. (Effective April 1, 2018.) A person detained or committed for seventy-two hour evaluation and treatment or for an outpatient evaluation for the purpose of filing a petition for a less restrictive alternative treatment order may be committed for not more than fourteen additional days of involuntary intensive treatment or ninety additional days of a less restrictive alternative to involuntary intensive treatment. A petition may only be filed if the following conditions are met:

(1) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and finds that the condition is caused by mental disorder or substance use disorder and results in a likelihood of serious harm, results in the person being gravely disabled, or results in the person being in need of assisted outpatient mental health treatment, and are prepared to testify those conditions are met; and

(2) The person has been advised of the need for voluntary treatment and the professional staff of the facility has evidence that he or she has not in good faith volunteered; and

(3) The agency or facility providing intensive treatment or which proposes to supervise the less restrictive alternative is certified to provide such treatment by the department; and

(4)(a)(i) The professional staff of the agency or facility or the designated crisis responder has filed a petition with the court for a fourteen day involuntary detention or a ninety day less restrictive alternative. The petition must be signed by:

(A) One physician, physician assistant, or psychiatric advanced registered nurse practitioner; and

(B) One physician, physician assistant, psychiatric advanced registered nurse practitioner, or mental health professional.

(ii) If the petition is for substance use disorder treatment, the petition may be signed by a chemical dependency professional instead of a mental health professional and by an advanced registered nurse practitioner instead of a psychiatric advanced registered nurse practitioner. The persons signing the petition must have examined the person.

(b) If involuntary detention is sought the petition shall state facts that support the finding that such person, as a result of a mental disorder or substance use disorder, presents a likelihood of serious harm, or is gravely disabled and that there are no less restrictive alternatives to detention in the best interest of such person or others. The petition shall state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate. If an involuntary less restrictive alternative is sought, the petition shall state facts that support the finding that such person, as a result of a mental disorder or as a result of a substance use disorder, presents a likelihood of serious harm, is gravely disabled, or is in need of assisted outpatient mental health treatment, and shall set forth any recommendations for less restrictive alternative treatment services; and

(5) A copy of the petition has been served on the detained or committed person, his or her attorney and his or her guardian or conservator, if any, prior to the probable cause hearing; and

(6) The court at the time the petition was filed and before the probable cause hearing has appointed counsel to represent such person if no other counsel has appeared; and

(7) The petition reflects that the person was informed of the loss of firearm rights if involuntarily committed for mental health treatment; and

(8) At the conclusion of the initial commitment period, the professional staff of the agency or facility or the designated crisis responder may petition for an additional period of either ninety days of less restrictive alternative treatment or ninety days of involuntary intensive treatment as provided in RCW 71.05.290; and

(9) If the hospital or facility designated to provide less restrictive alternative treatment is other than the facility providing involuntary treatment, the outpatient facility so designated to provide less restrictive alternative treatment has agreed to assume such responsibility. [2017 3rd sp.s. c 14 § 17. Prior: 2016 sp.s. c 29 § 230; 2016 c 155 § 5; 2016 c 45 § 1; 2015 c 250 § 6; 2011 c 343 § 9; prior: 2009 c 293 § 3; 2009 c 217 § 2; 2006 c 333 § 302; 1998 c 297 § 13; 1997 c 112 § 18; 1987 c 439 § 3; 1975 1st ex.s. c 199 § 5; 1974 ex.s. c 145 § 15; 1973 1st ex.s. c 142 § 28.]

Effective date—2017 3rd sp.s. c 14 §§ 9, 12, 14, 15, and 17-21: See note following RCW 71.05.590.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Intent—Effective date—2011 c 343: See notes following RCW 71.05.730.

Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333: See notes following RCW 71.24.016.

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

71.05.290 Petition for additional commitment—Affidavit. (Effective April 1, 2018.) (1) At any time during a person's fourteen day intensive treatment period, the professional person in charge of a treatment facility or his or her professional designee or the designated crisis responder may petition the superior court for an order requiring such person to undergo an additional period of treatment. Such petition must be based on one or more of the grounds set forth in RCW 71.05.280.

(2)(a)(i) The petition shall summarize the facts which support the need for further commitment and shall be supported by affidavits based on an examination of the patient and signed by:

(A) One physician, physician assistant, or psychiatric advanced registered nurse practitioner; and

(B) One physician, physician assistant, psychiatric advanced registered nurse practitioner, or mental health professional.

(ii) If the petition is for substance use disorder treatment, the petition may be signed by a chemical dependency professional instead of a mental health professional and by an advanced registered nurse practitioner instead of a psychiatric advanced registered nurse practitioner.

(b) The affidavits shall describe in detail the behavior of the detained person which supports the petition and shall explain what, if any, less restrictive treatments which are alternatives to detention are available to such person, and shall state the willingness of the affiant to testify to such facts in subsequent judicial proceedings under this chapter. If less restrictive alternative treatment is sought, the petition shall set forth any recommendations for less restrictive alternative treatment services.

(3) If a person has been determined to be incompetent pursuant to RCW 10.77.086(4), then the professional person in charge of the treatment facility or his or her professional designee or the designated crisis responder may directly file a petition for one hundred eighty day treatment under RCW 71.05.280(3). No petition for initial detention or fourteen day detention is required before such a petition may be filed. [2017 3rd sp.s. c 14 § 18. Prior: 2016 sp.s. c 29 § 235; 2016 c 155 § 6; 2016 c 45 § 3; 2015 c 250 § 10; 2009 c 217 § 3; 2008 c 213 § 7; 1998 c 297 § 16; 1997 c 112 § 24; 1986 c 67 § 4; 1975 1st ex.s. c 199 § 6; 1974 ex.s. c 145 § 20; 1973 1st ex.s. c 142 § 34.]

Effective date—2017 3rd sp.s. c 14 §§ 9, 12, 14, 15, and 17-21: See note following RCW 71.05.590.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

71.05.300 Filing of petition—Appearance—Notice—Advice as to rights—Appointment of attorney, expert, or professional person. (Effective April 1, 2018.) (1) The petition for ninety day treatment shall be filed with the clerk of the superior court at least three days before expiration of the fourteen-day period of intensive treatment. At the time of filing such petition, the clerk shall set a time for the person to come before the court on the next judicial day after the day of filing unless such appearance is waived by the person's attorney, and the clerk shall notify the designated crisis responder. The designated crisis responder shall immediately notify the person detained, his or her attorney, if any, and his or her guardian or conservator, if any, the prosecuting attorney, and the behavioral health organization administrator, and provide a copy of the petition to such persons as soon as possible. The behavioral health organization administrator or designee may review the petition and may appear and testify at the full hearing on the petition.

(2) At the time set for appearance the detained person shall be brought before the court, unless such appearance has been waived and the court shall advise him or her of his or her right to be represented by an attorney, his or her right to a jury trial, and, if the petition is for commitment for mental health treatment, his or her loss of firearm rights if involuntarily committed. If the detained person is not represented by an attorney, or is indigent or is unwilling to retain an attorney, the court shall immediately appoint an attorney to represent him or her. The court shall, if requested, appoint a reasonably available licensed physician, physician assistant, psychiatric advanced registered nurse practitioner, psychologist, psychiatrist, or other professional person, designated by the detained person to examine and testify on behalf of the detained person.

(3) The court may, if requested, also appoint a professional person as defined in RCW 71.05.020 to seek less restrictive alternative courses of treatment and to testify on behalf of the detained person. In the case of a person with a developmental disability who has been determined to be incompetent pursuant to RCW 10.77.086(4), then the appointed professional person under this section shall be a developmental disabilities professional.

(4) The court shall also set a date for a full hearing on the petition as provided in RCW 71.05.310. [2017 3rd sp.s. c 14 § 19. Prior: 2016 sp.s. c 29 § 236; 2016 c 155 § 7; 2014 c 225 § 84; prior: 2009 c 293 § 5; 2009 c 217 § 4; 2008 c 213 § 8; 2006 c 333 § 303; 1998 c 297 § 17; 1997 c 112 § 25; 1989 c 420 § 14; 1987 c 439 § 8; 1975 1st ex.s. c 199 § 7; 1974 ex.s. c 145 § 21; 1973 1st ex.s. c 142 § 35.]

Effective date—2017 3rd sp.s. c 14 §§ 9, 12, 14, 15, and 17-21: See note following RCW 71.05.590.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Effective date—2014 c 225: See note following RCW 71.24.016.

Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333: See notes following RCW 71.24.016.

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

71.05.360 Rights of involuntarily detained persons. (Effective April 1, 2018.) (1)(a) Every person involuntarily detained or committed under the provisions of this chapter shall be entitled to all the rights set forth in this chapter, which shall be prominently posted in the facility, and shall retain all rights not denied him or her under this chapter except as chapter 9.41 RCW may limit the right of a person to purchase or possess a firearm or to qualify for a concealed pistol license if the person is committed under RCW 71.05.240 or 71.05.320 for mental health treatment.

(b) No person shall be presumed incompetent as a consequence of receiving an evaluation or voluntary or involuntary treatment for a mental disorder or substance use disorder, under this chapter or any prior laws of this state dealing with mental illness or substance use disorders. Competency shall not be determined or withdrawn except under the provisions of chapter 10.77 or 11.88 RCW.

(c) Any person who leaves a public or private agency following evaluation or treatment for a mental disorder or substance use disorder shall be given a written statement setting forth the substance of this section.

(2) Each person involuntarily detained or committed pursuant to this chapter shall have the right to adequate care and individualized treatment.

(3) The provisions of this chapter shall not be construed to deny to any person treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(4) Persons receiving evaluation or treatment under this chapter shall be given a reasonable choice of an available physician, physician assistant, psychiatric advanced registered nurse practitioner, or other professional person qualified to provide such services.

(5) Whenever any person is detained for evaluation and treatment pursuant to this chapter, both the person and, if possible, a responsible member of his or her immediate family, personal representative, guardian, or conservator, if any, shall be advised as soon as possible in writing or orally, by the officer or person taking him or her into custody or by personnel of the evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program where the person is detained that unless the person is released or voluntarily admits himself or herself for treatment within seventy-two hours of the initial detention:

(a) A judicial hearing in a superior court, either by a judge or court commissioner thereof, shall be held not more than seventy-two hours after the initial detention to determine whether there is probable cause to detain the person after the seventy-two hours have expired for up to an additional fourteen days without further automatic hearing for the reason that the person is a person whose mental disorder or substance use disorder presents a likelihood of serious harm or that the person is gravely disabled;

(b) The person has a right to communicate immediately with an attorney; has a right to have an attorney appointed to represent him or her before and at the probable cause hearing if he or she is indigent; and has the right to be told the name and address of the attorney that the mental health professional has designated pursuant to this chapter;

(c) The person has the right to remain silent and that any statement he or she makes may be used against him or her;

(d) The person has the right to present evidence and to cross-examine witnesses who testify against him or her at the probable cause hearing; and

(e) The person has the right to refuse psychiatric medications, including antipsychotic medication beginning twenty-four hours prior to the probable cause hearing.

(6) When proceedings are initiated under RCW 71.05.153, no later than twelve hours after such person is admitted to the evaluation and treatment facility, secure detoxification facility, or approved substance use disorder treatment program the personnel of the facility or the designated crisis responder shall serve on such person a copy of the petition for initial detention and the name, business address, and phone number of the designated attorney and shall forthwith commence service of a copy of the petition for initial detention on the designated attorney.

(7) The judicial hearing described in subsection (5) of this section is hereby authorized, and shall be held according to the provisions of subsection (5) of this section and rules promulgated by the supreme court.

(8) At the probable cause hearing the detained person shall have the following rights in addition to the rights previously specified:

- (a) To present evidence on his or her behalf;
- (b) To cross-examine witnesses who testify against him or her;
- (c) To be proceeded against by the rules of evidence;
- (d) To remain silent;
- (e) To view and copy all petitions and reports in the court file.

(9) Privileges between patients and physicians, physician assistants, psychologists, or psychiatric advanced registered nurse practitioners are deemed waived in proceedings under this chapter relating to the administration of antipsychotic medications. As to other proceedings under this chapter, the privileges shall be waived when a court of competent jurisdiction in its discretion determines that such waiver is necessary to protect either the detained person or the public.

The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person or on its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical or psychological records of the detained person so long as the requirements of RCW 5.45.020 are met except that portions of the record which contain opinions as to the detained person's mental state must be deleted from such records unless the person making such conclusions is available for cross-examination.

(10) Insofar as danger to the person or others is not created, each person involuntarily detained, treated in a less restrictive alternative course of treatment, or committed for treatment and evaluation pursuant to this chapter shall have, in addition to other rights not specifically withheld by law, the following rights:

(a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(b) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(c) To have access to individual storage space for his or her private use;

(d) To have visitors at reasonable times;

(e) To have reasonable access to a telephone, both to make and receive confidential calls, consistent with an effective treatment program;

(f) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(g) To discuss treatment plans and decisions with professional persons;

(h) Not to consent to the administration of antipsychotic medications and not to thereafter be administered antipsychotic medications unless ordered by a court under RCW 71.05.217 or pursuant to an administrative hearing under RCW 71.05.215;

(i) Not to consent to the performance of electroconvulsant therapy or surgery, except emergency lifesaving surgery, unless ordered by a court under RCW 71.05.217;

(j) Not to have psychosurgery performed on him or her under any circumstances;

(k) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue.

(11) Every person involuntarily detained shall immediately be informed of his or her right to a hearing to review the legality of his or her detention and of his or her right to counsel, by the professional person in charge of the facility providing evaluation and treatment, or his or her designee, and, when appropriate, by the court. If the person so elects, the court shall immediately appoint an attorney to assist him or her.

(12) A person challenging his or her detention or his or her attorney shall have the right to designate and have the court appoint a reasonably available independent physician, physician assistant, psychiatric advanced registered nurse practitioner, or other professional person to examine the person detained, the results of which examination may be used in the proceeding. The person shall, if he or she is financially able, bear the cost of such expert examination, otherwise such expert examination shall be at public expense.

(13) Nothing contained in this chapter shall prohibit the patient from petitioning by writ of habeas corpus for release.

(14) Nothing in this chapter shall prohibit a person committed on or prior to January 1, 1974, from exercising a right available to him or her at or prior to January 1, 1974, for obtaining release from confinement.

(15) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or an active condition of supervision by the department of corrections. [2017 3rd sp.s. c 14 § 20. Prior: 2016 sp.s. c 29 § 244; 2016 c 155 § 8; 2009 c 217 § 5; 2007 c 375 § 14; 2005 c 504 § 107; 1997 c 112 § 30; 1974 ex.s. c 145 § 25; 1973 1st ex.s. c 142 § 41.]

Effective date—2017 3rd sp.s. c 14 § 9, 12, 14, 15, and 17-21: See note following RCW 71.05.590.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Additional notes found at www.leg.wa.gov

71.05.590 Less restrictive alternative or conditional release orders—Enforcement, modification, or revocation. (Effective until April 1, 2018.) (1) Either an agency or facility designated to monitor or provide services under a less restrictive alternative order or conditional release order, or a designated mental health professional, may take action to enforce, modify, or revoke a less restrictive alternative or conditional release order. The agency, facility, or designated mental health professional must determine that:

(a) The person is failing to adhere to the terms and conditions of the court order;

(b) Substantial deterioration in the person's functioning has occurred;

(c) There is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further evaluation, intervention, or treatment; or

(d) The person poses a likelihood of serious harm.

(2) Actions taken under this section must include a flexible range of responses of varying levels of intensity appropriate to the circumstances and consistent with the interests of the individual and the public in personal autonomy, safety, recovery, and compliance. Available actions may include, but are not limited to, any of the following:

(a) To counsel or advise the person as to their rights and responsibilities under the court order, and to offer appropriate incentives to motivate compliance;

(b) To increase the intensity of outpatient services provided to the person by increasing the frequency of contacts with the provider, referring the person for an assessment for assertive community services, or by other means;

(c) To request a court hearing for review and modification of the court order. The request must be made to the court with jurisdiction over the order and specify the circumstances that give rise to the request and what modification is being sought. The county prosecutor shall assist the agency or facility in requesting this hearing and issuing an appropriate summons to the person. This subsection does not limit the inherent authority of a treatment provider to alter conditions of treatment for clinical reasons, and is intended to be used only when court intervention is necessary or advisable to secure the person's compliance and prevent decompensation or deterioration;

(d) To cause the person to be transported by a peace officer, designated mental health professional, or other means to the agency or facility monitoring or providing services under the court order, or to a triage facility, crisis stabilization unit, emergency department, or evaluation and treatment facility for up to twelve hours for the purpose of an evaluation to determine whether modification, revocation, or commitment proceedings are necessary and appropriate to stabilize the person and prevent decompensation, deterioration, or physical harm. Temporary detention for evaluation under this subsection is intended to occur only following a pattern of non-

compliance or the failure of reasonable attempts at outreach and engagement, and may occur only when in the clinical judgment of a designated mental health professional or the professional person in charge of an agency or facility designated to monitor less restrictive alternative services temporary detention is appropriate. This subsection does not limit the ability or obligation to pursue revocation procedures under subsection (4) of this section in appropriate circumstances; and

(e) To initiate revocation procedures under subsection (4) of this section.

(3) The facility or agency designated to provide outpatient treatment shall notify the secretary or designated mental health professional when a person fails to adhere to terms and conditions of court ordered treatment or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm.

(4)(a) A designated mental health professional or the secretary may upon their own motion or notification by the facility or agency designated to provide outpatient care order a person subject to a court order under this section to be apprehended and taken into custody and temporary detention in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment, or initiate proceedings under this subsection (4) without ordering the apprehension and detention of the person.

(b) A person detained under this subsection (4) must be held until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he or she had been released. If the person is not detained, the hearing must be scheduled within five days of service on the person. The designated mental health professional or the secretary may modify or rescind the order at any time prior to commencement of the court hearing.

(c) The designated mental health professional or secretary shall file a revocation petition and order of apprehension and detention with the court of the county where the person is currently located or being detained. The designated mental health professional shall serve the person and their attorney, guardian, and conservator, if any. The person has the same rights with respect to notice, hearing, and counsel as in any involuntary treatment proceeding, except as specifically set forth in this section. There is no right to jury trial. The venue for proceedings is the county where the petition is filed. Notice of the filing must be provided to the court that originally ordered commitment, if different from the court where the petition for revocation is filed, within two judicial days of the person's detention.

(d) The issues for the court to determine are whether: (i) The person adhered to the terms and conditions of the court order; (ii) substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or (iv) there is a likelihood of serious harm; and, if any of the above conditions apply, whether the court should reinstate or modify the person's less restrictive alternative or conditional release order or order the person's detention for inpatient treatment. The person may waive the court hearing and allow the court to enter a stipulated order upon the agreement of all parties. If

the court orders detention for inpatient treatment, the treatment period may be for no longer than the period authorized in the original court order.

(e) Revocation proceedings under this subsection (4) are not allowable if the current commitment is solely based on the person being in need of assisted outpatient mental health treatment. In order to obtain a court order for detention for inpatient treatment under this circumstance, a petition must be filed under RCW 71.05.150 or 71.05.153.

(5) In determining whether or not to take action under this section the designated mental health professional, agency, or facility must consider the factors specified under RCW 71.05.212 and the court must consider the factors specified under RCW 71.05.245 as they apply to the question of whether to enforce, modify, or revoke a court order for involuntary treatment. [2017 3rd sp.s. c 14 § 8; 2015 c 250 § 13.]

Expiration date—2017 3rd sp.s. c 14 §§ 8, 11, and 13: "Sections 8, 11, and 13 of this act expire April 1, 2018." [2017 3rd sp.s. c 14 § 23.]

71.05.590 Less restrictive alternative or conditional release orders—Enforcement, modification, or revocation. (Effective April 1, 2018, until July 1, 2026.) (1) Either an agency or facility designated to monitor or provide services under a less restrictive alternative order or conditional release order, or a designated crisis responder, may take action to enforce, modify, or revoke a less restrictive alternative or conditional release order. The agency, facility, or designated crisis responder must determine that:

(a) The person is failing to adhere to the terms and conditions of the court order;

(b) Substantial deterioration in the person's functioning has occurred;

(c) There is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further evaluation, intervention, or treatment; or

(d) The person poses a likelihood of serious harm.

(2) Actions taken under this section must include a flexible range of responses of varying levels of intensity appropriate to the circumstances and consistent with the interests of the individual and the public in personal autonomy, safety, recovery, and compliance. Available actions may include, but are not limited to, any of the following:

(a) To counsel or advise the person as to their rights and responsibilities under the court order, and to offer appropriate incentives to motivate compliance;

(b) To increase the intensity of outpatient services provided to the person by increasing the frequency of contacts with the provider, referring the person for an assessment for assertive community services, or by other means;

(c) To request a court hearing for review and modification of the court order. The request must be made to the court with jurisdiction over the order and specify the circumstances that give rise to the request and what modification is being sought. The county prosecutor shall assist the agency or facility in requesting this hearing and issuing an appropriate summons to the person. This subsection does not limit the inherent authority of a treatment provider to alter conditions of treatment for clinical reasons, and is intended to be used only when court intervention is necessary or advisable to secure the person's compliance and prevent decompensation or deterioration;

(d) To cause the person to be transported by a peace officer, designated crisis responder, or other means to the agency or facility monitoring or providing services under the court order, or to a triage facility, crisis stabilization unit, emergency department, or to an evaluation and treatment facility if the person is committed for mental health treatment, or to a secure detoxification facility with available space or an approved substance use disorder treatment program with available space if the person is committed for substance use disorder treatment. The person may be detained at the facility for up to twelve hours for the purpose of an evaluation to determine whether modification, revocation, or commitment proceedings are necessary and appropriate to stabilize the person and prevent decompensation, deterioration, or physical harm. Temporary detention for evaluation under this subsection is intended to occur only following a pattern of non-compliance or the failure of reasonable attempts at outreach and engagement, and may occur only when in the clinical judgment of a designated crisis responder or the professional person in charge of an agency or facility designated to monitor less restrictive alternative services temporary detention is appropriate. This subsection does not limit the ability or obligation to pursue revocation procedures under subsection (4) of this section in appropriate circumstances; and

(e) To initiate revocation procedures under subsection (4) of this section.

(3) The facility or agency designated to provide outpatient treatment shall notify the secretary or designated crisis responder when a person fails to adhere to terms and conditions of court ordered treatment or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm.

(4)(a) A designated crisis responder or the secretary may upon their own motion or notification by the facility or agency designated to provide outpatient care order a person subject to a court order under this chapter to be apprehended and taken into custody and temporary detention in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment if the person is committed for mental health treatment, or, if the person is committed for substance use disorder treatment, in a secure detoxification facility or approved substance use disorder treatment program if either is available in or near the county in which he or she is receiving outpatient treatment and has adequate space. Proceedings under this subsection (4) may be initiated without ordering the apprehension and detention of the person.

(b) A person detained under this subsection (4) must be held until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he or she had been released. If the person is not detained, the hearing must be scheduled within five days of service on the person. The designated crisis responder or the secretary may modify or rescind the order at any time prior to commencement of the court hearing.

(c) The designated crisis responder or secretary shall file a revocation petition and order of apprehension and detention with the court of the county where the person is currently located or being detained. The designated crisis responder shall serve the person and their attorney, guardian, and con-

servator, if any. The person has the same rights with respect to notice, hearing, and counsel as in any involuntary treatment proceeding, except as specifically set forth in this section. There is no right to jury trial. The venue for proceedings is the county where the petition is filed. Notice of the filing must be provided to the court that originally ordered commitment, if different from the court where the petition for revocation is filed, within two judicial days of the person's detention.

(d) The issues for the court to determine are whether: (i) The person adhered to the terms and conditions of the court order; (ii) substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or (iv) there is a likelihood of serious harm; and, if any of the above conditions apply, whether the court should reinstate or modify the person's less restrictive alternative or conditional release order or order the person's detention for inpatient treatment. The person may waive the court hearing and allow the court to enter a stipulated order upon the agreement of all parties. If the court orders detention for inpatient treatment, the treatment period may be for no longer than the period authorized in the original court order. A court may not issue an order to detain a person for inpatient treatment in a secure detoxification facility or approved substance use disorder treatment program under this subsection unless there is a secure detoxification facility or approved substance use disorder treatment program available and with adequate space for the person.

(e) Revocation proceedings under this subsection (4) are not allowable if the current commitment is solely based on the person being in need of assisted outpatient mental health treatment. In order to obtain a court order for detention for inpatient treatment under this circumstance, a petition must be filed under RCW 71.05.150 or 71.05.153.

(5) In determining whether or not to take action under this section the designated crisis responder, agency, or facility must consider the factors specified under RCW 71.05.212 and the court must consider the factors specified under RCW 71.05.245 as they apply to the question of whether to enforce, modify, or revoke a court order for involuntary treatment. [2017 3rd sp.s. c 14 § 9; 2016 sp.s. c 29 § 242; 2015 c 250 § 13.]

Effective date—2017 3rd sp.s. c 14 §§ 9, 12, 14, 15, and 17-21: "Sections 9, 12, 14, 15, and 17 through 21 of this act take effect April 1, 2018." [2017 3rd sp.s. c 14 § 24.]

Expiration date—2017 3rd sp.s. c 14 §§ 9 and 15: "Sections 9 and 15 of this act expire July 1, 2026." [2017 3rd sp.s. c 14 § 25.]

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

71.05.590 Less restrictive alternative or conditional release orders—Enforcement, modification, or revocation. (Effective July 1, 2026.) (1) Either an agency or facility designated to monitor or provide services under a less restrictive alternative order or conditional release order, or a designated crisis responder, may take action to enforce, modify, or revoke a less restrictive alternative or conditional release

order. The agency, facility, or designated crisis responder must determine that:

(a) The person is failing to adhere to the terms and conditions of the court order;

(b) Substantial deterioration in the person's functioning has occurred;

(c) There is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further evaluation, intervention, or treatment; or

(d) The person poses a likelihood of serious harm.

(2) Actions taken under this section must include a flexible range of responses of varying levels of intensity appropriate to the circumstances and consistent with the interests of the individual and the public in personal autonomy, safety, recovery, and compliance. Available actions may include, but are not limited to, any of the following:

(a) To counsel or advise the person as to their rights and responsibilities under the court order, and to offer appropriate incentives to motivate compliance;

(b) To increase the intensity of outpatient services provided to the person by increasing the frequency of contacts with the provider, referring the person for an assessment for assertive community services, or by other means;

(c) To request a court hearing for review and modification of the court order. The request must be made to the court with jurisdiction over the order and specify the circumstances that give rise to the request and what modification is being sought. The county prosecutor shall assist the agency or facility in requesting this hearing and issuing an appropriate summons to the person. This subsection does not limit the inherent authority of a treatment provider to alter conditions of treatment for clinical reasons, and is intended to be used only when court intervention is necessary or advisable to secure the person's compliance and prevent decompensation or deterioration;

(d) To cause the person to be transported by a peace officer, designated crisis responder, or other means to the agency or facility monitoring or providing services under the court order, or to a triage facility, crisis stabilization unit, emergency department, or to an evaluation and treatment facility if the person is committed for mental health treatment, or to a secure detoxification facility or an approved substance use disorder treatment program if the person is committed for substance use disorder treatment. The person may be detained at the facility for up to twelve hours for the purpose of an evaluation to determine whether modification, revocation, or commitment proceedings are necessary and appropriate to stabilize the person and prevent decompensation, deterioration, or physical harm. Temporary detention for evaluation under this subsection is intended to occur only following a pattern of noncompliance or the failure of reasonable attempts at outreach and engagement, and may occur only when in the clinical judgment of a designated crisis responder or the professional person in charge of an agency or facility designated to monitor less restrictive alternative services temporary detention is appropriate. This subsection does not limit the ability or obligation to pursue revocation procedures under subsection (4) of this section in appropriate circumstances; and

(e) To initiate revocation procedures under subsection (4) of this section.

(3) The facility or agency designated to provide outpatient treatment shall notify the secretary or designated crisis responder when a person fails to adhere to terms and conditions of court ordered treatment or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm.

(4)(a) A designated crisis responder or the secretary may upon their own motion or notification by the facility or agency designated to provide outpatient care order a person subject to a court order under this chapter to be apprehended and taken into custody and temporary detention in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment if the person is committed for mental health treatment, or, if the person is committed for substance use disorder treatment, in a secure detoxification facility or approved substance use disorder treatment program if either is available in or near the county in which he or she is receiving outpatient treatment. Proceedings under this subsection (4) may be initiated without ordering the apprehension and detention of the person.

(b) A person detained under this subsection (4) must be held until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he or she had been released. If the person is not detained, the hearing must be scheduled within five days of service on the person. The designated crisis responder or the secretary may modify or rescind the order at any time prior to commencement of the court hearing.

(c) The designated crisis responder or secretary shall file a revocation petition and order of apprehension and detention with the court of the county where the person is currently located or being detained. The designated crisis responder shall serve the person and their attorney, guardian, and conservator, if any. The person has the same rights with respect to notice, hearing, and counsel as in any involuntary treatment proceeding, except as specifically set forth in this section. There is no right to jury trial. The venue for proceedings is the county where the petition is filed. Notice of the filing must be provided to the court that originally ordered commitment, if different from the court where the petition for revocation is filed, within two judicial days of the person's detention.

(d) The issues for the court to determine are whether: (i) The person adhered to the terms and conditions of the court order; (ii) substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or (iv) there is a likelihood of serious harm; and, if any of the above conditions apply, whether the court should reinstate or modify the person's less restrictive alternative or conditional release order or order the person's detention for inpatient treatment. The person may waive the court hearing and allow the court to enter a stipulated order upon the agreement of all parties. If the court orders detention for inpatient treatment, the treatment period may be for no longer than the period authorized in the original court order.

(e) Revocation proceedings under this subsection (4) are not allowable if the current commitment is solely based on the person being in need of assisted outpatient mental health

treatment. In order to obtain a court order for detention for inpatient treatment under this circumstance, a petition must be filed under RCW 71.05.150 or 71.05.153.

(5) In determining whether or not to take action under this section the designated crisis responder, agency, or facility must consider the factors specified under RCW 71.05.212 and the court must consider the factors specified under RCW 71.05.245 as they apply to the question of whether to enforce, modify, or revoke a court order for involuntary treatment. [2017 3rd sp.s. c 14 § 10; 2016 sp.s. c 29 § 243; 2016 sp.s. c 29 § 242; 2015 c 250 § 13.]

Effective date—2017 3rd sp.s. c 14 §§ 10 and 16: "Sections 10 and 16 of this act take effect July 1, 2026." [2017 3rd sp.s. c 14 § 26.]

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

71.05.760 Designated crisis responders—Training—Transition process—Secure detoxification facility capacity. (Effective April 1, 2018.) (1)(a) By April 1, 2018, the department, by rule, must combine the functions of a designated mental health professional and designated chemical dependency specialist by establishing a designated crisis responder who is authorized to conduct investigations, detain persons up to seventy-two hours to the proper facility, and carry out the other functions identified in this chapter and chapter 71.34 RCW. The behavioral health organizations shall provide training to the designated crisis responders as required by the department.

(b)(i) To qualify as a designated crisis responder, a person must have received chemical dependency training as determined by the department and be a:

(A) Psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or social worker;

(B) Person with a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university and who have, in addition, at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, such experience gained under the direction of a mental health professional;

(C) Person who meets the waiver criteria of RCW 71.24.260, which waiver was granted before 1986;

(D) Person who had an approved waiver to perform the duties of a mental health professional that was requested by the regional support network and granted by the department before July 1, 2001; or

(E) Person who has been granted an exception of the minimum requirements of a mental health professional by the department consistent with rules adopted by the secretary.

(ii) Training must include chemical dependency training specific to the duties of a designated crisis responder, including diagnosis of substance abuse and dependence and assessment of risk associated with substance use.

(c) The department must develop a transition process for any person who has been designated as a designated mental health professional or a designated chemical dependency specialist before April 1, 2018, to be converted to a designated crisis responder. The behavioral health organizations shall provide training, as required by the department, to persons converting to designated crisis responders, which must

include both mental health and chemical dependency training applicable to the designated crisis responder role.

(2)(a) The department must ensure that at least one sixteen-bed secure detoxification facility is operational by April 1, 2018, and that at least two sixteen-bed secure detoxification facilities are operational by April 1, 2019.

(b) If, at any time during the implementation of secure detoxification facility capacity, federal funding becomes unavailable for federal match for services provided in secure detoxification facilities, then the department must cease any expansion of secure detoxification facilities until further direction is provided by the legislature. [2017 3rd sp.s. c 14 § 21; 2016 sp.s. c 29 § 201.]

Effective date—2017 3rd sp.s. c 14 §§ 9, 12, 14, 15, and 17-21: See note following RCW 71.05.590.

Effective dates—2016 sp.s. c 29: "(1) Sections 501, 503 through 532, and 701 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect *April 1, 2016.

(2) Sections 201 through 210, 212, 214 through 224, 226 through 232, 234 through 237, 239 through 242, 244 through 267, 269, 271, 273, 274, 276, 278, 279, 281, 401 through 429, and 502 of this act take effect April 1, 2018.

(3) Sections 211, 213, 225, 233, 238, 243, 268, 270, 272, 275, 277, and 280 of this act take effect July 1, 2026." [2016 sp.s. c 29 § 803.]

***Reviser's note:** 2016 sp.s. c 29 was signed by the governor on April 18, 2016.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

71.05.910 through 71.05.930 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 71.12 RCW

PRIVATE ESTABLISHMENTS

Sections

71.12.455	Definitions.
71.12.680	Pediatric transitional care services—Requirements.
71.12.682	Pediatric transitional care services—Rules not considered new service category.
71.12.684	Pediatric transitional care services—Rules, requirements.
71.12.686	Pediatric transitional care services—Duties of the department of social and health services.
71.12.688	Pediatric transitional care services—Facilities not subject to construction review.

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

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

(2) "Establishment" and "institution" mean:

(a) Every private or county or municipal hospital, including public hospital districts, sanitarium, home, or other place receiving or caring for any person with mental illness, mentally incompetent person, or chemically dependent person; and

(b) Beginning January 1, 2019, facilities providing pediatric transitional care services.

(3) "Pediatric transitional care services" means short-term, temporary, health and comfort services for drug exposed infants according to the requirements of this chapter and provided in an establishment licensed by the department of health.

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

(5) "Trained caregiver" means a noncredentialed, unlicensed person trained by the establishment providing pediatric transitional care services to provide hands-on care to drug exposed infants. Caregivers may not provide medical care to infants and may only work under the supervision of an appropriate health care professional. [2017 c 263 § 2; 2001 c 254 § 1; 2000 c 93 § 21; 1977 ex.s. c 80 § 43; 1959 c 25 § 71.12.455. Prior: 1949 c 198 § 53; Rem. Supp. 1949 § 6953-52a. Formerly RCW 71.12.010, part.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—2017 c 263: "The legislature finds that more than twelve thousand infants born in Washington each year have been prenatally exposed to opiates, methamphetamines, and other drugs. Prenatal drug exposure frequently results in infants suffering from neonatal abstinence syndrome and its accompanying withdrawal symptoms after birth. Withdrawal symptoms may include sleep problems, excessive crying, tremors, seizures, poor feeding, fever, generalized convulsions, vomiting, diarrhea, and hyperactive reflexes. Consequently, the legislature finds that drug exposed infants have unique medical needs and benefit from specialized health care that addresses their withdrawal symptoms. Specialized care for infants experiencing neonatal abstinence syndrome is based on the individual needs of the infant and includes: Administration of intravenous fluids and drugs such as morphine; personalized, hands-on therapeutic care such as gentle rocking, reduction in noise and lights, and swaddling; and frequent high-calorie feedings.

The legislature further finds that drug exposed infants often require hospitalization which burdens hospitals and hospital staff who either have to increase staffing levels or require current staff to take on additional duties to administer the specialized care needed by drug exposed infants.

The legislature further finds that drug exposed infants benefit from early and consistent family involvement in their care, and families thrive when they are provided the opportunity, skills, and training to help them participate in their child's care.

The legislature further finds that infants with neonatal abstinence syndrome often can be treated in a nonhospital clinic setting where they receive appropriate medical and nonmedical care for their symptoms. The legislature, therefore, intends to encourage alternatives to continued hospitalization for drug exposed infants, including the continuation and development of pediatric transitional care services that provide short-term medical care as well as training and assistance to caregivers in order to support the transition from hospital to home for drug exposed infants." [2017 c 263 § 1.]

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

71.12.680 Pediatric transitional care services—Requirements. (1) An establishment providing pediatric transitional care services to drug exposed infants must demonstrate that it is capable of providing services for children who:

(a) Are no more than one year of age;

(b) Have been exposed to drugs before birth;

(c) Require twenty-four hour continuous residential care and skilled nursing services as a result of prenatal substance exposure; and

(d) Are referred to the establishment by the department of social and health services, regional hospitals, and private parties.

(2) After January 1, 2019, no person may operate or maintain an establishment that provides pediatric transitional care services without a license under this chapter. [2017 c 263 § 3.]

Findings—Intent—2017 c 263: See note following RCW 71.12.455.

71.12.682 Pediatric transitional care services—Rules not considered new service category. For the purposes of this chapter, the rules for pediatric transitional care services are not considered as a new department of social and health services service category. [2017 c 263 § 4.]

Findings—Intent—2017 c 263: See note following RCW 71.12.455.

71.12.684 Pediatric transitional care services—Rules, requirements. The secretary must, in consultation with the department of social and health services, adopt rules on pediatric transitional care services. The rules must:

(1) Establish requirements for medical examinations and consultations which must be delivered by an appropriate health care professional;

(2) Require twenty-four hour medical supervision for children receiving pediatric transitional services in accordance with the staffing ratios established under subsection (3) of this section;

(3) Include staffing ratios that consider the number of registered nurses or licensed practical nurses employed by the establishment and the number of trained caregivers on duty at the establishment. These staffing ratios may not require more than:

(a) One registered nurse to be on duty at all times;

(b) One registered nurse or licensed practical nurse to eight infants; and

(c) One trained caregiver to four infants;

(4) Require establishments that provide pediatric transitional care services to prepare weekly plans specific to each infant in their care and in accordance with the health care professional's standing orders. The health care professional may modify an infant's weekly plan without reexamining the infant if he or she determines the modification is in the best interest of the child. This modification may be communicated to the registered nurse on duty at the establishment who must then implement the modification. Weekly plans are to include short-term goals for each infant and outcomes must be included in reports required by the department;

(5) Ensure that neonatal abstinence syndrome scoring is conducted by an appropriate health care professional;

(6) Establish drug exposed infant developmental screening tests for establishments that provide pediatric transitional care services to administer according to a schedule established by the secretary;

(7) Require the establishment to collaborate with the department of social and health services to develop an individualized safety plan for each child and to meet other contractual requirements of the department of social and health services to identify strategies to meet supervision needs, medical concerns, and family support needs;

(8) Establish the maximum amount of days an infant may be placed at an establishment;

(9) Develop timelines for initial and ongoing parent-infant visits to nurture and help develop attachment and bonding between the child and parent, if such visits are possible. Timelines must be developed upon placement of the infant in the establishment providing pediatric transitional care services;

(10) Determine how transportation for the infant will be provided, if needed;

[2017 RCW Supp—page 800]

(11) Establish on-site training requirements for caregivers, volunteers, parents, foster parents, and relatives;

(12) Establish background check requirements for caregivers, volunteers, employees, and any other person with unsupervised access to the infants under the care of the establishment; and

(13) Establish other requirements necessary to support the infant and the infant's family. [2017 c 263 § 5.]

Findings—Intent—2017 c 263: See note following RCW 71.12.455.

71.12.686 Pediatric transitional care services—Duties of the department of social and health services. After referral by the department of social and health services of an infant to an establishment approved to provide pediatric transitional care services, the department of social and health services:

(1) Retains primary responsibility for case management and must provide consultation to the establishment regarding all placements and permanency planning issues, including developing a parent-child visitation plan;

(2) Must work with the department and the establishment to identify and implement evidence-based practices that address current and best medical practices and parent participation; and

(3) Work with the establishment to ensure medicaid-eligible services are so billed. [2017 c 263 § 6.]

Findings—Intent—2017 c 263: See note following RCW 71.12.455.

71.12.688 Pediatric transitional care services—Facilities not subject to construction review. Facilities that provide pediatric transitional care services that are in existence on July 23, 2017, are not subject to construction review by the department for initial licensure. [2017 c 263 § 7.]

Findings—Intent—2017 c 263: See note following RCW 71.12.455.

Chapter 71.24 RCW

COMMUNITY MENTAL HEALTH SERVICES ACT

Sections

71.24.037	Licensed service providers, residential services, community support services—Minimum standards—Violation reporting—Transfer or sale of behavioral health service to family member.
71.24.055	Repealed.
71.24.310	Administration of chapters 71.05 and 71.24 RCW through behavioral health organizations—Implementation of chapter 71.05 RCW.
71.24.335	Behavioral health organizations—Provider reimbursement—Requirements—Procedure—Definitions. (<i>Effective January 1, 2018.</i>)
71.24.560	Opioid treatment programs—Pregnant women—Information and education.
71.24.580	Criminal justice treatment account.
71.24.585	Opioid use disorder treatment—Declaration of regulation by state.
71.24.587	Opioid use disorder treatment—Possession or use of lawfully prescribed medication—Declaration by state.
71.24.590	Opioid treatment—Program certification by department, department duties—Definition.
71.24.595	Statewide treatment and operating standards for opioid treatment programs—Evaluation and report.
71.24.870	Behavioral health services—Review of rules, policies, and procedures by department—Adoption of rules—Audit.
71.24.900	Decodified.

71.24.037 Licensed service providers, residential services, community support services—Minimum stan-

dards—Violation reporting—Transfer or sale of behavioral health service to family member. (1) The secretary shall by rule establish state minimum standards for licensed behavioral health service providers and services, whether those service providers and services are licensed to provide solely mental health services, substance use disorder treatment services, or services to persons with co-occurring disorders.

(2) Minimum standards for licensed behavioral health service providers shall, at a minimum, establish: Qualifications for staff providing services directly to persons with mental disorders, substance use disorders, or both, the intended result of each service, and the rights and responsibilities of persons receiving behavioral health services pursuant to this chapter. The secretary shall provide for deeming of licensed behavioral health service providers as meeting state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department.

(3) Minimum standards for community support services and resource management services shall include at least qualifications for resource management services, client tracking systems, and the transfer of patient information between behavioral health service providers.

(4) The department may suspend, revoke, limit, restrict, or modify an approval, or refuse to grant approval, for failure to meet the provisions of this chapter, or the standards adopted under this chapter. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(5) No licensed behavioral health service provider may advertise or represent itself as a licensed behavioral health service provider if approval has not been granted, has been denied, suspended, revoked, or canceled.

(6) Licensure as a behavioral health service provider is effective for one calendar year from the date of issuance of the license. The license must specify the types of services provided by the behavioral health service provider that meet the standards adopted under this chapter. Renewal of a license must be made in accordance with this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary.

(7) Licensure as a licensed behavioral health service provider must specify the types of services provided that meet the standards adopted under this chapter. Renewal of a license must be made in accordance with this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary.

(8) Licensed behavioral health service providers may not provide types of services for which the licensed behavioral health service provider has not been certified. Licensed behavioral health service providers may provide services for which approval has been sought and is pending, if approval for the services has not been previously revoked or denied.

(9) The department periodically shall inspect licensed behavioral health service providers at reasonable times and in a reasonable manner.

(10) Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him or her to enter and inspect at reasonable

times, and examine the books and accounts of, any licensed behavioral health service provider refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter.

(11) The department shall maintain and periodically publish a current list of licensed behavioral health service providers.

(12) Each licensed behavioral health service provider shall file with the department upon request, data, statistics, schedules, and information the department reasonably requires. A licensed behavioral health service provider that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may have its license revoked or suspended.

(13) The department shall use the data provided in subsection (12) of this section to evaluate each program that admits children to inpatient substance use disorder treatment upon application of their parents. The evaluation must be done at least once every twelve months. In addition, the department shall randomly select and review the information on individual children who are admitted on application of the child's parent for the purpose of determining whether the child was appropriately placed into substance use disorder treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment.

(14) Any settlement agreement entered into between the department and licensed behavioral health service providers to resolve administrative complaints, license violations, license suspensions, or license revocations may not reduce the number of violations reported by the department unless the department concludes, based on evidence gathered by inspectors, that the licensed behavioral health service provider did not commit one or more of the violations.

(15) In cases in which a behavioral health service provider that is in violation of licensing standards attempts to transfer or sell the behavioral health service provider to a family member, the transfer or sale may only be made for the purpose of remedying license violations and achieving full compliance with the terms of the license. Transfers or sales to family members are prohibited in cases in which the purpose of the transfer or sale is to avoid liability or reset the number of license violations found before the transfer or sale. If the department finds that the owner intends to transfer or sell, or has completed the transfer or sale of, ownership of the behavioral health service provider to a family member solely for the purpose of resetting the number of violations found before the transfer or sale, the department may not renew the behavioral health service provider's license or issue a new license to the behavioral health service provider. [2017 c 330 § 2; 2016 sp.s. c 29 § 505; 2001 c 323 § 11; 1999 c 10 § 5.]

Finding—2017 c 330: "The state finds that the department should not reduce the number of license violations found by field inspectors for the purpose of allowing licensed behavioral health service providers to avoid liability in a manner that permits the violating service provider to continue to provide care at the risk of public safety. The state also recognizes the need to prohibit fraudulent transfers of licenses between licensed behavioral health service providers found in violation of the terms of their license agreement and their family members." [2017 c 330 § 1.]

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Purpose—Intent—1999 c 10: See note following RCW 71.24.025.

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

71.24.310 Administration of chapters 71.05 and 71.24 RCW through behavioral health organizations—Implementation of chapter 71.05 RCW. The legislature finds that administration of chapter 71.05 RCW and this chapter can be most efficiently and effectively implemented as part of the behavioral health organization defined in RCW 71.24.025. For this reason, the legislature intends that the department and the behavioral health organizations shall work together to implement chapter 71.05 RCW as follows:

(1) By June 1, 2006, behavioral health organizations shall recommend to the department the number of state hospital beds that should be allocated for use by each behavioral health organization. The statewide total allocation shall not exceed the number of state hospital beds offering long-term inpatient care, as defined in this chapter, for which funding is provided in the biennial appropriations act.

(2) If there is consensus among the behavioral health organizations regarding the number of state hospital beds that should be allocated for use by each behavioral health organization, the department shall contract with each behavioral health organization accordingly.

(3) If there is not consensus among the behavioral health organizations regarding the number of beds that should be allocated for use by each behavioral health organization, the department shall establish by emergency rule the number of state hospital beds that are available for use by each behavioral health organization. The emergency rule shall be effective September 1, 2006. The primary factor used in the allocation shall be the estimated number of adults with acute and chronic mental illness in each behavioral health organization area, based upon population-adjusted incidence and utilization.

(4) The allocation formula shall be updated at least every three years to reflect demographic changes, and new evidence regarding the incidence of acute and chronic mental illness and the need for long-term inpatient care. In the updates, the statewide total allocation shall include (a) all state hospital beds offering long-term inpatient care for which funding is provided in the biennial appropriations act; plus (b) the estimated equivalent number of beds or comparable diversion services contracted in accordance with subsection (5) of this section.

(5) The department is encouraged to enter performance-based contracts with behavioral health organizations to provide some or all of the behavioral health organization's allocated long-term inpatient treatment capacity in the community, rather than in the state hospital. The performance contracts shall specify the number of patient days of care available for use by the behavioral health organization in the state hospital.

(6) If a behavioral health organization uses more state hospital patient days of care than it has been allocated under subsection (3) or (4) of this section, or than it has contracted to use under subsection (5) of this section, whichever is less, it shall reimburse the department for that care. Reimbursements must be calculated using quarterly average census data

to determine an average number of days used in excess of the bed allocation for the quarter. The reimbursement rate per day shall be the hospital's total annual budget for long-term inpatient care, divided by the total patient days of care assumed in development of that budget.

(7) One-half of any reimbursements received pursuant to subsection (6) of this section shall be used to support the cost of operating the state hospital and, during the 2007-2009 fiscal biennium, implementing new services that will enable a behavioral health organization to reduce its utilization of the state hospital. The department shall distribute the remaining half of such reimbursements among behavioral health organizations that have used less than their allocated or contracted patient days of care at that hospital, proportional to the number of patient days of care not used. [2017 c 222 § 1; 2014 c 225 § 40; 2013 2nd sp.s. c 4 § 994. Prior: 2009 c 564 § 1810; 2009 c 564 § 952; 2006 c 333 § 107; 1989 c 205 § 6.]

Effective date—2014 c 225: See note following RCW 71.24.016.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2009 c 564: See note following RCW 2.68.020.

Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333: See notes following RCW 71.24.016.

Additional notes found at www.leg.wa.gov

71.24.335 Behavioral health organizations—Provider reimbursement—Requirements—Procedure—Definitions. (Effective January 1, 2018.) (1) Upon initiation or renewal of a contract with the department, a behavioral health organization shall reimburse a provider for a behavioral health service provided to a covered person who is under eighteen years old through telemedicine or store and forward technology if:

(a) The behavioral health organization in which the covered person is enrolled provides coverage of the behavioral health service when provided in person by the provider; and

(b) The behavioral health service is medically necessary.

(2)(a) If the service is provided through store and forward technology there must be an associated visit between the covered person and the referring provider. Nothing in this section prohibits the use of telemedicine for the associated office visit.

(b) For purposes of this section, reimbursement of store and forward technology is available only for those services specified in the negotiated agreement between the behavioral health organization and provider.

(3) An originating site for a telemedicine behavioral health service subject to subsection (1) of this section means an originating site as defined in rule by the department or the health care authority.

(4) Any originating site, other than a home, under subsection (3) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement must be subject to a negotiated agreement between the originating site and the behavioral health organization. A distant site or any other site not identified in subsection (3) of this section may not charge a facility fee.

(5) A behavioral health organization may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.

(6) A behavioral health organization may subject coverage of a telemedicine or store and forward technology behavioral health service under subsection (1) of this section to all terms and conditions of the behavioral health organization in which the covered person is enrolled, including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable behavioral health care service provided in person.

(7) This section does not require a behavioral health organization to reimburse:

(a) An originating site for professional fees;

(b) A provider for a behavioral health service that is not a covered benefit under the behavioral health organization; or

(c) An originating site or provider when the site or provider is not a contracted provider with the behavioral health organization.

(8) For purposes of this section:

(a) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through telemedicine;

(b) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW;

(c) "Originating site" means the physical location of a patient receiving behavioral health services through telemedicine;

(d) "Provider" has the same meaning as in RCW 48.43.005;

(e) "Store and forward technology" means use of an asynchronous transmission of a covered person's medical or behavioral health information from an originating site to the provider at a distant site which results in medical or behavioral health diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email; and

(f) "Telemedicine" means the delivery of health care or behavioral health services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "telemedicine" does not include the use of audio-only telephone, facsimile, or email.

(9) The department must, in consultation with the health care authority, adopt rules as necessary to implement the provisions of this section. [2017 c 202 § 7.]

Contingent effective date—2017 c 202 § 7: "Section 7 of this act takes effect January 1, 2018, but only if neither Substitute House Bill No. 1388 (including any later amendments or substitutes) nor Substitute Senate Bill No. 5259 (including any later amendments or substitutes) is signed into law by the governor by July 23, 2017." [2017 c 202 § 10.] Neither Substitute House Bill No. 1388 nor Substitute Senate Bill No. 5259 was signed into law by July 23, 2017.

Findings—Intent—2017 c 202: See note following RCW 74.09.492.

71.24.560 Opioid treatment programs—Pregnant women—Information and education. (1) All approved opioid treatment programs that provide services to women who are pregnant are required to disseminate up-to-date and accurate health education information to all their pregnant clients concerning the possible addiction and health risks that their treatment may have on their baby. All pregnant clients

must also be advised of the risks to both them and their baby associated with not remaining on the opioid treatment program. The information must be provided to these clients both verbally and in writing. The health education information provided to the pregnant clients must include referral options for the substance-exposed baby.

(2) The department shall adopt rules that require all opioid treatment programs to educate all pregnant women in their program on the benefits and risks of medication-assisted treatment to their fetus before they are provided these medications, as part of their treatment. The department shall meet the requirements under this subsection within the appropriations provided for opioid treatment programs. The department, working with treatment providers and medical experts, shall develop and disseminate the educational materials to all certified opioid treatment programs. [2017 c 297 § 11; 2016 sp.s. c 29 § 506; 2005 c 70 § 2; 1995 c 312 § 46; 1990 c 151 § 5. Prior: 1989 c 270 § 19; 1989 c 175 § 131; 1972 ex.s. c 122 § 9. Formerly RCW 70.96A.090.]

Findings—Intent—2017 c 297: See note following RCW 18.22.800.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Findings—Intent—2005 c 70: "The legislature finds that drug use among pregnant women is a significant and growing concern statewide. The legislature further finds that methadone, although an effective alternative to other substance use treatments, can result in babies who are exposed to methadone while in utero being born addicted and facing the painful effects of withdrawal.

It is the intent of the legislature to notify all pregnant mothers who are receiving methadone treatment of the risks and benefits methadone could have on their baby during pregnancy through birth and to inform them of the potential need for the newborn baby to be taken care of in a hospital setting or in a specialized supportive environment designed specifically to address newborn addiction problems." [2005 c 70 § 1.]

Additional notes found at www.leg.wa.gov

71.24.580 Criminal justice treatment account. (1) The criminal justice treatment account is created in the state treasury. Moneys in the account may be expended solely for: (a) Substance use disorder treatment and treatment support services for offenders with a substance use disorder that, if not treated, would result in addiction, against whom charges are filed by a prosecuting attorney in Washington state; (b) the provision of substance use disorder treatment services and treatment support services for nonviolent offenders within a drug court program; and (c) the administrative and overhead costs associated with the operation of a drug court. During the 2015-2017 fiscal biennium, the legislature may transfer from the criminal justice treatment account to the state general fund amounts as reflect the state savings associated with the implementation of the medicaid expansion of the federal affordable care act and the excess fund balance of the account. During the 2017-2019 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys in the criminal justice treatment account to the state general fund. It is the intent of the legislature to continue, in future biennia, the policy of transferring to the state general fund such amounts as reflect the excess fund balance of the account. Moneys in the account may be spent only after appropriation.

(2) For purposes of this section:

(a) "Treatment" means services that are critical to a participant's successful completion of his or her substance use disorder treatment program, but does not include the following services: Housing other than that provided as part of an inpatient substance use disorder treatment program, vocational training, and mental health counseling; and

(b) "Treatment support" means transportation to or from inpatient or outpatient treatment services when no viable alternative exists, and child care services that are necessary to ensure a participant's ability to attend outpatient treatment sessions.

(3) Revenues to the criminal justice treatment account consist of: (a) Funds transferred to the account pursuant to this section; and (b) any other revenues appropriated to or deposited in the account.

(4)(a) For the fiscal year beginning July 1, 2006, and each subsequent fiscal year, the amount transferred shall be increased on an annual basis by the implicit price deflator as published by the federal bureau of labor statistics.

(b) In each odd-numbered year, the legislature shall appropriate the amount transferred to the criminal justice treatment account in (a) of this subsection to the department for the purposes of subsection (5) of this section.

(5) Moneys appropriated to the department from the criminal justice treatment account shall be distributed as specified in this subsection. The department may retain up to three percent of the amount appropriated under subsection (4)(b) of this section for its administrative costs.

(a) Seventy percent of amounts appropriated to the department from the account shall be distributed to counties pursuant to the distribution formula adopted under this section. The division of alcohol and substance abuse, in consultation with the department of corrections, the Washington state association of counties, the Washington state association of drug court professionals, the superior court judges' association, the Washington association of prosecuting attorneys, representatives of the criminal defense bar, representatives of substance use disorder treatment providers, and any other person deemed by the department to be necessary, shall establish a fair and reasonable methodology for distribution to counties of moneys in the criminal justice treatment account. County or regional plans submitted for the expenditure of formula funds must be approved by the panel established in (b) of this subsection.

(b) Thirty percent of the amounts appropriated to the department from the account shall be distributed as grants for purposes of treating offenders against whom charges are filed by a county prosecuting attorney. The department shall appoint a panel of representatives from the Washington association of prosecuting attorneys, the Washington association of sheriffs and police chiefs, the superior court judges' association, the Washington state association of counties, the Washington defender's association or the Washington association of criminal defense lawyers, the department of corrections, the Washington state association of drug court professionals, substance use disorder treatment providers, and the division. The panel shall review county or regional plans for funding under (a) of this subsection and grants approved under this subsection. The panel shall attempt to ensure that

treatment as funded by the grants is available to offenders statewide.

(6) The county alcohol and drug coordinator, county prosecutor, county sheriff, county superior court, a substance abuse treatment provider appointed by the county legislative authority, a member of the criminal defense bar appointed by the county legislative authority, and, in counties with a drug court, a representative of the drug court shall jointly submit a plan, approved by the county legislative authority or authorities, to the panel established in subsection (5)(b) of this section, for disposition of all the funds provided from the criminal justice treatment account within that county. The funds shall be used solely to provide approved alcohol and substance abuse treatment pursuant to RCW 71.24.560, treatment support services, and for the administrative and overhead costs associated with the operation of a drug court.

(a) No more than ten percent of the total moneys received under subsections (4) and (5) of this section by a county or group of counties participating in a regional agreement shall be spent on the administrative and overhead costs associated with the operation of a drug court.

(b) No more than ten percent of the total moneys received under subsections (4) and (5) of this section by a county or group of counties participating in a regional agreement shall be spent for treatment support services.

(7) Counties are encouraged to consider regional agreements and submit regional plans for the efficient delivery of treatment under this section.

(8) Moneys allocated under this section shall be used to supplement, not supplant, other federal, state, and local funds used for substance abuse treatment.

(9) Counties must meet the criteria established in RCW 2.30.030(3).

(10) The authority under this section to use funds from the criminal justice treatment account for the administrative and overhead costs associated with the operation of a drug court expires June 30, 2015. [2017 3rd sp.s. c 1 § 981; 2016 sp.s. c 29 § 511. Prior: 2015 3rd sp.s. c 4 § 968; 2015 c 291 § 10; 2013 2nd sp.s. c 4 § 990; 2011 2nd sp.s. c 9 § 910; 2011 1st sp.s. c 40 § 34; prior: 2009 c 479 § 50; 2009 c 445 § 1; 2008 c 329 § 918; 2003 c 379 § 11; 2002 c 290 § 4. Formerly RCW 70.96A.350.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Conflict with federal requirements—2015 c 291: See note following RCW 2.30.010.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 2nd sp.s. c 9: See note following RCW 28B.50.837.

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2009 c 479: See note following RCW 2.56.030.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Intent—2002 c 290: See note following RCW 9.94A.517.

Additional notes found at www.leg.wa.gov

71.24.585 Opioid use disorder treatment—Declaration of regulation by state. The state of Washington declares that there is no fundamental right to medication-assisted treatment for opioid use disorder. The state of Washington further declares that while medications used in the treatment of opioid use disorder are addictive substances, that they nevertheless have several legal, important, and justified uses and that one of their appropriate and legal uses is, in conjunction with other required therapeutic procedures, in the treatment of persons with opioid use disorder. The state of Washington recognizes as evidence-based for the management of opioid use disorder the medications approved by the federal food and drug administration for the treatment of opioid use disorder. Medication-assisted treatment should only be used for participants who are deemed appropriate to need this level of intervention. Providers must inform patients of all treatment options available. The provider and the patient shall consider alternative treatment options, like abstinence, when developing the treatment plan. If medications are prescribed, follow up must be included in the treatment plan in order to work towards the goal of abstinence.

Because some such medications are controlled substances in chapter 69.50 RCW, the state of Washington maintains the legal obligation and right to regulate the clinical uses of these medications in the treatment of opioid use disorder.

Further, the state declares that the main goal of opiate substitution treatment is total abstinence from substance use for the individuals who participate in the treatment program, but recognizes the additional goals of reduced morbidity, and restoration of the ability to lead a productive and fulfilling life. The state recognizes that a small percentage of persons who participate in opioid treatment programs require treatment for an extended period of time. Opioid treatment programs shall provide a comprehensive transition program to eliminate substance use, including opioid use of program participants. [2017 c 297 § 12; 2016 sp.s. c 29 § 519; 2001 c 242 § 1; 1995 c 321 § 1; 1989 c 270 § 20. Formerly RCW 70.96A.400.]

Findings—Intent—2017 c 297: See note following RCW 18.22.800.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

71.24.587 Opioid use disorder treatment—Possession or use of lawfully prescribed medication—Declaration by state. The state declares that a person lawfully possessing or using lawfully prescribed medication for the treatment of opioid use disorder must be treated the same in judicial and administrative proceedings as a person lawfully possessing or using other lawfully prescribed medications. [2017 c 297 § 13.]

Findings—Intent—2017 c 297: See note following RCW 18.22.800.

71.24.590 Opioid treatment—Program certification by department, department duties—Definition. (1) When making a decision on an application for certification of a program, the department shall:

(a) Consult with the county legislative authorities in the area in which an applicant proposes to locate a program and

the city legislative authority in any city in which an applicant proposes to locate a program;

(b) Certify only programs that will be sited in accordance with the appropriate county or city land use ordinances. Counties and cities may require conditional use permits with reasonable conditions for the siting of programs. Pursuant to RCW 36.70A.200, no local comprehensive plan or development regulation may preclude the siting of essential public facilities;

(c) Not discriminate in its certification decision on the basis of the corporate structure of the applicant;

(d) Consider the size of the population in need of treatment in the area in which the program would be located and certify only applicants whose programs meet the necessary treatment needs of that population;

(e) Consider the availability of other certified opioid treatment programs near the area in which the applicant proposes to locate the program;

(f) Consider the transportation systems that would provide service to the program and whether the systems will provide reasonable opportunities to access the program for persons in need of treatment;

(g) Consider whether the applicant has, or has demonstrated in the past, the capability to provide the appropriate services to assist the persons who utilize the program in meeting goals established by the legislature in RCW 71.24.585. The department shall prioritize certification to applicants who have demonstrated such capability and are able to measure their success in meeting such outcomes;

(h) Hold one public hearing in the community in which the facility is proposed to be located. The hearing shall be held at a time and location that are most likely to permit the largest number of interested persons to attend and present testimony. The department shall notify all appropriate media outlets of the time, date, and location of the hearing at least three weeks in advance of the hearing.

(2) A county may impose a maximum capacity for a program of not less than three hundred fifty participants if necessary to address specific local conditions cited by the county.

(3) A program applying for certification from the department and a program applying for a contract from a state agency that has been denied the certification or contract shall be provided with a written notice specifying the rationale and reasons for the denial.

(4) For the purpose of this chapter, opioid treatment program means:

(a) Dispensing a medication approved by the federal drug administration for the treatment of opioid use disorder and dispensing medication for the reversal of opioid overdose; and

(b) Providing a comprehensive range of medical and rehabilitative services. [2017 c 297 § 14; 2001 c 242 § 2; 1995 c 321 § 2; 1989 c 270 § 21. Formerly RCW 70.96A.410.]

Contingent effective date—2017 c 297 §§ 14 and 16: "Sections 14 and 16 of this act take effect only if neither Substitute House Bill No. 1388 (including any later amendments or substitutes) nor Substitute Senate Bill No. 5259 (including any later amendments or substitutes) is signed into law by the governor by July 23, 2017." [2017 c 297 § 18.] Neither Substitute House Bill No. 1388 nor Substitute Senate Bill No. 5259 was signed into law by July 23, 2017.

Findings—Intent—2017 c 297: See note following RCW 18.22.800.

71.24.595 Statewide treatment and operating standards for opioid treatment programs—Evaluation and report. (1) The department, in consultation with opioid treatment program service providers and counties and cities, shall establish statewide treatment standards for certified opioid treatment programs. The department shall enforce these treatment standards. The treatment standards shall include, but not be limited to, reasonable provisions for all appropriate and necessary medical procedures, counseling requirements, urinalysis, and other suitable tests as needed to ensure compliance with this chapter.

(2) The department, in consultation with opioid treatment programs and counties, shall establish statewide operating standards for certified opioid treatment programs. The department shall enforce these operating standards. The operating standards shall include, but not be limited to, reasonable provisions necessary to enable the department and counties to monitor certified and licensed opioid treatment programs for compliance with this chapter and the treatment standards authorized by this chapter and to minimize the impact of the opioid treatment programs upon the business and residential neighborhoods in which the program is located.

(3) The department shall analyze and evaluate the data submitted by each treatment program and take corrective action where necessary to ensure compliance with the goals and standards enumerated under this chapter. Opioid treatment programs are subject to the oversight required for other substance use disorder treatment programs, as described in this chapter. [2017 c 297 § 16; 2003 c 207 § 6; 2001 c 242 § 3; 1998 c 245 § 135; 1995 c 321 § 3; 1989 c 270 § 22. Formerly RCW 70.96A.420.]

Contingent effective date—2017 c 297 §§ 14 and 16: See note following RCW 71.24.590.

Findings—Intent—2017 c 297: See note following RCW 18.22.800.

71.24.870 Behavioral health services—Review of rules, policies, and procedures by department—Adoption of rules—Audit. (1) Subject to the availability of amounts appropriated for this specific purpose, the department must immediately perform a review of its rules, policies, and procedures related to the documentation requirements for behavioral health services. Rules adopted by the department relating to the provision of behavioral health services must:

(a) Identify areas in which duplicative or inefficient documentation requirements can be eliminated or streamlined for providers;

(b) Limit prescriptive requirements for individual initial assessments to allow clinicians to exercise professional judgment to conduct age-appropriate, strength-based psychosocial assessments, including current needs and relevant history according to current best practices;

(c) By April 1, 2018, provide a single set of regulations for agencies to follow that provide mental health, substance use disorder, and co-occurring treatment services;

(d) Exempt providers from duplicative state documentation requirements when the provider is following documentation requirements of an evidence-based, research-based, or state-mandated program that provides adequate protection for patient safety; and

(e) Be clear and not unduly burdensome in order to maximize the time available for the provision of care.

(2) Subject to the availability of amounts appropriated for this specific purpose, audits conducted by the department relating to provision of behavioral health services must:

(a) Rely on a sampling methodology to conduct reviews of personnel files and clinical records based on written guidelines established by the department that are consistent with the standards of other licensing and accrediting bodies;

(b) Treat organizations with multiple locations as a single entity. The department must not require annual visits at all locations operated by a single entity when a sample of records may be reviewed from a centralized location;

(c) Share audit results with behavioral health organizations to assist with their review process and, when appropriate, take steps to coordinate and combine audit activities;

(d) Coordinate audit functions between the department and the department of health to combine audit activities into a single site visit and eliminate redundancies;

(e) Not require information to be provided in particular documents or locations when the same information is included or demonstrated elsewhere in the clinical file, except where required by federal law; and

(f) Ensure that audits involving manualized programs such as wraparound with intensive services or other evidence or research-based programs are conducted to the extent practicable by personnel familiar with the program model and in a manner consistent with the documentation requirements of the program. [2017 c 207 § 2.]

Contingent effective date—2017 c 207 § 2: "Section 2 of this act takes effect only if neither Substitute House Bill No. 1388 (including any later amendments or substitutes) nor Substitute Senate Bill No. 5259 (including any later amendments or substitutes) is signed into law by the governor by July 23, 2017." [2017 c 207 § 5.] Neither Substitute House Bill No. 1388 nor Substitute Senate Bill No. 5259 was signed into law by July 23, 2017.

Findings—Intent—2017 c 207: "The legislature finds that a prioritized recommendation of the children's mental health work group, as reported in December 2016, is to reduce burdensome and duplicative paperwork requirements for providers of children's mental health services. This recommendation is consistent with the recommendations of the behavioral health workforce assessment of the workforce training and education coordinating board to reduce time-consuming documentation requirements and the behavioral and primary health regulatory alignment task force to streamline regulations and reduce the time spent responding to inefficient and excessive audits.

The legislature further finds that duplicative and overly prescriptive documentation and audit requirements negatively impact the adequacy of the provider network by reducing workforce morale and limiting the time available for patient care. Such requirements create costly barriers to the efficient provision of services for children and their families. The legislature also finds that current state regulations are often duplicative or conflicting with research-based models and other state-mandated treatment models intended to improve the quality of services and ensure positive outcomes. These barriers can be reduced while creating a greater emphasis on quality, outcomes, and safety.

The legislature further finds that social workers serving children are encumbered by burdensome paperwork requirements which can interfere with the effective delivery of services.

Therefore, the legislature intends to require the department of social and health services to take steps to reduce paperwork, documentation, and audit requirements that are inefficient or duplicative for social workers who serve children and for providers of mental health services to children and families, and to encourage the use of effective treatment models to improve the quality of services." [2017 c 207 § 1.]

71.24.900 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 71.34 RCW

MENTAL HEALTH SERVICES FOR MINORS

Sections

- 71.34.795 Transferring or moving persons from juvenile correctional institutions or facilities to evaluation and treatment facilities. (*Effective July 1, 2019.*)
- 71.34.901 Decodified.

71.34.795 Transferring or moving persons from juvenile correctional institutions or facilities to evaluation and treatment facilities. (*Effective July 1, 2019.*) When in the judgment of the department of children, youth, and families the welfare of any person committed to or confined in any state juvenile correctional institution or facility necessitates that the person be transferred or moved for observation, diagnosis, or treatment to an evaluation and treatment facility, the secretary of children, youth, and families or the secretary's designee is authorized to order and effect such move or transfer for a period of up to fourteen days, provided that the secretary notifies the original committing court of the transfer and the evaluation and treatment facility is in agreement with the transfer. No person committed to or confined in any state juvenile correctional institution or facility may be transferred to an evaluation and treatment facility for more than fourteen days unless that person has been admitted as a voluntary patient or committed for one hundred eighty-day treatment under this chapter or ninety-day treatment under chapter 71.05 RCW if eighteen years of age or older. Underlying jurisdiction of minors transferred or committed under this section remains with the state correctional institution. A voluntary admitted minor or minors committed under this section and no longer meeting the criteria for one hundred eighty-day commitment shall be returned to the state correctional institution to serve the remaining time of the underlying dispositional order or sentence. The time spent by the minor at the evaluation and treatment facility shall be credited towards the minor's juvenile court sentence. [2017 3rd sp.s. c 6 § 725; 1985 c 354 § 19. Formerly RCW 71.34.180.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

71.34.901 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Title 71A

DEVELOPMENTAL DISABILITIES

Chapters

- 71A.10 General provisions.**
- 71A.20 Residential habilitation centers.**

Chapter 71A.10 RCW

GENERAL PROVISIONS

Sections

- 71A.10.805 Decodified.

71A.10.805 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 71A.20 RCW

RESIDENTIAL HABILITATION CENTERS

Sections

- 71A.20.180 Closure of Yakima Valley School—Department duties—Continuation of services.
- 71A.20.190 Repealed.

71A.20.180 Closure of Yakima Valley School—Department duties—Continuation of services. (1)(a) The Yakima Valley School shall continue to operate as a residential habilitation center until such time that the census of permanent residents has reached eight persons. Upon such time as the facility closes to full residential care, the facility must thereafter operate crisis stabilization beds and only so many respite service beds as the needs of the department-identified catchment area or as emergency placement needs require, subject to the availability of amounts appropriated for this specific purpose.

(b) As of October 19, 2017, no new long-term admissions are permitted.

(2) The department, within available funds:

(a) Shall establish state-operated living alternatives, within funds specifically provided in the omnibus appropriations act, to provide community residential services to residential habilitation center residents transitioning to the community under chapter 30, Laws of 2011 1st sp. sess. who prefer a state-operated living alternative. The department shall offer residential habilitation center employees opportunities to work in state-operated living alternatives as they are established;

(b) May use existing supported living program capacity in the community for former residential habilitation center residents who prefer and choose a supported living program;

(c) Shall establish up to eight state-staffed crisis stabilization beds and up to eight state-staffed respite beds based upon funding provided in the omnibus appropriations act and the geographic areas with the greatest need for those services;

(d) Shall establish regional or mobile specialty services evenly distributed throughout the state, such as dental care, physical therapy, occupational therapy, and specialized nursing care, which can be made available to former residents of residential habilitation centers and, within available funds, other individuals with developmental disabilities residing in the community; and

(e) Shall continue to provide respite services in residential habilitation centers and continue to develop respite care in the community. [2017 3rd sp.s. c 19 § 1; 2011 1st sp.s. c 30 § 6.]

Findings—Intent—Conflict with federal requirements—2011 1st sp.s. c 30: See notes following RCW 71A.20.010.

71A.20.190 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Title 72

STATE INSTITUTIONS

Chapters

- 72.01 Administration.**
- 72.02 Adult corrections.**
- 72.05 Children and youth services.**
- 72.09 Department of corrections.**

- 72.19** Juvenile correctional institution in King county.
- 72.36** Soldiers' and veterans' homes and veterans' cemetery.
- 72.72** Criminal behavior of residents of institutions.

**Chapter 72.01 RCW
ADMINISTRATION**

Sections

- 72.01.010 Powers and duties apply to department of social and health services, department of children, youth, and families, and department of corrections—Joint exercise authorized. (*Effective July 1, 2019.*)
- 72.01.045 Assaults to employees—Reimbursement for costs. (*Effective July 1, 2019.*)
- 72.01.050 Secretary's powers and duties—Management of public institutions and correctional facilities. (*Effective July 1, 2019.*)
- 72.01.210 Institutional chaplains—Appointment—Qualifications. (*Effective July 1, 2019.*)
- 72.01.410 Child under eighteen convicted of crime amounting to felony—Placement. (*Effective July 1, 2019.*)

72.01.010 Powers and duties apply to department of social and health services, department of children, youth, and families, and department of corrections—Joint exercise authorized. (*Effective July 1, 2019.*) As used in this chapter:

"Department" means the departments of social and health services, children, youth, and families, and corrections; and

"Secretary" means the secretaries of social and health services, children, youth, and families, and corrections.

The powers and duties granted and imposed in this chapter, when applicable, apply to the departments of social and health services, children, youth, and families, and corrections and the secretaries of social and health services, children, youth, and families and corrections, for institutions under their control. A power or duty may be exercised or fulfilled jointly if joint action is more efficient, as determined by the secretaries. [2017 3rd sp.s. c 6 § 726; 1981 c 136 § 66; 1979 c 141 § 142; 1970 ex.s. c 18 § 56; 1959 c 28 § 72.01.010. Prior: 1907 c 166 § 10; RRS § 10919. Formerly RCW 72.04.010.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

72.01.045 Assaults to employees—Reimbursement for costs. (*Effective July 1, 2019.*) (1) For purposes of this section only, "assault" means an unauthorized touching of an employee by a resident, patient, or juvenile offender resulting in physical injury to the employee.

(2) In recognition of the hazardous nature of employment in state institutions, the legislature hereby provides a supplementary program to reimburse employees of the department of social and health services, the department of natural resources, the department of children, youth, and families, and the department of veterans affairs for some of their costs attributable to their being the victims of assault by residents, patients, or juvenile offenders. This program shall be limited to the reimbursement provided in this section.

[2017 RCW Supp—page 808]

(3) An employee is only entitled to receive the reimbursement provided in this section if the secretary of social and health services, the commissioner of public lands, the secretary of the department of children, youth, and families, or the director of the department of veterans affairs, or the secretary's, commissioner's, or director's designee, finds that each of the following has occurred:

(a) A resident or patient has assaulted the employee and as a result thereof the employee has sustained demonstrated physical injuries which have required the employee to miss days of work;

(b) The assault cannot be attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment; and

(c) The department of labor and industries has approved the employee's workers' compensation application pursuant to chapter 51.32 RCW.

(4) The reimbursement authorized under this section shall be as follows:

(a) The employee's accumulated sick leave days shall not be reduced for the workdays missed;

(b) For each workday missed for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay; and

(c) In respect to workdays missed for which the employee will receive or has received compensation under chapter 51.32 RCW, the employee shall be reimbursed in an amount which, when added to that compensation, will result in the employee receiving full pay for the workdays missed.

(5) Reimbursement under this section may not last longer than three hundred sixty-five consecutive days after the date of the injury.

(6) The employee shall not be entitled to the reimbursement provided in subsection (4) of this section for any workday for which the secretary, commissioner, director, or applicable designee, finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW.

(7) The reimbursement shall only be made for absences which the secretary, commissioner, director, or applicable designee believes are justified.

(8) While the employee is receiving reimbursement under this section, he or she shall continue to be classified as a state employee and the reimbursement amount shall be considered as salary or wages.

(9) All reimbursement payments required to be made to employees under this section shall be made by the employing department. The payments shall be considered as a salary or wage expense and shall be paid by the department in the same manner and from the same appropriations as other salary and wage expenses of the department.

(10) Should the legislature revoke the reimbursement authorized under this section or repeal this section, no affected employee is entitled thereafter to receive the reimbursement as a matter of contractual right. [2017 3rd sp.s. c 6 § 627; 2002 c 77 § 1; 1990 c 153 § 1; 1987 c 102 § 1; 1986 c 269 § 4.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

72.01.050 Secretary's powers and duties—Management of public institutions and correctional facilities. (Effective July 1, 2019.) (1) The secretary of social and health services shall have full power to manage and govern the following public institutions: The western state hospital, the eastern state hospital, the northern state hospital, Lakeland Village, the Rainier school, and such other institutions as authorized by law, subject only to the limitations contained in laws relating to the management of such institutions.

(2) The secretary of corrections shall have full power to manage, govern, and name all state correctional facilities, subject only to the limitations contained in laws relating to the management of such institutions.

(3) If any state correctional facility is fully or partially destroyed by natural causes or otherwise, the secretary of corrections may, with the approval of the governor, provide for the establishment and operation of additional residential correctional facilities to place those inmates displaced by such destruction. However, such additional facilities may not be established if there are existing residential correctional facilities to which all of the displaced inmates can be appropriately placed. The establishment and operation of any additional facility shall be on a temporary basis, and the facility may not be operated beyond July 1 of the year following the year in which it was partially or fully destroyed.

(4) The secretary of the department of children, youth, and families shall have full power to manage and govern Echo Glen, the Green Hill school, and such other institutions as authorized by law, subject only to the limitations contained in laws relating to the management of such institutions. [2017 3rd sp.s. c 6 § 628; 1992 c 7 § 51; 1988 c 143 § 1. Prior: 1985 c 378 § 8; 1985 c 350 § 1; 1981 c 136 § 68; 1979 c 141 § 145; 1977 c 31 § 1; 1959 c 28 § 72.01.050; prior: 1955 c 195 § 4(1); 1915 c 107 § 1, part; 1907 c 166 § 2, part; 1901 c 119 § 3, part; RRS § 10899, part. Formerly RCW 43.28.020, part.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

72.01.210 Institutional chaplains—Appointment—Qualifications. (Effective July 1, 2019.) (1) The secretary of corrections shall appoint institutional chaplains for the state correctional institutions for convicted felons. Institutional chaplains shall be appointed as employees of the department of corrections. The secretary of corrections may further contract with chaplains to be employed as is necessary to meet the religious needs of those inmates whose religious denominations are not represented by institutional chaplains and where volunteer chaplains are not available.

(2) Institutional chaplains appointed by the department of corrections under this section shall have qualifications necessary to function as religious program coordinators for all faith groups represented within the department. Every chaplain so appointed or contracted with shall have qualifications consistent with community standards of the given faith group to which the chaplain belongs and shall not be required to violate the tenets of his or her faith when acting in an ecclesiastical role.

(3) The secretary of children, youth, and families shall appoint chaplains for the correctional institutions for juveniles found delinquent by the juvenile courts; and the secretary of corrections and the secretary of social and health services shall appoint one or more chaplains for other custodial, correctional, and mental institutions under their control.

(4) Except as provided in this section, the chaplains so appointed under this section shall have the qualifications and shall be compensated in an amount as recommended by the appointing department and approved by the Washington personnel resources board. [2017 3rd sp.s. c 6 § 727; 2008 c 104 § 3; 1993 c 281 § 62; 1981 c 136 § 69; 1979 c 141 § 154; 1967 c 58 § 1; 1959 c 33 § 1; 1959 c 28 § 72.01.210. Prior: 1955 c 248 § 1. Formerly RCW 72.04.160.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Finding—2008 c 104: "The legislature finds that men and women who are incarcerated have the need to develop prosocial behaviors. These behaviors will better enable these men and women to fully participate in society and adhere to law-abiding behaviors, such as continuing treatment that is undertaken in prison, once the person is released in the community.

Living in an environment where foundational skills are modeled and encouraged fosters positive outcomes for people who have been convicted and sentenced for their crimes. Basic skills include positive decision making, personal responsibility, building a healthy community, religious tolerance and understanding, ethics and morality, conflict management, family life relationships, leadership, managing emotions, restorative justice, transitional issues, and spirituality. Learning and practicing how to overcome minor and significant obstacles in a positive way will prepare offenders who are returning to our communities to begin their new crime-free lives." [2008 c 104 § 1.]

Housing allowance for state-employed chaplains: RCW 41.04.360.

Washington personnel resources board: RCW 41.06.110.

Additional notes found at www.leg.wa.gov

72.01.410 Child under eighteen convicted of crime amounting to felony—Placement. (Effective July 1, 2019.)

(1) Whenever any child under the age of eighteen is convicted as an adult in the courts of this state of a crime amounting to a felony, and is committed for a term of confinement, that child shall be initially placed in a facility operated by the department of corrections to determine the child's earned release date.

(a) If the earned release date is prior to the child's twenty-first birthday, the department of corrections shall transfer the child to the custody of the department of children, youth, and families, or to such other institution as is now, or may hereafter be authorized by law to receive such child, until such time as the child completes the ordered term of confinement or arrives at the age of twenty-one years.

(i) While in the custody of the department of children, youth, and families, the child must have the same treatment, housing options, transfer, and access to program resources as any other child committed directly to that juvenile correctional facility or institution pursuant to chapter 13.40 RCW. Treatment, placement, and program decisions shall be at the sole discretion of the department of children, youth, and families. The youth shall only be transferred back to the custody of the department of corrections with the approval of the department of children, youth, and families or when the child reaches the age of twenty-one.

(ii) If the child's sentence includes a term of community custody, the department of children, youth, and families shall not release the child to community custody until the department of corrections has approved the child's release plan pursuant to RCW 9.94A.729(5)(b). If a child is held past his or her earned release date pending release plan approval, the department of children, youth, and families shall retain custody until a plan is approved or the child completes the ordered term of confinement prior to age twenty-one.

(iii) If the department of children, youth, and families determines that retaining custody of the child presents a safety risk, the child may be returned to the custody of the department of corrections.

(b) If the child's earned release date is on or after the child's twenty-first birthday, the department of corrections shall, with the consent of the secretary of children, youth, and families, transfer the child to a facility or institution operated by the department of children, youth, and families. Despite the transfer, the department of corrections retains authority over custody decisions and must approve any leave from the facility. When the child turns age twenty-one, he or she must be transferred back to the department of corrections. The department of children, youth, and families has all routine and day-to-day operations authority for the child while in its custody.

(2)(a) Except as provided in (b) and (c) of this subsection, an offender under the age of eighteen who is convicted in adult criminal court and who is committed to a term of confinement at the department of corrections must be placed in a housing unit, or a portion of a housing unit, that is separated from offenders eighteen years of age or older, until the offender reaches the age of eighteen.

(b) An offender who reaches eighteen years of age may remain in a housing unit for offenders under the age of eighteen if the secretary of corrections determines that: (i) The offender's needs and the correctional goals for the offender could continue to be better met by the programs and housing environment that is separate from offenders eighteen years of age and older; and (ii) the programs or housing environment for offenders under the age of eighteen will not be substantially affected by the continued placement of the offender in that environment. The offender may remain placed in a housing unit for offenders under the age of eighteen until such time as the secretary of corrections determines that the offender's needs and correctional goals are no longer better met in that environment but in no case past the offender's twenty-first birthday.

(c) An offender under the age of eighteen may be housed in an intensive management unit or administrative segregation unit containing offenders eighteen years of age or older if it is necessary for the safety or security of the offender or staff. In these cases, the offender must be kept physically separate from other offenders at all times. [2017 3rd sp.s. c 6 § 728; 2015 c 156 § 2; 2002 c 171 § 1; 1997 c 338 § 41; 1994 c 220 § 1; 1981 c 136 § 74; 1979 c 141 § 166; 1959 c 140 § 1.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

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

Juvenile not to be confined with adult inmates: RCW 13.04.116.

Additional notes found at www.leg.wa.gov

Chapter 72.02 RCW ADULT CORRECTIONS

Sections

72.02.100 Earnings, clothing, transportation, subsistence payments, and rental vouchers upon release of certain prisoners.

72.02.100 Earnings, clothing, transportation, subsistence payments, and rental vouchers upon release of certain prisoners. (1) Any person serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, who is thereafter released upon an order of parole of the indeterminate sentence review board, or who is discharged from custody upon expiration of sentence, or who is ordered discharged from custody by a court of appropriate jurisdiction, shall be entitled to retain his or her earnings from labor or employment while in confinement and shall be supplied by the superintendent of the state correctional facility with suitable and presentable clothing, the sum of forty dollars for subsistence, and transportation by the least expensive method of public transportation not to exceed the cost of one hundred dollars to his or her place of residence or the place designated in his or her parole plan, or to the place from which committed if such person is being discharged on expiration of sentence, or discharged from custody by a court of appropriate jurisdiction: PROVIDED, That up to sixty additional dollars may be made available to the parolee for necessary personal and living expenses upon application to and approval by such person's community corrections officer. If in the opinion of the superintendent suitable arrangements have been made to provide the person to be released with suitable clothing and/or the expenses of transportation, the superintendent may consent to such arrangement. If the superintendent has reasonable cause to believe that the person to be released has ample funds, with the exception of earnings from labor or employment while in confinement, to assume the expenses of clothing, transportation, or the expenses for which payments made pursuant to this section or RCW 72.02.110 or any one or more of such expenses, the person released shall be required to assume such expenses.

(2) Within existing resources, the department of corrections may provide temporary housing assistance for a person being released from the Washington corrections center for women or mission creek corrections center for women through the use of rental vouchers, for a period not to exceed three months, if such assistance will support the person's release into the community. The department's authority to provide vouchers under this section is independent of its authority under RCW 9.94A.729. [2017 c 214 § 1; 2012 c 117 § 455; 1988 c 143 § 5; 1971 ex.s. c 171 § 1.]

Report to legislature—2017 c 214: "(1) By November 1, 2020, and in compliance with RCW 43.01.036, the department of corrections must submit a report to the legislature detailing, to the extent possible:

- (a) The number of individuals provided with housing assistance pursuant to RCW 72.02.100(2);
- (b) The ability of the individual to maintain housing at the conclusion of the rental voucher period; and
- (c) The recidivism rate of those provided with housing assistance.

(2) This section expires December 31, 2020." [2017 c 214 § 2.]

Chapter 72.05 RCW
CHILDREN AND YOUTH SERVICES

Sections

72.05.010	Declaration of purpose. <i>(Effective July 1, 2019.)</i>
72.05.020	Definitions. <i>(Effective July 1, 2019.)</i>
72.05.130	Powers and duties of department—"Close security" institutions designated. <i>(Effective July 1, 2019.)</i>
72.05.154	Juvenile forest camps—Industrial insurance—Eligibility for benefits—Exceptions. <i>(Effective July 1, 2019.)</i>
72.05.300	Decodified. <i>(Effective July 1, 2018.)</i>
72.05.415	Establishing community placement oversight committees—Review and recommendations—Liability—Travel expenses—Notice to law enforcement of placement decisions. <i>(Effective July 1, 2019.)</i>
72.05.435	Common use of residential group homes for juvenile offenders—Placement of juvenile convicted of a class A felony. <i>(Effective July 1, 2019.)</i>
72.05.440	Eligibility for employment or volunteer position with juveniles—Must report convictions—Rules. <i>(Effective July 1, 2019.)</i>

72.05.010 Declaration of purpose. (Effective July 1, 2019.) (1) The purposes of RCW 72.05.010 through 72.05.210 are: To provide for every child with behavior problems, mentally and physically handicapped persons, and hearing and visually impaired children, within the purview of RCW 72.05.010 through 72.05.210, as now or hereafter amended, such care, guidance and instruction, control and treatment as will best serve the welfare of the child or person and society; to insure nonpolitical and qualified operation, supervision, management, and control of the Green Hill school, the Naselle Youth Camp, Echo Glen, Lakeland Village, Rainier school, the Yakima Valley school, Fircrest school, the Child Study and Treatment Center and Secondary School of western state hospital, and like residential state schools, camps, and centers hereafter established; and to provide for the persons committed or admitted to those schools that type of care, instruction, and treatment most likely to accomplish their rehabilitation and restoration to normal citizenship.

(2) To further such purposes, Green Hill School, Echo Glen, Naselle Youth Camp, and such other juvenile rehabilitation facilities, as may hereafter be established, are placed under the department of children, youth, and families; Lakeland Village, Rainier school, the Yakima Valley school, Fircrest school, the Child Study and Treatment Center and Secondary School of western state hospital, and like residential state schools, camps, and centers, hereafter established, are placed under the department of social and health services. [2017 3rd sp.s. c 6 § 701; 1985 c 378 § 9; 1980 c 167 § 7; 1979 ex.s. c 217 § 7; 1979 c 141 § 177; 1959 c 28 § 72.05.010. Prior: 1951 c 234 § 1.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

72.05.020 Definitions. (Effective July 1, 2019.) As used in this chapter, unless the context requires otherwise:

(1) "Community facility" means a group care facility operated for the care of juveniles committed to the depart-

ment under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility.

(2) "Department" means the department of children, youth, and families.

(3) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(4) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

(5) "Physical restraint" means the use of any bodily force or physical intervention to control an offender or limit a juvenile offender's freedom of movement in a way that does not involve a mechanical restraint. Physical restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, without the aid of mechanical restraint, accomplished with limited force and designed to:

(a) Prevent a juvenile offender from completing an act that would result in potential bodily harm to self or others or damage property;

(b) Remove a disruptive juvenile offender who is unwilling to leave the area voluntarily; or

(c) Guide a juvenile offender from one location to another.

(6) "Postpartum recovery" means (a) the entire period a youth is in the hospital, birthing center, or clinic after giving birth and (b) an additional time period, if any, a treating physician determines is necessary for healing after the youth leaves the hospital, birthing center, or clinic.

(7) "Restraints" means anything used to control the movement of a person's body or limbs and includes:

(a) Physical restraint; or

(b) Mechanical device including but not limited to: Metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons.

(8) "Secretary" means the secretary of the department.

(9) "Service provider" means the entity that operates a community facility.

(10) "Transportation" means the conveying, by any means, of an incarcerated pregnant woman or youth from the institution or community facility to another location from the moment she leaves the institution or community facility to the time of arrival at the other location, and includes the escorting of the pregnant incarcerated woman or youth from the institution or community facility to a transport vehicle and from the vehicle to the other location. [2017 3rd sp.s. c 6 § 702; 2010 c 181 § 7; 1998 c 269 § 2; 1979 c 141 § 178; 1970 ex.s. c 18 § 58; 1959 c 28 § 72.05.020. Prior: 1951 c 234 § 2. Formerly RCW 43.19.260.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Intent—Finding—1998 c 269: "It is the intent of the legislature to:

(1) Enhance public safety and maximize the rehabilitative potential of juvenile offenders through modifications to licensed community residential placements for juveniles;

(2) Ensure community support for community facilities by enabling community participation in decisions involving these facilities and assuring the safety of communities in which community facilities for juvenile offenders are located; and

(3) Improve public safety by strengthening the safeguards in placement, oversight, and monitoring of the juvenile offenders placed in the community, and by establishing minimum standards for operation of licensed residential community facilities. The legislature finds that community support and participation is vital to the success of community programming." [1998 c 269 § 1.]

Additional notes found at www.leg.wa.gov

72.05.130 Powers and duties of department—"Close security" institutions designated. (Effective July 1, 2019.)

The department of social and health services and the department of children, youth, and families shall establish, maintain, operate and administer a comprehensive program for the custody, care, education, treatment, instruction, guidance, control, and rehabilitation of all persons who may be committed or admitted to institutions, schools, or other facilities, placed under the control of each, except for the programs of education provided pursuant to RCW 28A.190.030 through 28A.190.050 which shall be established, operated, and administered by the school district conducting the program, and in order to accomplish these purposes, the powers and duties of the secretary of the department of social and health services and the secretary of the department of children, youth, and families for the institutions placed under the respective department shall include the following:

(1) The assembling, analyzing, tabulating, and reproduction in report form, of statistics and other data with respect to children with behavior problems in the state of Washington, including, but not limited to, the extent, kind, and causes of such behavior problems in the different areas and population centers of the state. Such reports shall not be open to public inspection, but shall be open to the inspection of the governor and to the superior court judges of the state of Washington.

(2) The establishment and supervision of diagnostic facilities and services in connection with the custody, care, and treatment of mentally and physically handicapped, and behavior problem children who may be committed or admitted to any of the institutions, schools, or facilities controlled and operated by the department, or who may be referred for such diagnosis and treatment by any superior court of this state. Such diagnostic services may be established in connection with, or apart from, any other state institution under the supervision and direction of the secretary of the department of social and health services or the secretary of the department of children, youth, and families. Such diagnostic services shall be available to the superior courts of the state for persons referred for such services by them prior to commitment, or admission to, any school, institution, or other facility. Such diagnostic services shall also be available to other departments of the state. When the secretary of the department of social and health services or the secretary of the department of children, youth, and families determines it necessary, the secretary of the department of social and health services or the secretary of the department of children, youth, and families may create waiting lists and set priorities for use of diagnostic services for juvenile offenders on the basis of those most severely in need.

(3) The supervision of all persons committed or admitted to any institution, school, or other facility operated by the

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department of social and health services or the department of children, youth, and families, and the transfer of such persons from any such institution, school, or facility to any other such school, institution, or facility: PROVIDED, That where a person has been committed to a minimum security institution, school, or facility by any of the superior courts of this state, a transfer to a close security institution shall be made only with the consent and approval of such court.

(4) The supervision of parole, discharge, or other release, and the post-institutional placement of all persons committed to Green Hill school, or such as may be assigned, paroled, or transferred therefrom to other facilities operated by the department. Green Hill school is hereby designated as a "close security" institution to which shall be given the custody of children with the most serious behavior problems. [2017 3rd sp.s. c 6 § 703; 1990 c 33 § 592; 1985 c 378 § 10; 1983 c 191 § 12; 1979 ex.s. c 217 § 8; 1979 c 141 § 179; 1959 c 28 § 72.05.130. Prior: 1951 c 234 § 13. Formerly RCW 43.19.370.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Additional notes found at www.leg.wa.gov

72.05.154 Juvenile forest camps—Industrial insurance—Eligibility for benefits—Exceptions. (Effective July 1, 2019.)

From and after July 1, 1973, any inmate working in a juvenile forest camp established and operated pursuant to RCW 72.05.150, pursuant to an agreement between the department of children, youth, and families and the department of natural resources shall be eligible for the benefits provided by Title 51 RCW, as now or hereafter amended, relating to industrial insurance, with the exceptions provided by this section.

No inmate as described in RCW 72.05.152, until released upon an order of parole by the department of children, youth, and families, or discharged from custody upon expiration of sentence, or discharged from custody by order of a court of appropriate jurisdiction, or his or her dependents or beneficiaries, shall be entitled to any payment for temporary disability or permanent total disability as provided for in RCW 51.32.090 or 51.32.060 respectively, as now or hereafter amended, or to the benefits of chapter 51.36 RCW relating to medical aid: PROVIDED, That RCW 72.05.152 and this section shall not affect the eligibility, payment or distribution of benefits for any industrial injury to the inmate which occurred prior to his or her existing commitment to the department of children, youth, and families.

Any and all premiums or assessments as may arise under this section pursuant to the provisions of Title 51 RCW shall be the obligation of and be paid by the state department of natural resources. [2017 3rd sp.s. c 6 § 704; 2012 c 117 § 460; 1973 c 68 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

72.05.300 Decodified. (Effective July 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

72.05.415 Establishing community placement oversight committees—Review and recommendations—Liability—Travel expenses—Notice to law enforcement of placement decisions. (Effective July 1, 2019.) (1) The secretary shall develop a process with local governments that allows each community to establish a community placement oversight committee. The department may conduct community awareness activities. The community placement oversight committees developed pursuant to this section shall be implemented no later than September 1, 1999.

(2) The community placement oversight committees may review and make recommendations regarding the placement of any juvenile who the secretary proposes to place in the community facility.

(3) The community placement oversight committees, their members, and any agency represented by a member shall not be liable in any cause of action as a result of its decision in regard to a proposed placement of a juvenile unless the committee acts with gross negligence or bad faith in making a placement decision.

(4) Members of the committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) Except as provided in RCW 13.40.215, at least seventy-two hours prior to placing a juvenile in a community facility the secretary shall provide to the chief law enforcement officer of the jurisdiction in which the community facility is sited: (a) The name of the juvenile; (b) the juvenile's criminal history; and (c) such other relevant and disclosable information as the law enforcement officer may require. [2017 3rd sp.s. c 6 § 705; 1998 c 269 § 9.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

72.05.435 Common use of residential group homes for juvenile offenders—Placement of juvenile convicted of a class A felony. (Effective July 1, 2019.) (1) The department shall establish by rule a policy for the common use of residential group homes for juvenile offenders under the jurisdiction of the department.

(2) A juvenile confined under the jurisdiction of the department who is convicted of a class A felony is not eligible for placement in a community facility operated by the department that houses juveniles under the department's care pursuant to a dependency proceeding under chapter 13.34 RCW unless:

(a) The juvenile is housed in a separate living unit solely for juvenile offenders;

(b) The community facility is a specialized treatment program and the youth is not assessed as sexually aggressive under RCW 13.40.470; or

(c) The community facility is a specialized treatment program that houses one or more sexually aggressive youth

and the juvenile is not assessed as sexually vulnerable under RCW 13.40.470. [2017 3rd sp.s. c 6 § 706; 1998 c 269 § 15.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

72.05.440 Eligibility for employment or volunteer position with juveniles—Must report convictions—Rules. (Effective July 1, 2019.) (1) A person shall not be eligible for an employed or volunteer position within the department of children, youth, and families or any agency with which it contracts in which the person may have regular access to juveniles under the jurisdiction of the department of children, youth, and families or the department of corrections if the person has been convicted of one or more of the following:

(a) Any felony sex offense;

(b) Any violent offense, as defined in RCW 9.94A.030.

(2) Subsection (1) of this section applies only to persons hired by the department or any of its contracting agencies after September 1, 1998.

(3) Any person employed by the department of children, youth, and families, or by any contracting agency, who may have regular access to juveniles under the jurisdiction of the department of children, youth, and families or the department of corrections and who is convicted of an offense set forth in this section after September 1, 1998, shall report the conviction to his or her supervisor. The report must be made within seven days of conviction. Failure to report within seven days of conviction constitutes misconduct under Title 50 RCW.

(4) For purposes of this section "may have regular access to juveniles" means access for more than a nominal amount of time.

(5) The department shall adopt rules to implement this section. [2017 3rd sp.s. c 6 § 707; 1998 c 269 § 16.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

Chapter 72.09 RCW DEPARTMENT OF CORRECTIONS

Sections

72.09.111	Inmate wages—Deductions—Availability of savings—Recovery of cost of incarceration—Definition.
72.09.285	Rental voucher list—Housing providers.
72.09.335	Sex offenders—Treatment assessment and opportunity.
72.09.337	Sex offenders—Rules regarding. (Effective July 1, 2019.)
72.09.460	Inmate participation in education and work programs—Associate degree education opportunities—Legislative intent—Priorities—Rules—Payment of costs.
72.09.465	Associate degree education programs.

72.09.111 Inmate wages—Deductions—Availability of savings—Recovery of cost of incarceration—Definition. (1) The secretary shall deduct taxes and legal financial obligations from the wages, gratuities, or workers' compensation benefits payable directly to the inmate under chapter 51.32 RCW, of each inmate working in correctional indus-

tries work programs, or otherwise receiving such wages, gratuities, or benefits. The secretary shall also deduct child support payments from the gratuities of each inmate working in class II through class IV correctional industries work programs. The secretary shall develop a formula for the distribution of offender wages, gratuities, and benefits. The formula shall not reduce the inmate account below the indigency level, as defined in RCW 72.09.015.

(a) The formula shall include the following maximum allowable deductions from class I wages and from all others earning at least minimum wage:

(i) Five percent to the crime victims' compensation account provided in RCW 7.68.045;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration;

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and

(v) Twenty percent for payment of any civil judgment for assault for inmates who are subject to a civil judgment for assault in any Washington state court or federal court.

(b) The formula shall include the following minimum deductions from class II gross gratuities:

(i) Five percent to the crime victims' compensation account provided in RCW 7.68.045;

(ii) Ten percent to a department personal inmate savings account;

(iii) Fifteen percent to the department to contribute to the cost of incarceration;

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court;

(v) Fifteen percent for any child support owed under a support order; and

(vi) Fifteen percent for payment of any civil judgment for assault for inmates who are subject to a civil judgment for assault in any Washington state court or federal court.

(c) The formula shall include the following minimum deductions from any workers' compensation benefits paid pursuant to RCW 51.32.080:

(i) Five percent to the crime victims' compensation account provided in RCW 7.68.045;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) An amount equal to any legal financial obligations owed by the inmate established by an order of any Washington state superior court up to the total amount of the award.

(d) The formula shall include the following minimum deductions from class III gratuities:

(i) Five percent for the crime victims' compensation account provided in RCW 7.68.045;

(ii) Fifteen percent for any child support owed under a support order; and

(iii) Fifteen percent for payment of any civil judgment for assault for inmates who are subject to a civil judgment for assault in any Washington state court or federal court.

(e) The formula shall include the following minimum deduction from class IV gross gratuities:

(i) Five percent to the department to contribute to the cost of incarceration;

(ii) Fifteen percent for any child support owed under a support order; and

(iii) Fifteen percent for payment of any civil judgment for assault for inmates who are subject to a civil judgment for assault in any Washington state court or federal court.

(2) Any person sentenced to life imprisonment without possibility of release or parole under chapter 10.95 RCW or sentenced to death shall be exempt from the requirement under subsection (1)(a)(ii), (b)(ii), or (c)(ii).

(3)(a) The department personal inmate savings account, together with any accrued interest, may be made available to an inmate at the following times:

(i) During confinement to pay for accredited postsecondary educational expenses;

(ii) Prior to the release from confinement to pay for department-approved reentry activities that promote successful community reintegration; or

(iii) When the secretary determines that an emergency exists for the inmate.

(b) The secretary shall establish guidelines for the release of funds pursuant to (a) of this subsection, giving consideration to the inmate's need for resources at the time of his or her release from confinement.

(c) Any funds remaining in an offender's personal inmate savings account shall be made available to the offender at the time of his or her release from confinement.

(4) The management of classes I, II, and IV correctional industries may establish an incentive payment for offender workers based on productivity criteria. This incentive shall be paid separately from the hourly wage/gratuity rate and shall not be subject to the specified deduction for cost of incarceration.

(5) In the event that the offender worker's wages, gratuity, or workers' compensation benefit is subject to garnishment for support enforcement, the crime victims' compensation account, savings, and cost of incarceration deductions shall be calculated on the net wages after taxes, legal financial obligations, and garnishment.

(6) The department shall explore other methods of recovering a portion of the cost of the inmate's incarceration and for encouraging participation in work programs, including development of incentive programs that offer inmates benefits and amenities paid for only from wages earned while working in a correctional industries work program.

(7) The department shall develop the necessary administrative structure to recover inmates' wages and keep records of the amount inmates pay for the costs of incarceration and amenities. All funds deducted from inmate wages under subsection (1) of this section for the purpose of contributions to the cost of incarceration shall be deposited in a dedicated fund with the department and shall be used only for the purpose of enhancing and maintaining correctional industries work programs.

(8) It shall be in the discretion of the secretary to apportion the inmates between class I and class II depending on available contracts and resources.

(9) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW.

(10) For purposes of this section, "wages" means monetary compensation due to an offender worker by reason of his or her participation in a class I work program, subject to allowable deductions. [2017 c 81 § 1; 2011 c 282 § 2. Prior: 2010 c 122 § 5; 2010 c 116 § 1; 2009 c 479 § 60; 2007 c 483 § 605; 2004 c 167 § 7; prior: 2003 c 379 § 25; 2003 c 271 § 2; 2002 c 126 § 2; 1999 c 325 § 2; 1994 sp.s. c 7 § 534; 1993 sp.s. c 20 § 2.]

Effective date—2010 c 116: "This act takes effect July 1, 2010." [2010 c 116 § 2.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Finding—Intent—2007 c 483: See note following RCW 35.82.340.

Findings—2007 c 483: See RCW 72.78.005.

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

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

Additional notes found at www.leg.wa.gov

72.09.285 Rental voucher list—Housing providers.

(1) A housing provider may be placed on a list with the department to receive rental vouchers under RCW 9.94A.729 in accordance with the provisions of this section.

(2) For living environments with between four and eight beds, or a greater number of individuals if permitted by local code, the department shall provide transition support that verifies an offender is participating in programming or services including, but not limited to, substance abuse treatment, mental health treatment, sex offender treatment, educational programming, development of positive living skills, or employment programming. In addition, when selecting housing providers, the department shall consider the compatibility of the proposed offender housing with the surrounding neighborhood and underlying zoning. The department shall adopt procedures to limit the concentration of housing providers who provide housing to sex offenders in a single neighborhood or area.

(3)(a) The department shall provide the local law and justice council, county sheriff, or, if such housing is located within a city, a city's chief law enforcement officer with notice anytime a housing provider or new housing location requests to be or is added to the list within that county.

(b) The county or city local government may provide the department with a community impact statement, which includes the number and location of other special needs housing in the neighborhood and a review of services and supports in the area to assist offenders in their transition. If a community impact statement is provided to the department within twenty-five business days of the notice of a new housing provider or housing location request, the department shall consider the community impact statement in determining whether to add the provider to the list and, if the provider is added, shall include the community impact statement in the notice that a provider is added to the list within that county.

(4) If a certificate of inspection, as provided in RCW 59.18.125, is required by local regulation and the local gov-

ernment does not have a current certificate of inspection on file, the local government shall have ten business days from the later of (a) receipt of notice from the department as provided in subsection (3) of this section; or (b) the date the local government is given access to the dwelling unit to conduct an inspection or reinspection to issue a certificate. This section is deemed satisfied if a local government does not issue a timely certificate of inspection.

(5)(a) If, within ten business days of receipt of a notice from the department of a new location or new housing provider, the county or city determines that the housing is in a neighborhood with an existing concentration of special needs housing, including but not limited to offender reentry housing, retirement homes, assisted living, emergency or transitional housing, or adult family homes, the county or city may request that the department program administrator remove the new location or new housing provider from the list.

(b) This subsection does not apply to housing providers approved by the department to receive rental vouchers on July 28, 2013.

(6) The county or city may at any time request a housing provider be removed from the list if it provides information to the department that:

(a) It has determined that the housing does not comply with state and local fire and building codes or applicable zoning and development regulations in effect at the time the housing provider first began receiving housing vouchers; or

(b) The housing provider is not complying with the provisions of this section.

(7) After receiving a request to remove a housing provider from the county or city, the department shall immediately notify the provider of the concerns and request that the provider demonstrate that it is in compliance with the provisions of this section. If, after ten days' written notice, the housing provider cannot demonstrate to the department that it is in compliance with the reasons for the county's or city's request for removal, the department shall remove the housing provider from the list.

(8) A housing provider who provides housing pursuant to this section is not liable for civil damages arising from the criminal conduct of an offender to any greater extent than a regular tenant, and no special duties are created under this section. [2017 c 141 § 1; 2013 c 266 § 2.]

72.09.335 Sex offenders—Treatment assessment and opportunity.

(1) The department shall determine placement for sex offender treatment by assessing the offender's risk for sexual reoffense as the primary factor. The department shall offer offenders the opportunity for sex offender treatment during incarceration based on the following priority:

(a) Offenders who are assessed as high risk for sexual reoffense;

(b) Offenders sentenced under RCW 9.94A.507 who are assessed as moderate risk for sexual reoffense;

(c) Offenders not sentenced under RCW 9.94A.507 who are assessed as moderate risk for sexual reoffense;

(d) Offenders sentenced under RCW 9.94A.507 who are assessed as low risk for sexual reoffense but whose potential release under RCW 9.95.420 will require participation in sex offender treatment, as determined by the indeterminate sentence review board.

(2) As capacity allows, offenders not sentenced under RCW 9.94A.507 who are assessed as low risk for sexual reoffense may be offered the opportunity for sex offender treatment during incarceration.

(3) This section creates no enforceable right to participate in sex offender treatment. [2017 c 144 § 1; 2009 c 28 § 34; 2001 2nd sp.s. c 12 § 305.]

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Additional notes found at www.leg.wa.gov

72.09.337 Sex offenders—Rules regarding. (Effective July 1, 2019.) The secretary of corrections, the secretary of social and health services, the secretary of children, youth, and families, and the indeterminate sentence review board may adopt rules to implement chapter 12, Laws of 2001 2nd sp. sess. [2017 3rd sp.s. c 6 § 631; 2001 2nd sp.s. c 12 § 502.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

72.09.460 Inmate participation in education and work programs—Associate degree education opportunities—Legislative intent—Priorities—Rules—Payment of costs. (1) Recognizing that there is a positive correlation between education opportunities and reduced recidivism, it is the intent of the legislature to offer appropriate associate degree opportunities to inmates designed to prepare the inmate to enter the workforce.

(2) The legislature intends that all inmates be required to participate in department-approved education programs, work programs, or both, unless exempted as specifically provided in this section. Eligible inmates who refuse to participate in available education or work programs available at no charge to the inmates shall lose privileges according to the system established under RCW 72.09.130. Eligible inmates who are required to contribute financially to an education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges.

(3) The legislature recognizes more inmates may agree to participate in education and work programs than are available. The department must make every effort to achieve maximum public benefit by placing inmates in available and appropriate education and work programs.

(4)(a) The department shall, to the extent possible and considering all available funds, prioritize its resources to meet the following goals for inmates in the order listed:

(i) Achievement of basic academic skills through obtaining a high school diploma or a high school equivalency certificate as provided in RCW 28B.50.536;

(ii) Achievement of vocational skills necessary for purposes of work programs and for an inmate to qualify for work upon release;

(iii) Additional work and education programs necessary for compliance with an offender's individual reentry plan under RCW 72.09.270; and

(iv) Other appropriate vocational, work, or education programs that are not necessary for compliance with an offender's individual reentry plan under RCW 72.09.270 including associate degree education programs.

(b) If programming is provided pursuant to (a)(i) through (iii) of this subsection, the department shall pay the cost of such programming, including but not limited to books, materials, and supplies.

(c) If programming is provided pursuant to (a)(iv) of this subsection, inmates shall be required to pay all or a portion of the costs, including books, fees, and tuition, for participation in any vocational, work, or education program as provided in department policies. Department policies shall include a formula for determining how much an offender shall be required to pay. The formula shall include steps which correlate to an offender average monthly income or average available balance in a personal inmate savings account and which are correlated to a prorated portion or percent of the per credit fee for tuition, books, or other ancillary costs. The formula shall be reviewed every two years. A third party may pay directly to the department all or a portion of costs and tuition for any programming provided pursuant to (a)(iv) of this subsection on behalf of an inmate. Such payments shall not be subject to any of the deductions as provided in this chapter.

(d) The department may accept any and all donations and grants of money, equipment, supplies, materials, and services from any third party, including but not limited to nonprofit entities, and may receive, utilize, and dispose of same to complete the purposes of this section.

(e) Any funds collected by the department under (c) and (d) of this subsection and subsections (9) and (10) of this section shall be used solely for the creation, maintenance, or expansion of inmate educational and vocational programs.

(5) The department shall provide access to a program of education to all offenders who are under the age of eighteen and who have not met high school graduation requirements or requirements to earn a high school equivalency certificate as provided in RCW 28B.50.536 in accordance with chapter 28A.193 RCW. The program of education established by the department and education provider under RCW 28A.193.020 for offenders under the age of eighteen must provide each offender a choice of curriculum that will assist the inmate in achieving a high school diploma or high school equivalency certificate. The program of education may include but not be limited to basic education, prevocational training, work ethic skills, conflict resolution counseling, substance abuse intervention, and anger management counseling. The curriculum may balance these and other rehabilitation, work, and training components.

(6)(a) In addition to the policies set forth in this section, the department shall consider the following factors in establishing criteria for assessing the inclusion of education and work programs in an inmate's individual reentry plan and in placing inmates in education and work programs:

(i) An inmate's release date and custody level. An inmate shall not be precluded from participating in an education or work program solely on the basis of his or her release date, except that inmates with a release date of more than one hundred twenty months in the future shall not comprise more than ten percent of inmates participating in a new class I correctional industry not in existence on June 10, 2004;

(ii) An inmate's education history and basic academic skills;

(iii) An inmate's work history and vocational or work skills;

(iv) An inmate's economic circumstances, including but not limited to an inmate's family support obligations; and

(v) Where applicable, an inmate's prior performance in department-approved education or work programs;

(b) The department shall establish, and periodically review, inmate behavior standards and program goals for all education and work programs. Inmates shall be notified of applicable behavior standards and program goals prior to placement in an education or work program and shall be removed from the education or work program if they consistently fail to meet the standards or goals.

(7) Eligible inmates who refuse to participate in available education or work programs available at no charge to the inmates shall lose privileges according to the system established under RCW 72.09.130. Eligible inmates who are required to contribute financially to an education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges.

(8) The department shall establish, by rule, objective medical standards to determine when an inmate is physically or mentally unable to participate in available education or work programs. When the department determines an inmate is permanently unable to participate in any available education or work program due to a health condition, the inmate is exempt from the requirement under subsection (2) of this section. When the department determines an inmate is temporarily unable to participate in an education or work program due to a medical condition, the inmate is exempt from the requirement of subsection (2) of this section for the period of time he or she is temporarily disabled. The department shall periodically review the medical condition of all inmates with temporary disabilities to ensure the earliest possible entry or reentry by inmates into available programming.

(9) The department shall establish policies requiring an offender to pay all or a portion of the costs and tuition for any vocational training or postsecondary education program if the offender previously abandoned coursework related to associate degree education or vocational training without excuse as defined in rule by the department. Department policies shall include a formula for determining how much an offender shall be required to pay. The formula shall include steps which correlate to an offender average monthly income or average available balance in a personal inmate savings account and which are correlated to a prorated portion or percent of the per credit fee for tuition, books, or other ancillary costs. The formula shall be reviewed every two years. A third party may pay directly to the department all or a portion of costs and tuition for any program on behalf of an inmate under this subsection. Such payments shall not be subject to any of the deductions as provided in this chapter.

(10) Notwithstanding any other provision in this section, an inmate sentenced to life without the possibility of release, sentenced to death under chapter 10.95 RCW, or subject to the provisions of 8 U.S.C. Sec. 1227:

(a) Shall not be required to participate in education programming except as may be necessary for the maintenance of discipline and security;

(b) May not participate in an associate degree education program offered by the department or its contracted providers;

(c) May participate in prevocational or vocational training that may be necessary to participate in a work program;

(d) Shall be subject to the applicable provisions of this chapter relating to inmate financial responsibility for programming. [2017 c 120 § 3; 2013 c 39 § 24; 2007 c 483 § 402; 2004 c 167 § 5; 1998 c 244 § 10; 1997 c 338 § 43; 1995 1st sp.s. c 19 § 5.]

Findings—Intent—2017 c 120: See note following RCW 28B.50.815.

Findings—Intent—2007 c 483: "Research and practice show that long-term success in helping offenders prepare for economic self-sufficiency requires strategies that address their education and employment needs. Recent research suggests that a solid academic foundation and employment- and career-focused programs can be cost-effective in reducing the likelihood of reoffense. To this end, the legislature intends that the state strive to provide every inmate with basic academic skills as well as educational and vocational training designed to meet the assessed needs of the offender.

Nonetheless, it is vital that offenders engaged in educational or vocational training contribute to their own success. An offender should financially contribute to his or her education, particularly postsecondary educational pursuits. The legislature intends to provide more flexibility for offenders in obtaining postsecondary education by allowing third parties to make contributions to the offender's education without mandatory deductions. In developing the loan program, the department is encouraged to adopt rules and standards similar to those that apply to students in noninstitutional settings for issues such as applying for a loan, maintaining accountability, and accruing interest on the loan obligation." [2007 c 483 § 401.]

Findings—2007 c 483: See RCW 72.78.005.

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

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Additional notes found at www.leg.wa.gov

72.09.465 Associate degree education programs. (1) The department may implement associate degree education programs at state correctional institutions. During the 2015-2017 fiscal biennium, the department may implement postsecondary degree programs within state institutions, including the state correctional institution with the largest population of females, within its existing funds and under the limitations in this section, to include any funding provided under subsection (3) of this section. The department may consider for inclusion in any associate degree education program, any education program from an accredited community or technical college, college, or university that is part of an associate workforce degree program designed to prepare the inmate to enter the workforce.

(2) Inmates not meeting the department's priority criteria for the state-funded associate degree education program shall be required to pay the costs for participation in a postsecondary education degree program if he or she elects to participate through self-pay, including costs of books, fees, tuition, or any other appropriate ancillary costs, by one or more of the following means:

(a) The inmate who is participating in the postsecondary education degree program may, during confinement, provide the required payment or payments to the department; or

(b) A third party shall provide the required payment or payments directly to the department on behalf of an inmate, and such payments shall not be subject to any of the deductions as provided in this chapter.

(3) The department may accept any and all donations and grants of money, equipment, supplies, materials, and services from any third party, including but not limited to nonprofit entities, and may receive, utilize, and dispose of same to provide postsecondary education to inmates.

(4) An inmate may be selected to participate in a state-funded associate degree education program, based on priority criteria determined by the department, in which the following conditions may be considered:

(a) Priority should be given to inmates within five years or less of release;

(b) The inmate does not already possess a postsecondary education degree; and

(c) The inmate's individual reentry plan includes participation in an associate degree education program that is:

(i) Offered at the inmate's state correctional institution;

(ii) Approved by the department as an eligible and effective postsecondary education degree program; and

(iii) Limited to an associate workforce degree.

(5) During the 2015-2017 fiscal biennium, an inmate may be selected to participate in a state-funded postsecondary education degree program, based on priority criteria determined by the department, in which the following conditions may be considered:

(a) Priority should be given to inmates within five years of release;

(b) The inmate does not already possess a postsecondary education degree; and

(c) The inmate's individual reentry plan includes participation in a postsecondary education degree program that is:

(i) Offered at the inmate's state correctional institution; and

(ii) Approved by the department as an eligible and effective postsecondary education degree program.

(6) Any funds collected by the department under this section shall be used solely for the creation, maintenance, or expansion of inmate postsecondary education degree programs. [2017 c 120 § 4; 2016 sp.s. c 36 § 946; 2007 c 483 § 403.]

Findings—Intent—2017 c 120: See note following RCW 28B.50.815.

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

Findings—Intent—2007 c 483: See note following RCW 72.09.460.

Findings—2007 c 483: See RCW 72.78.005.

Chapter 72.19 RCW

JUVENILE CORRECTIONAL INSTITUTION IN KING COUNTY

Sections

72.19.010	Institution established—Location. (<i>Effective July 1, 2019.</i>)
72.19.020	Rules. (<i>Effective July 1, 2019.</i>)
72.19.030	Superintendent—Appointment. (<i>Effective July 1, 2019.</i>)
72.19.040	Associate superintendents—Appointment—Acting superintendent. (<i>Effective July 1, 2019.</i>)
72.19.050	Powers and duties of superintendent. (<i>Effective July 1, 2019.</i>)
72.19.060	Male, female, juveniles—Residential housing, separation—Correctional programs, separation, combination. (<i>Effective July 1, 2019.</i>)

72.19.010 Institution established—Location. (*Effective July 1, 2019.*) There is hereby established under the supervision and control of the secretary of children, youth, and families a correctional institution for the confinement and rehabilitation of juveniles committed by the juvenile courts to the department of children, youth, and families. Such institution shall be situated upon publicly owned lands within King county, under the supervision of the department of natural resources, which land is located in the vicinity of Echo Lake and more particularly situated in Section 34, Township 24 North, Range 7 East W.M. and that portion of Section 3, Township 23 North, Range 7 East W.M. lying north of U.S. Highway 10, together with necessary access routes thereto, all of which tract is leased by the department of natural resources to the department of children, youth, and families for the establishment and construction of the correctional institution authorized and provided for in this chapter. [2017 3rd sp.s. c 6 § 708; 1979 c 141 § 222; 1963 c 165 § 1; 1961 c 183 § 1.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

72.19.020 Rules. (*Effective July 1, 2019.*) The secretary of children, youth, and families may make, amend, and repeal rules for the administration of the juvenile correctional institution established by this chapter in furtherance of the provisions of this chapter and not inconsistent with law. [2017 3rd sp.s. c 6 § 709; 1979 c 141 § 223; 1961 c 183 § 4.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

72.19.030 Superintendent—Appointment. (*Effective July 1, 2019.*) The superintendent of the correctional institution established by this chapter shall be appointed by the secretary of children, youth, and families. [2017 3rd sp.s. c 6 § 710; 1983 1st ex.s. c 41 § 27; 1979 c 141 § 224; 1963 c 165 § 3.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

72.19.040 Associate superintendents—Appointment—Acting superintendent. (*Effective July 1, 2019.*) The superintendent, subject to the approval of the secretary of children, youth, and families, shall appoint such associate superintendents as shall be deemed necessary. In the event the superintendent shall be absent from the institution, or during periods of illness or other situations incapacitating the superintendent from properly performing his or her duties, one of the associate superintendents of such institution shall act as superintendent during such period of absence, illness, or incapacity as may be designated by the secretary of children, youth, and families. [2017 3rd sp.s. c 6 § 711; 2012 c 117 § 461; 1979 c 141 § 225; 1963 c 165 § 4.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

72.19.050 Powers and duties of superintendent. (*Effective July 1, 2019.*) The superintendent shall have the following powers, duties and responsibilities:

(1) Subject to the rules of the department of children, youth, and families, the superintendent shall have the supervision and management of the institution, of the grounds and buildings, the subordinate officers and employees, and of the juveniles received at such institution and the custody of such persons until released or transferred as provided by law.

(2) Subject to the rules of the department of children, youth, and families and the office of financial management, appoint all subordinate officers and employees.

(3) The superintendent shall be the custodian of the personal property of all juveniles in the institution and shall make rules governing the accounting and disposition of all moneys received by such juveniles, not inconsistent with the law, and subject to the approval of the secretary of the department of children, youth, and families. [2017 3rd sp.s. c 6 § 712; 1993 c 281 § 65; 1979 c 141 § 226; 1963 c 165 § 5.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

72.19.060 Male, female, juveniles—Residential housing, separation—Correctional programs, separation, combination. (*Effective July 1, 2019.*) The plans and construction of the juvenile correctional institution established by this chapter shall provide for adequate separation of the residential housing of the male juvenile from the female juvenile. In all other respects, the juvenile correctional programs for both boys and girls may be combined or separated as the secretary of children, youth, and families deems most reasonable and effective to accomplish the reformation, training and rehabilitation of the juvenile offender, realizing all possible economies from the lack of necessity for duplication of facilities. [2017 3rd sp.s. c 6 § 713; 1979 c 141 § 227; 1963 c 165 § 7.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Chapter 72.36 RCW

SOLDIERS' AND VETERANS' HOMES AND VETERANS' CEMETERY

Sections

72.36.115 Eastern Washington state veterans' cemetery.

72.36.115 Eastern Washington state veterans' cemetery. (1) The department shall establish and maintain in this state an eastern Washington state veterans' cemetery.

(2) All honorably discharged veterans and their spouses or state registered domestic partners who meet eligibility requirements under 38 C.F.R. Sec. 38.620 are eligible for interment in the eastern Washington state veterans' cemetery.

(3) The department shall collect all federal veterans' burial benefits and other available state or county resources.

(4) The department shall adopt rules defining the services available, eligibility, fees, and the general operations associated with the eastern Washington state veterans' cemetery. [2017 c 185 § 8; 2009 c 521 § 169; 2007 c 43 § 2.]

Finding—2007 c 43: "The legislature recognizes the unique sacrifices made by veterans and their family members. The legislature recognizes further that while all veterans are entitled to interment at the Tahoma national cemetery, veterans and families living in eastern Washington desire a veterans' cemetery location closer to their homes. The legislature requested and received the department of veterans affairs feasibility study and business plan outlining the need and feasibility and now intends to establish a state veterans' cemetery to honor veterans in their final resting place." [2007 c 43 § 1.]

Chapter 72.72 RCW

CRIMINAL BEHAVIOR OF RESIDENTS OF INSTITUTIONS

Sections

72.72.030 Institutional impact account—Reimbursement to political subdivisions—Limitations. (*Effective July 1, 2019.*)

72.72.040 Reimbursement—Rules. (*Effective July 1, 2019.*)

72.72.030 Institutional impact account—Reimbursement to political subdivisions—Limitations. (*Effective July 1, 2019.*) (1) There is hereby created, in the state treasury, an institutional impact account. The secretary of children, youth, and families may reimburse political subdivisions for criminal justice costs incurred directly as a result of crimes committed by offenders residing in an institution as defined herein under the jurisdiction of the secretary of children, youth, and families. Such reimbursement shall be made to the extent funds are available from the institutional impact account. Reimbursements shall be limited to law enforcement, prosecutorial, judicial, and jail facilities costs which are documented to be strictly related to the criminal activities of the offender.

(2) The secretary of corrections may reimburse political subdivisions for criminal justice costs incurred directly as a result of crimes committed by offenders residing in an institution as defined herein under the jurisdiction of the secretary of corrections. Such reimbursement shall be made to the extent funds are available from the institutional impact account. Reimbursements shall be limited to law enforcement, prosecutorial, judicial, and jail facilities costs which are documented to be strictly related to the criminal activities of the offender. [2017 3rd sp.s. c 6 § 714; 1991 sp.s. c 13 § 10; 1985 c 57 § 71; 1983 c 279 § 2; 1979 ex.s. c 108 § 3.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

72.72.040 Reimbursement—Rules. (*Effective July 1, 2019.*) (1) The secretary of children, youth, and families and the secretary of corrections shall each promulgate rules pursuant to chapter 34.05 RCW regarding the reimbursement process for their respective agencies.

(2) Reimbursement shall not be made if otherwise provided pursuant to other provisions of state law. [2017 3rd sp.s. c 6 § 715; 1983 c 279 § 3; 1979 ex.s. c 108 § 4.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Title 73

VETERANS AND VETERANS' AFFAIRS

Chapters

- 73.04 General provisions.
- 73.08 Veterans' relief.

Chapter 73.04 RCW

GENERAL PROVISIONS

Sections

73.04.150 Joint committee on veterans' and military affairs.

73.04.150 Joint committee on veterans' and military affairs. (1) There is hereby created a joint committee on veterans' and military affairs. The committee shall consist of: (a) Eight members of the senate appointed by the president of the senate, four of whom shall be members of the majority party and four of whom shall be members of the minority party; and (b) eight members of the house of representatives appointed by the speaker, four of whom shall be members of the majority party and four of whom shall be members of the minority party. Members of the committee shall be appointed before the close of the 2005 legislative session, and before the close of each regular session during an odd-numbered year thereafter.

(2) Each member's term of office shall run from the close of the session in which he or she was appointed until the close of the next regular session held in an odd-numbered year. If a successor is not appointed during a session, the member's term shall continue until the member is reappointed or a successor is appointed. The term of office for a committee member who does not continue as a member of the senate or house of representatives shall cease upon the convening of the next session of the legislature during an odd-numbered year after the member's appointment, or upon the member's resignation, whichever is earlier. Vacancies on the committee shall be filled by appointment in the same manner as described in subsection (1) of this section. All such vacancies shall be filled from the same political party and from the same house as the member whose seat was vacated.

(3) The committee shall establish an executive committee of four members, two of whom are members of the senate and two of whom are members of the house of representatives. The executive committee shall appoint one cochair from the two executive committee members who are senators and one cochair from the two executive committee members who are representatives. The two cochairs shall be from different political parties and their terms of office shall run from the close of the session in which they are appointed until the close of the next regular session in an odd-numbered year. The executive committee is responsible for performing all general administrative and personnel duties assigned to it in

the rules and procedures adopted by the joint committee, as well as other duties delegated to it by the joint committee.

(4) The joint committee on veterans' and military affairs has the following powers and duties:

(a) To study veterans' issues, active military forces issues, and national guard and reserve component issues, and make recommendations to the legislature; and

(b) To study structure and administration of the department of veterans affairs and the military department, and make recommendations to the legislature.

(5) The joint committee shall adopt rules and procedures for its orderly operation. The joint committee may create subcommittees to perform duties under this section.

(6) The regulating authorities for the department of licensing and the department of health shall file reports to the legislature biennially and the Washington state military transition council annually beginning January 1, 2018, and appear annually before the joint committee on veterans' and military affairs, to provide updates on progress in their efforts to implement the requirements of chapter 18.340 RCW, chapter 32, Laws of 2011, and chapter 351, Laws of 2011. By January 1, 2018, the department of labor and industries and the professional educator standards board must each submit a report to the legislature, including an assessment on how its licensing, certification, and apprenticeship programs apply training and experience acquired by military members and their spouses outside of Washington, and recommendations about whether such programs should be included in the reporting schedule within this subsection. [2017 c 184 § 1; 2005 c 141 § 1; 2001 c 268 § 1.]

Chapter 73.08 RCW

VETERANS' RELIEF

Sections

73.08.005 Definitions.

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

(1) "Direct costs" includes those allowable costs that can be readily assigned to the statutory objectives of this chapter, consistent with the cost principles promulgated by the federal office of management and budget in circular No. A-87, dated May 10, 2004.

(2) "Family" means the spouse or domestic partner, surviving spouse, surviving domestic partner, and dependent children of a living or deceased veteran, or a servicemember who was killed in the line of duty regardless of the number of days served.

(3) "Indigent" means a person who is defined as such by the county legislative authority using one or more of the following definitions:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, medical care services, or supplemental security income;

(b) Receiving an annual income, after taxes, of up to one hundred fifty percent or less of the current federally established poverty level, or receiving an annual income not exceeding a higher qualifying income established by the county legislative authority; or

(c) Unable to pay reasonable costs for shelter, food, utilities, and transportation because his or her available funds are insufficient.

(4) "Indirect costs" includes those allowable costs that are generally associated with carrying out the statutory objectives of this chapter, but the identification and tracking of those costs cannot be readily assigned to a specific statutory objective without an accounting effort that is disproportionate to the benefit received. A county legislative authority may allocate allowable indirect costs to its veterans' assistance fund if it is accomplished in a manner consistent with the cost principles promulgated by the federal office of management and budget in circular No. A-87, dated May 10, 2004.

(5)(a) "Veteran" means:

(i) A person who served in the active military, naval, or air service; a member of the women's air forces service pilots during World War II; a United States documented merchant mariner with service aboard an oceangoing vessel operated by the war shipping administration; the office of defense transportation, or their agents, from December 7, 1941, through December 31, 1946; or a civil service crewmember with service aboard a United States army transport service or United States naval transportation service vessel in oceangoing service from December 7, 1941, through December 31, 1946, who meets one of the following criteria:

(A) Served on active duty for at least one hundred eighty days and who was released with an honorable discharge;

(B) Received an honorable or general under honorable characterization of service with a medical reason for separation for a condition listed as non-existed prior to service, regardless of number of days served; or

(C) Received an honorable discharge and has received a rating for a service connected disability from the United States department of veterans affairs regardless of number of days served;

(ii) A current member honorably serving in the armed forces reserve or national guard who has been activated by presidential call up for purposes other than training;

(iii) A former member of the armed forces reserve or national guard who has fulfilled his or her initial military service obligation and was released with an honorable discharge;

(iv) A former member of the armed forces reserve or national guard who does not have over one hundred seventy-nine days of active duty service, but meets the federal definition of a veteran having completed twenty years of service.

(b) At the discretion of the county legislative authority and in consultation with the veterans' advisory board, counties may expand eligibility for the veterans assistance fund as the county determines necessary, which may include serving veterans with additional discharge characterizations.

(6) "Veterans' advisory board" means a board established by a county legislative authority under the authority of RCW 73.08.035.

(7) "Veterans' assistance fund" means an account in the custody of the county auditor, or the chief financial officer in

a county operating under a charter, that is funded by taxes levied under the authority of RCW 73.08.080.

(8) "Veterans' assistance program" means a program approved by the county legislative authority under the authority of RCW 73.08.010 that is fully or partially funded by the veterans' assistance fund authorized by RCW 73.08.080. [2017 c 185 § 9; 2016 c 76 § 1; 2013 c 42 § 2; 2011 1st sp.s. c 36 § 17; 2010 1st sp.s. c 8 § 17; 2009 c 35 § 1; 2008 c 6 § 502; 2005 c 250 § 2.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Intent—2005 c 250: "(1) It is the intent of the legislature that each county establish a veterans' assistance program to benefit indigent veterans and their families. These programs must be funded, at least in part, by veterans' assistance funds. The legislature intends also for each county to establish a veterans' advisory board responsible for advising the county legislative authority on needed and appropriate assistance programs for local indigent veterans and their families. Recognizing the valuable insight and perspectives that veterans offer, it is the intent of the legislature that each board be comprised entirely of veterans.

(2) The legislature recognizes that ongoing veterans' relief or assistance programs in some areas of the state have provided meaningful assistance to indigent veterans and family members. The legislature further recognizes that veterans' service organizations have traditionally been the initial point of contact for indigent veterans and family members seeking assistance. In recognition of these factors, the legislature intends to authorize, upon the satisfaction of certain administrative requirements, existing veterans' relief or assistance programs to continue providing needed and effective assistance to indigent veterans and their families.

(3) The legislature recognizes that counties respond to the needs of indigent veterans and family members in the manner most appropriate to the needs and resources of the county. The legislature intends for the provisions of this act to facilitate the effective use of assistance funds through efficient model programs that benefit veterans and family members experiencing financial hardships.

(4) It is the policy of the state of Washington that bias shall not play a role in the distribution of the veterans' assistance fund." [2005 c 250 § 1.]

Title 74

PUBLIC ASSISTANCE

Chapters

74.04 General provisions—Administration.

74.08A Washington workfirst temporary assistance for needy families.

74.09 Medical care.

74.12 Temporary assistance for needy families.

74.12A Incentive to work—Economic independence.

74.13 Child welfare services.

74.13A Adoption support.

74.13B Child welfare system—Contracting for services.

74.14A Children and family services.

74.14B Children's services.

74.14C Family preservation services.

74.15 Care of children, expectant mothers, persons with developmental disabilities.

74.18 Department of services for the blind.

74.20A Support of dependent children—Alternative method—1971 act.

74.34 Abuse of vulnerable adults.

74.39A Long-term care services options—Expansion.

- 74.42** Nursing homes—Resident care, operating standards.
74.46 Nursing facility medicaid payment system.
74.60 Hospital safety net assessment.

Chapter 74.04 RCW

GENERAL PROVISIONS—ADMINISTRATION

Sections

- 74.04.060 Records, confidential—Exceptions—Penalty. (*Effective July 1, 2018.*)
 74.04.800 Incarcerated parents—Policies to encourage family contact and engagement. (*Effective July 1, 2018.*)

74.04.060 Records, confidential—Exceptions—Penalty. (*Effective July 1, 2018.*) (1)(a) For the protection of applicants and recipients, the department, the authority, and the county offices and their respective officers and employees are prohibited, except as hereinafter provided, from disclosing the contents of any records, files, papers and communications, except for purposes directly connected with the administration of the programs of this title. In any judicial proceeding, except such proceeding as is directly concerned with the administration of these programs, such records, files, papers and communications, and their contents, shall be deemed privileged communications and except for the right of any individual to inquire of the office whether a named individual is a recipient of welfare assistance and such person shall be entitled to an affirmative or negative answer.

(b) Unless prohibited by federal law, for the purpose of investigating and preventing child abuse and neglect and providing for the health care coordination and well-being of children in foster care, the department and the authority shall disclose to the department of children, youth, and families the following information: Developmental disabilities administration client records; home and community services client records; long-term care facility or certified community residential supports records; health care information; child support information; food assistance information; and public assistance information. Disclosure under this subsection (1)(b) is mandatory for the purposes of the federal health insurance portability and accountability act.

(c) Upon written request of a parent who has been awarded visitation rights in an action for divorce or separation or any parent with legal custody of the child, the department shall disclose to him or her the last known address and location of his or her natural or adopted children. The secretary shall adopt rules which establish procedures for disclosing the address of the children and providing, when appropriate, for prior notice to the custodian of the children. The notice shall state that a request for disclosure has been received and will be complied with by the department unless the department receives a copy of a court order which enjoins the disclosure of the information or restricts or limits the requesting party's right to contact or visit the other party or the child. Information supplied to a parent by the department shall be used only for purposes directly related to the enforcement of the visitation and custody provisions of the court order of separation or decree of divorce. No parent shall disclose such information to any other person except for the purpose of enforcing visitation provisions of the said order or decree.

(d) The department shall review methods to improve the protection and confidentiality of information for recipients of welfare assistance who have disclosed to the department that they are past or current victims of domestic violence or stalking.

(2) The county offices shall maintain monthly at their offices a report showing the names and addresses of all recipients in the county receiving public assistance under this title, together with the amount paid to each during the preceding month.

(3) The provisions of this section shall not apply to duly designated representatives of approved private welfare agencies, public officials, members of legislative interim committees and advisory committees when performing duties directly connected with the administration of this title, such as regulation and investigation directly connected therewith: PROVIDED, HOWEVER, That any information so obtained by such persons or groups shall be treated with such degree of confidentiality as is required by the federal social security law.

(4) It shall be unlawful, except as provided in this section, for any person, body, association, firm, corporation or other agency to solicit, publish, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce in the use of any lists or names for commercial or political purposes of any nature. The violation of this section shall be a gross misdemeanor. [2017 3rd sp.s. c 6 § 817; 2011 1st sp.s. c 15 § 66; 2006 c 259 § 5; 1987 c 435 § 29; 1983 1st ex.s. c 41 § 32; 1973 c 152 § 1; 1959 c 26 § 74.04.060. Prior: 1953 c 174 § 7; 1950 ex.s. c 10 § 1; 1941 c 128 § 5; Rem. Supp. 1941 § 10007-106b.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Child support, department may disclose information to internal revenue department: RCW 74.20.160.

Additional notes found at www.leg.wa.gov

74.04.800 Incarcerated parents—Policies to encourage family contact and engagement. (*Effective July 1, 2018.*) (1)(a) The secretary of social and health services and the secretary of the department of children, youth, and families shall review current department policies and assess the adequacy and availability of programs targeted at persons who receive services through the department who are the children and families of a person who is incarcerated in a department of corrections facility. Great attention shall be focused on programs and policies affecting foster youth who have a parent who is incarcerated.

(b) The secretary of social and health services and the secretary of the department of children, youth, and families shall adopt policies that encourage familial contact and engagement between inmates of the department of corrections facilities and their children with the goal of facilitating normal child development, while reducing recidivism and intergenerational incarceration. Programs and policies should take into consideration the children's need to maintain contact

with his or her parent, the inmate's ability to develop plans to financially support their children, assist in reunification when appropriate, and encourage the improvement of parenting skills where needed. The programs and policies should also meet the needs of the child while the parent is incarcerated.

(2) The secretary of social and health services and the secretary of the department of children, youth, and families shall conduct the following activities to assist in implementing the requirements of subsection (1) of this section:

(a) Gather information and data on the recipients of public assistance, or children in the care of the state under chapter 13.34 RCW, who are the children and families of inmates incarcerated in department of corrections facilities; and

(b) Participate in the children of incarcerated parents advisory committee and report information obtained under this section to the advisory committee. [2017 3rd sp.s. c 6 § 329; 2007 c 384 § 3.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Intent—Finding—2007 c 384: See note following RCW 72.09.495.

Chapter 74.08A RCW

WASHINGTON WORKFIRST TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Sections

74.08A.250 "Work activity" defined.

74.08A.260 Work activity—Referral—Individual responsibility plan—Refusal to work.

74.08A.270 Good cause.

74.08A.250 "Work activity" defined. Unless the context clearly requires otherwise, as used in this chapter, "work activity" means:

(1) Unsubsidized paid employment in the private or public sector;

(2) Subsidized paid employment in the private or public sector, including employment through the state or federal work-study program for a period not to exceed twenty-four months;

(3) Work experience, including:

(a) An internship or practicum, that is paid or unpaid and is required to complete a course of vocational training or to obtain a license or certificate in a high-demand occupation, as determined by the employment security department. No internship or practicum shall exceed twelve months; or

(b) Work associated with the refurbishing of publicly assisted housing, if sufficient paid employment is not available;

(4) On-the-job training;

(5) Job search and job readiness assistance;

(6) Community service programs, including a recipient's voluntary service at a child care or preschool facility licensed under *chapter 43.215 RCW or an elementary school in which his or her child is enrolled;

(7) Vocational educational training, not to exceed twelve months with respect to any individual except that this twelve-month limit may be increased to twenty-four months subject to funding appropriated specifically for this purpose;

(8) Job skills training directly related to employment;

(9) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a high school equivalency certificate as provided in RCW 28B.50.536;

(10) Satisfactory attendance at secondary school or in a course of study leading to a high school equivalency certificate as provided in RCW 28B.50.536, in the case of a recipient who has not completed secondary school or received such a certificate;

(11) The provision of child care services to an individual who is participating in a community service program;

(12) Internships, that shall be paid or unpaid work experience performed by an intern in a business, industry, or government or nongovernmental agency setting;

(13) Practicums, which include any educational program in which a student is working under the close supervision of a professional in an agency, clinic, or other professional practice setting for purposes of advancing their skills and knowledge;

(14) Services required by the recipient under RCW 74.08.025(3) and 74.08A.010(4) to become employable;

(15) Financial literacy activities designed to be effective in assisting a recipient in becoming self-sufficient and financially stable; and

(16) Parent education services or programs that support development of appropriate parenting skills, life skills, and employment-related competencies. [2017 c 156 § 1; 2013 c 39 § 27; 2011 1st sp.s. c 42 § 8; 2009 c 353 § 6; 2006 c 107 § 2; 2000 c 10 § 1; 1997 c 58 § 311.]

***Reviser's note:** All sections not repealed or decodified in chapter 43.215 RCW were recodified in chapter 43.216 RCW by 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Findings—Intent—2006 c 107: "The legislature finds that for a variety of reasons, many citizens may lack the basic financial knowledge necessary to spend their money wisely, save for the future, and manage money challenges, such as a job loss, financing a college education, or a catastrophic injury. The legislature also finds that financial literacy is an essential element in achieving financial stability and self-sufficiency. The legislature intends to encourage participation in financial literacy training by WorkFirst participants, in order to promote their ability to make financial decisions that will contribute to their long-term financial well-being." [2006 c 107 § 1.]

Additional notes found at www.leg.wa.gov

74.08A.260 Work activity—Referral—Individual responsibility plan—Refusal to work. (1) Each recipient shall be assessed after determination of program eligibility and before referral to job search. Assessments shall be based upon factors that are critical to obtaining employment, including but not limited to education, availability of child care, history of family violence, history of substance abuse, and other factors that affect the ability to obtain employment. Assessments may be performed by the department or by a contracted entity. The assessment shall be based on a uniform, consistent, transferable format that will be accepted by all agencies and organizations serving the recipient.

(2) Based on the assessment, an individual responsibility plan shall be prepared that: (a) Sets forth an employment goal and a plan for maximizing the recipient's success at meeting the employment goal; (b) considers WorkFirst educational

and training programs from which the recipient could benefit; (c) contains the obligation of the recipient to participate in the program by complying with the plan; (d) moves the recipient into full-time WorkFirst activities as quickly as possible; and (e) describes the services available to the recipient either during or after WorkFirst to enable the recipient to obtain and keep employment and to advance in the workplace and increase the recipient's wage earning potential over time.

(3) Recipients who are not engaged in work and work activities, and do not qualify for a good cause exemption under RCW 74.08A.270, shall engage in self-directed service as provided in RCW 74.08A.330.

(4) If a recipient refuses to engage in work and work activities required by the department, the family's grant shall be reduced by the recipient's share, and may, if the department determines it appropriate, be terminated.

(5) The department may waive the penalties required under subsection (4) of this section, subject to a finding that the recipient refused to engage in work for good cause provided in RCW 74.08A.270.

(6) In consultation with the recipient, the department or contractor shall place the recipient into a work activity that is available in the local area where the recipient resides.

(7) Assessments conducted under this section shall include a consideration of the potential benefit to the recipient of engaging in financial literacy activities. The department shall consider the options for financial literacy activities available in the community, including information and resources available through the financial education public-private partnership created under RCW 28A.300.450. The department may authorize up to ten hours of financial literacy activities as a core activity or an optional activity under WorkFirst.

(8)(a) Subsections (2) through (6) of this section are suspended for a recipient who is a parent or other relative personally providing care for a child under the age of two years. This suspension applies to both one and two parent families. However, both parents in a two-parent family cannot use the suspension during the same month. Nothing in this subsection shall prevent a recipient from participating in the WorkFirst program on a voluntary basis.

(b)(i) The period of suspension of work activities under this subsection provides an opportunity for the legislative and executive branches to oversee redesign of the WorkFirst program. To realize this opportunity, both during the period of suspension and following reinstatement of work activity requirements as redesign is being implemented, a legislative-executive WorkFirst oversight task force is established, with members as provided in this subsection (8)(b).

(ii) The president of the senate shall appoint two members from each of the two largest caucuses of the senate.

(iii) The speaker of the house of representatives shall appoint two members from each of the two largest caucuses of the house of representatives.

(iv) The governor shall appoint members representing the department of social and health services, the *department of early learning, the department of commerce, the employment security department, the office of financial management, and the state board for community and technical colleges.

(v) The task force shall choose cochairs, one from among the legislative members and one from among the executive branch members. The legislative members shall convene the initial meeting of the task force.

(c) The task force shall:

(i) Oversee the partner agencies' implementation of the redesign of the WorkFirst program and operation of the temporary assistance for needy families program to ensure that the programs are achieving desired outcomes for their clients;

(ii) Determine evidence-based outcome measures for the WorkFirst program, including measures related to equitably serving the needs of historically underrepresented populations, such as English language learners, immigrants, refugees, and other diverse communities;

(iii) Develop accountability measures for WorkFirst recipients and the state agencies responsible for their progress toward self-sufficiency;

(iv) Make recommendations to the governor and the legislature regarding:

(A) Policies to improve the effectiveness of the WorkFirst program over time;

(B) Early identification of those recipients most likely to experience long stays on the program and strategies to improve their ability to achieve progress toward self-sufficiency; and

(C) Necessary changes to the program, including taking into account federal changes to the temporary assistance for needy families program.

(d) The partner agencies must provide the task force with regular reports on:

(i) The partner agencies' progress toward meeting the outcome and performance measures established under (c) of this subsection;

(ii) Caseload trends and program expenditures, and the impact of those trends and expenditures on client services, including services to historically underrepresented populations; and

(iii) The characteristics of families who have been unsuccessful on the program and have lost their benefits either through sanction or the sixty-month time limit.

(e) Staff support for the task force must be provided by senate committee services, the house of representatives office of program research, and the state agency members of the task force.

(f) The task force shall meet on a quarterly basis beginning September 2011, or as determined necessary by the task force cochairs.

(g) During its tenure, the state agency members of the task force shall respond in a timely manner to data requests from the cochairs. [2017 3rd sp.s. c 21 § 1; 2011 1st sp.s. c 42 § 2; 2009 c 85 § 2; 2006 c 107 § 3; 2003 c 383 § 1; 1997 c 58 § 313.]

***Reviser's note:** The department of early learning was abolished and its powers, duties, and functions were transferred to the department of children, youth, and families by 2017 3rd sp.s. c 6 § 802, effective July 1, 2018.

Findings—Intent—2011 1st sp.s. c 42: "The legislature finds that stable and sustainable employment is the key goal of the WorkFirst and temporary assistance for needy families programs. Achieving stable and sustainable employment is a developmental process that takes time, effort, and engagement. In times of fiscal challenge, temporary assistance for needy families and WorkFirst resources must be invested in program elements that

produce the best results for low-income families and the state of Washington.

The legislature further finds that the core tenets that are the foundation of Washington state's WorkFirst program are: (1) Achieving stable and successful employment; (2) recognizing the critical role that participants play in their children's development, healthy growth, and promotion of family stability; (3) developing strategies founded on the principle that WorkFirst is a transitional, not long-term, program to assist families on the pathway to self-sufficiency while holding them accountable; and (4) leveraging resources outside the funding for temporary assistance for needy families is crucial to achieving WorkFirst goals. It is the intent of the legislature, using evidence-based and research-based practices, to develop a road map to self-sufficiency for WorkFirst participants and temporary assistance for needy families recipients.

The legislature further finds that parents are responsible for the support of their children and that they have up to sixty months of receipt of temporary assistance for needy families benefits, absent any applicable hardship extension, to achieve stable and sustainable employment or find other means to support their family. It is the intent of the legislature to apply a sixty-month time limit to the temporary assistance for needy families program, including households in which a parent is in the home and ineligible for temporary assistance for needy families. The legislature intends that hardship extensions be applied to families subject to time limits." [2011 1st sp.s. c 42 § 1.]

Effective date—2011 1st sp.s. c 42: "Except for section 6 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 42 § 28.]

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Findings—Intent—Effective date—2006 c 107: See notes following RCW 74.08A.250.

74.08A.270 Good cause. (1) Good cause reasons for failure to participate in WorkFirst program components include: (a) Situations where the recipient is a parent or other relative personally providing care for a child under the age of six years, and formal or informal child care, or day care for an incapacitated individual living in the same home as a dependent child, is necessary for an individual to participate or continue participation in the program or accept employment, and such care is not available, and the department fails to provide such care; or (b) the recipient is a parent with a child under the age of two years.

(2) A parent claiming a good cause exemption from WorkFirst participation under subsection (1)(b) of this section may be required to participate in one or more of the following, up to a maximum total of twenty hours per week, if such treatment, services, or training is indicated by the comprehensive evaluation or other assessment:

- (a) Mental health treatment;
- (b) Alcohol or drug treatment;
- (c) Domestic violence services; or
- (d) Parenting education or parenting skills training, if available.

(3) The department shall: (a) Work with a parent claiming a good cause exemption under subsection (1)(b) of this section to identify and access programs and services designed to improve parenting skills and promote child well-being, including but not limited to home visitation programs and services; and (b) provide information on the availability of home visitation services to temporary assistance for needy families caseworkers, who shall inform clients of the availability of the services. If desired by the client, the caseworker shall facilitate appropriate referrals to providers of home visitation services.

(4) Nothing in this section shall prevent a recipient from participating in the WorkFirst program on a voluntary basis.

(5) A parent is eligible for a good cause exemption under subsection (1)(b) of this section for a maximum total of twenty-four months over the parent's lifetime. [2017 3rd sp.s. c 21 § 2; 2007 c 289 § 1; 2002 c 89 § 1; 1997 c 58 § 314.]

Chapter 74.09 RCW MEDICAL CARE

Sections

74.09.010	Definitions.
74.09.195	Audits of health care providers by the authority—Requirements—Procedure.
74.09.325	Reimbursement of a health care service provided through telemedicine or store and forward technology—Report to the legislature. (<i>Effective January 1, 2018.</i>)
74.09.335	Reimbursement of health care services provided by fire departments—Adoption of standards.
74.09.337	Children's mental health—Authority's duties. (<i>Expires June 30, 2020.</i>)
74.09.340	Personal needs allowance, adjusted.
74.09.475	Newborn delivery services to medical assistance clients—Policies and procedures—Reporting.
74.09.480	Performance measures—Provider rate increases—Report.
74.09.492	Children's mental health—Treatment and services—Authority's duties. (<i>Expires June 30, 2020.</i>)
74.09.495	Behavioral health services—Access by children—Report.
74.09.497	Authority review of payment codes available to health plans and providers related to primary care and behavioral health—Requirements—Principles considered—Matrices—Reporting.
74.09.510	Medical assistance—Eligibility. (<i>Effective July 1, 2018.</i>)
74.09.520	Medical assistance—Care and services included—Funding limitations.
74.09.5225	Medical assistance—Payments for services provided by rural hospitals—Participation in Washington rural health access preservation pilot.
74.09.717	Dental health aide therapist services—Federal funding.

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

(1) "Authority" means the Washington state health care authority.

(2) "Bidirectional integration" means integrating behavioral health services into primary care settings and integrating primary care services into behavioral health settings.

(3) "Children's health program" means the health care services program provided to children under eighteen years of age and in households with incomes at or below the federal poverty level as annually defined by the federal department of health and human services as adjusted for family size, and who are not otherwise eligible for medical assistance or the limited casualty program for the medically needy.

(4) "Chronic care management" means the health care management within a health home of persons identified with, or at high risk for, one or more chronic conditions. Effective chronic care management:

(a) Actively assists patients to acquire self-care skills to improve functioning and health outcomes, and slow the progression of disease or disability;

(b) Employs evidence-based clinical practices;

(c) Coordinates care across health care settings and providers, including tracking referrals;

(d) Provides ready access to behavioral health services that are, to the extent possible, integrated with primary care; and

(e) Uses appropriate community resources to support individual patients and families in managing chronic conditions.

(5) "Chronic condition" means a prolonged condition and includes, but is not limited to:

- (a) A mental health condition;
- (b) A substance use disorder;
- (c) Asthma;
- (d) Diabetes;
- (e) Heart disease; and

(f) Being overweight, as evidenced by a body mass index over twenty-five.

(6) "County" means the board of county commissioners, county council, county executive, or tribal jurisdiction, or its designee.

(7) "Department" means the department of social and health services.

(8) "Department of health" means the Washington state department of health created pursuant to RCW 43.70.020.

(9) "Director" means the director of the Washington state health care authority.

(10) "Full benefit dual eligible beneficiary" means an individual who, for any month: Has coverage for the month under a medicare prescription drug plan or medicare advantage plan with part D coverage; and is determined eligible by the state for full medicaid benefits for the month under any eligibility category in the state's medicaid plan or a section 1115 demonstration waiver that provides pharmacy benefits.

(11) "Health home" or "primary care health home" means coordinated health care provided by a licensed primary care provider coordinating all medical care services, and a multidisciplinary health care team comprised of clinical and nonclinical staff. The term "coordinating all medical care services" shall not be construed to require prior authorization by a primary care provider in order for a patient to receive treatment for covered services by an optometrist licensed under chapter 18.53 RCW. Primary care health home services shall include those services defined as health home services in 42 U.S.C. Sec. 1396w-4 and, in addition, may include, but are not limited to:

(a) Comprehensive care management including, but not limited to, chronic care treatment and management;

(b) Extended hours of service;

(c) Multiple ways for patients to communicate with the team, including electronically and by phone;

(d) Education of patients on self-care, prevention, and health promotion, including the use of patient decision aids;

(e) Coordinating and assuring smooth transitions and follow-up from inpatient to other settings;

(f) Individual and family support including authorized representatives;

(g) The use of information technology to link services, track tests, generate patient registries, and provide clinical data; and

(h) Ongoing performance reporting and quality improvement.

(12) "Internal management" means the administration of medical assistance, medical care services, the children's health program, and the limited casualty program.

(13) "Limited casualty program" means the medical care program provided to medically needy persons as defined

under Title XIX of the federal social security act, and to medically indigent persons who are without income or resources sufficient to secure necessary medical services.

(14) "Medical assistance" means the federal aid medical care program provided to categorically needy persons as defined under Title XIX of the federal social security act.

(15) "Medical care services" means the limited scope of care financed by state funds and provided to persons who are not eligible for medicaid under RCW 74.09.510 and who are eligible for the aged, blind, or disabled assistance program authorized in RCW 74.62.030 or the essential needs and housing support program pursuant to RCW 74.04.805.

(16) "Multidisciplinary health care team" means an interdisciplinary team of health professionals which may include, but is not limited to, medical specialists, nurses, pharmacists, nutritionists, dietitians, social workers, behavioral and mental health providers including substance use disorder prevention and treatment providers, doctors of chiropractic, physical therapists, licensed complementary and alternative medicine practitioners, home care and other long-term care providers, and physicians' assistants.

(17) "Nursing home" means nursing home as defined in RCW 18.51.010.

(18) "Poverty" means the federal poverty level determined annually by the United States department of health and human services, or successor agency.

(19) "Primary care behavioral health" means a health care integration model in which behavioral health care is colocated, collaborative, and integrated within a primary care setting.

(20) "Primary care provider" means a general practice physician, family practitioner, internist, pediatrician, osteopathic physician, naturopath, physician assistant, osteopathic physician assistant, and advanced registered nurse practitioner licensed under Title 18 RCW.

(21) "Secretary" means the secretary of social and health services.

(22) "Whole-person care in behavioral health" means a health care integration model in which primary care services are integrated into a behavioral health setting either through colocation or community-based care management. [2017 c 226 § 5; 2013 2nd sp.s. c 10 § 8. Prior: 2011 1st sp.s. c 15 § 2; 2011 c 316 § 2; prior: 2010 1st sp.s. c 8 § 28; 2007 c 3 § 2; 1990 c 296 § 6; 1987 c 406 § 11; 1981 1st ex.s. c 6 § 18; 1981 c 8 § 17; 1979 c 141 § 333; 1959 c 26 § 74.09.010; prior: 1955 c 273 § 2.]

Sustainable solutions for the integration of behavioral and physical health—2017 c 226: See note following RCW 74.09.497.

Effective date—2013 2nd sp.s. c 10: See note following RCW 74.62.030.

Effective date—2011 1st sp.s. c 15: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 15 § 130.]

Findings—Intent—2011 1st sp.s. c 15: "The legislature finds that:

(1) Washington state government must be organized to be efficient, cost-effective, and responsive to its residents;

(2) The cost of state purchased health care continues to grow at an unsustainable rate, now representing nearly one-third of the state's budget and hindering our ability to invest in other essential services such as education and public safety;

(3) Responsibility for state health care purchasing is currently spread over multiple agencies, but successful interagency collaboration on quality

and cost initiatives has helped demonstrate the benefits to the state of centralized health care purchasing;

(4) Consolidating the majority of state health care purchasing into a single state agency will best position the state to work with others, including private sector purchasers, health insurance carriers, health care providers, and consumers to increase the quality and affordability of health care for all state residents;

(5) The development and implementation of uniform state policies for all state purchased health care is among the purposes for which the health care authority was originally created; and

(6) The state will be best able to take advantage of the opportunities and meet its obligations under the federal affordable care act, including establishment of a health benefit exchange and medicaid expansion, if primary responsibility for doing so rests with a single state agency.

The legislature therefore intends, where appropriate, to consolidate state health care purchasing within the health care authority, positioning the state to use its full purchasing power to get the greatest value for its money, and allowing other agencies to focus even more intently on their core missions." [2011 1st sp.s. c 15 § 1.]

Report—2011 1st sp.s. c 15: "(1) By December 10, 2011, the department of social and health services and the health care authority shall provide a preliminary report, and by December 1, 2012, provide a final implementation plan, to the governor and the legislature with recommendations regarding the role of the health care authority in the state's purchasing of mental health treatment, substance abuse treatment, and long-term care services, including services for those with developmental disabilities.

(2) The reports shall:

(a) Consider options for effectively coordinating the purchase and delivery of care for people who need long-term care, developmental disabilities, mental health, or chemical dependency services. Options considered may include, but are not limited to, transitioning purchase of these services from the department of social and health services to the health care authority, and strategies for the agencies to collaborate seamlessly while purchasing services separately; and

(b) Address the following components:

(i) Incentives to improve prevention efforts;

(ii) Service delivery approaches, including models for care management and care coordination and benefit design;

(iii) Rules to assure that those requiring long-term care services and supports receive that care in the least restrictive setting appropriate to their needs;

(iv) Systems to measure cost savings;

(v) Mechanisms to measure health outcomes and consumer satisfaction;

(vi) The designation of a single point of entry for financial and functional eligibility determinations for long-term care services; and

(vii) Process for collaboration with local governments.

(3) In developing these recommendations, the agencies shall:

(a) Consult with tribal governments and with interested stakeholders, including consumers, health care and other service providers, health insurance carriers, and local governments; and

(b) Cooperate with the joint select committee on health reform implementation established in House Concurrent Resolution No. 4404 and any of its advisory committees. The agencies shall strongly consider the guidance and input received from these forums in the development of its recommendations.

(4) The agencies shall submit a progress report to the governor and the legislature by November 15, 2013, that provides details on the agencies' progress on purchasing coordination to date." [2011 1st sp.s. c 15 § 116.]

Agency transfer—2011 1st sp.s. c 15: "(1) All powers, duties, and functions of the department of social and health services pertaining to the medical assistance program and the medicaid purchasing administration are transferred to the health care authority to the extent necessary to carry out the purposes of this act. All references to the secretary or the department of social and health services in the Revised Code of Washington shall be construed to mean the director or the health care authority when referring to the functions transferred in this section.

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

functions, and duties transferred shall be assigned to the health care authority.

(b) Any appropriations made to the department of social and health services for carrying out the powers, functions, and duties transferred shall, on July 1, 2011, be transferred and credited to the health care authority.

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

(3) All employees of the medicaid purchasing administration at the department of social and health services are transferred to the jurisdiction of the health care authority. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the health care authority to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the department of social and health services pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the health care authority. All existing contracts and obligations shall remain in full force and shall be performed by the health care authority.

(5) The transfer of the powers, duties, functions, and personnel of the department of social and health services shall not affect the validity of any act performed before July 1, 2011.

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

(7) A nonsupervisory medicaid purchasing unit bargaining unit is created at the health care authority. All nonsupervisory civil service employees of the medicaid purchasing administration at the department of social and health services assigned to the health care authority under this section whose positions are within the existing bargaining unit description at the department of social and health services shall become a part of the nonsupervisory medicaid purchasing unit bargaining unit at the health care authority under the provisions of chapter 41.80 RCW. The exclusive bargaining representative of the existing bargaining unit at the department of social and health services is certified as the exclusive bargaining representative of the nonsupervisory medicaid purchasing unit bargaining unit at the health care authority without the necessity of an election.

(8) A supervisory medicaid purchasing unit bargaining unit is created at the health care authority. All supervisory civil service employees of the medicaid purchasing administration at the department of social and health services assigned to the health care authority under this section whose positions are within the existing bargaining unit description at the department of social and health services shall become a part of the supervisory medicaid purchasing unit bargaining unit at the health care authority under the provisions of chapter 41.80 RCW. The exclusive bargaining representative of the existing bargaining unit at the department of social and health services is certified as the exclusive bargaining representative of the supervisory medicaid purchasing unit bargaining unit at the health care authority without the necessity of an election.

(9) The bargaining units of employees created under this section are appropriate units under the provisions of chapter 41.80 RCW. However, nothing contained in this section shall be construed to alter the authority of the public employment relations commission under the provisions of chapter 41.80 RCW to amend or modify the bargaining units.

(10) Positions from the department of social and health services central administration are transferred to the jurisdiction of the health care authority. Employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the health care authority to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(11) All classified employees of the department of social and health services central administration assigned to the health care authority under subsection (10) of this section whose positions are within an existing bargaining unit description at the health care authority shall become a part of the existing bargaining unit at the health care authority and shall be considered an appropriate inclusion or modification of the existing bargaining unit under the provisions of chapter 41.80 RCW." [2011 1st sp.s. c 15 § 124.]

References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: "The code reviser shall note wherever "administrator" is used or referred to in the Revised Code of Washington as the head of the health care authority that the title of the agency head has been changed to "director." The code reviser shall prepare legislation for the 2012 regular session that changes all statutory references to "administrator" of the health care authority to "director" of the health care authority." [2011 1st sp.s. c 15 § 125.]

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Additional notes found at www.leg.wa.gov

74.09.195 Audits of health care providers by the authority—Requirements—Procedure. (1) Audits of the records of health care providers performed under this chapter are subject to the following:

(a) The authority must provide at least thirty calendar days' notice before scheduling any on-site audit, unless there is evidence of danger to public health and safety or fraudulent activities;

(b) The authority must make a good faith effort to establish a mutually agreed upon time and date for the on-site audit;

(c) The authority must allow providers, at their request, to submit records requested as a result of an audit in electronic format, including compact disc, digital versatile disc, or other electronic formats deemed appropriate by the authority, or by facsimile transmission;

(d) The authority shall make reasonable efforts to avoid reviewing claims that are currently being audited by the authority, that have already been audited by the authority, or that are currently being audited by another governmental entity;

(e) A finding of overpayment to a provider in a program operated or administered by the authority may not be based on extrapolation unless there is a determination of sustained high level of payment error involving the provider or when documented educational intervention has failed to correct the level of payment error. Any finding that is based upon extrapolation, and the related sampling, must be established to be statistically fair and reasonable in order to be valid. The sampling methodology used must be validated by a statistician or person with equivalent experience as having a confidence level of ninety-five percent or greater;

(f) The authority must provide a detailed explanation in writing to a provider for any adverse determination that would result in partial or full recoupment of a payment to the provider. The written notification shall, at a minimum, include the following: (i) The reason for the adverse determination; (ii) the specific criteria on which the adverse determination was based; (iii) an explanation of the provider's appeal rights; and (iv) if applicable, the appropriate procedure to submit a claims adjustment in accordance with subsection (3) of this section;

(g) The authority may not recoup overpayments until all informal and formal appeals processes have been completed;

(h) The authority must offer a provider with an adverse determination the option of repaying the amount owed according to a negotiated repayment plan of up to twelve months;

(i) The authority must produce a preliminary report or draft audit findings within one hundred twenty days from the

receipt of all requested information as identified in writing by the authority; and

(j) In the event that the authority seeks to recoup funds from a provider who is no longer a contractor with the medical assistance program, the authority must provide a description of the claim, including the patient name, date of service, and procedure. A provider is not required to obtain a court order to receive such information.

(2) Any contractor that conducts audits of the medical assistance program on behalf of the authority must comply with the requirements in this subsection and must:

(a) In any appeal by a health care provider, employ or contract with a medical or dental professional who practices within the same specialty, is board certified, and experienced in the treatment, billing, and coding procedures used by the provider being audited to make findings and determinations;

(b) Compile, on an annual basis, metrics specified by the authority. The authority shall publish the metrics on its web site. The metrics must, at a minimum, include:

(i) The number and type of claims reviewed;

(ii) The number of records requested;

(iii) The number of overpayments and underpayments identified by the contractor;

(iv) The aggregate dollar amount associated with identified overpayments and underpayments;

(v) The duration of audits from initiation until time of completion;

(vi) The number of adverse determinations and the overturn rates of those determinations at each stage of the informal and formal appeal process;

(vii) The number of informal and formal appeals filed by providers categorized by disposition status;

(viii) The contractor's compensation structure and dollar amount of compensation; and

(ix) A copy of the authority's contract with the contractor.

(3) The authority shall develop and implement a procedure by which an improper payment identified by an audit may be resubmitted as a claims adjustment.

(4) The authority shall provide educational and training programs annually for providers. The training topics must include a summary of audit results, a description of common issues, problems and mistakes identified through audits and reviews, and opportunities for improvement. [2017 c 242 § 1.]

74.09.325 Reimbursement of a health care service provided through telemedicine or store and forward technology—Report to the legislature. (Effective January 1, 2018.)

(1) Upon initiation or renewal of a contract with the Washington state health care authority to administer a medicare managed care plan, a managed health care system shall reimburse a provider for a health care service provided to a covered person through telemedicine or store and forward technology if:

(a) The medicare managed care plan in which the covered person is enrolled provides coverage of the health care service when provided in person by the provider;

(b) The health care service is medically necessary;

(c) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal

patient protection and affordable care act in effect on January 1, 2015; and

(d) The health care service is determined to be safely and effectively provided through telemedicine or store and forward technology according to generally accepted health care practices and standards, and the technology used to provide the health care service meets the standards required by state and federal laws governing the privacy and security of protected health information.

(2)(a) If the service is provided through store and forward technology there must be an associated visit between the covered person and the referring health care provider. Nothing in this section prohibits the use of telemedicine for the associated office visit.

(b) For purposes of this section, reimbursement of store and forward technology is available only for those services specified in the negotiated agreement between the managed health care system and health care provider.

(3) An originating site for a telemedicine health care service subject to subsection (1) of this section includes a:

- (a) Hospital;
- (b) Rural health clinic;
- (c) Federally qualified health center;
- (d) Physician's or other health care provider's office;
- (e) Community mental health center;
- (f) Skilled nursing facility;
- (g) Home or any location determined by the individual receiving the service; or

(h) Renal dialysis center, except an independent renal dialysis center.

(4) Except for subsection (3)(g) of this section, any originating site under subsection (3) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement must be subject to a negotiated agreement between the originating site and the managed health care system. A distant site or any other site not identified in subsection (3) of this section may not charge a facility fee.

(5) A managed health care system may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.

(6) A managed health care system may subject coverage of a telemedicine or store and forward technology health service under subsection (1) of this section to all terms and conditions of the plan in which the covered person is enrolled including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable health care service provided in person.

(7) This section does not require a managed health care system to reimburse:

- (a) An originating site for professional fees;
- (b) A provider for a health care service that is not a covered benefit under the plan; or
- (c) An originating site or health care provider when the site or provider is not a contracted provider under the plan.

(8) For purposes of this section:

(a) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through telemedicine;

(b) "Health care service" has the same meaning as in RCW 48.43.005;

(c) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW;

(d) "Managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under this chapter and rendered by licensed providers, on a prepaid capitated basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(e) "Originating site" means the physical location of a patient receiving health care services through telemedicine;

(f) "Provider" has the same meaning as in RCW 48.43.005;

(g) "Store and forward technology" means use of an asynchronous transmission of a covered person's medical information from an originating site to the health care provider at a distant site which results in medical diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email; and

(h) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "telemedicine" does not include the use of audio-only telephone, facsimile, or email.

(9) To measure the impact on access to care for underserved communities and costs to the state and the medicaid managed health care system for reimbursement of telemedicine services, the Washington state health care authority, using existing data and resources, shall provide a report to the appropriate policy and fiscal committees of the legislature no later than December 31, 2018. [2017 c 219 § 3; 2016 c 68 § 5; 2015 c 23 § 4.]

Effective date—2017 c 219: See note following RCW 48.43.735.

Effective date—Intent—2016 c 68: See notes following RCW 48.43.735.

Effective date—Adoption of sections—2015 c 23 §§ 2-4: See notes following RCW 41.05.700.

Intent—2015 c 23: See note following RCW 41.05.700.

74.09.335 Reimbursement of health care services provided by fire departments—Adoption of standards.

The authority shall adopt standards for the reimbursement of health care services provided to eligible clients by fire departments pursuant to a community assistance referral and education services program under RCW 35.21.930. The standards must allow payment for covered health care services provided to individuals whose medical needs do not require ambulance transport to an emergency department. [2017 c 273 § 1.]

74.09.337 Children's mental health—Authority's duties. (Expires June 30, 2020.) (1) For children who are eligible for medical assistance and who have been identified as requiring mental health treatment, the authority must over-

see the coordination of resources and services through (a) the managed health care system as defined in RCW 74.09.325 and (b) tribal organizations providing health care services. The authority must ensure the child receives treatment and appropriate care based on their assessed needs, regardless of whether the referral occurred through primary care, school-based services, or another practitioner.

(2) The authority must require each managed health care system as defined in RCW 74.09.325 and each behavioral health organization to develop and maintain adequate capacity to facilitate child mental health treatment services in the community or transfers to a behavioral health organization, depending on the level of required care. Managed health care systems and behavioral health organizations must:

(a) Follow up with individuals to ensure an appointment has been secured;

(b) Coordinate with and report back to primary care provider offices on individual treatment plans and medication management, in accordance with patient confidentiality laws;

(c) Provide information to health plan members and primary care providers about the behavioral health resource line available twenty-four hours a day, seven days a week; and

(d) Maintain an accurate list of providers contracted to provide mental health services to children and youth. The list must contain current information regarding the providers' availability to provide services. The current list must be made available to health plan members and primary care providers.

(3) This section expires June 30, 2020. [2017 c 226 § 4.]

Sustainable solutions for the integration of behavioral and physical health—2017 c 226: See note following RCW 74.09.497.

74.09.340 Personal needs allowance, adjusted. Effective July 1, 2017, and each fiscal year thereafter, subject to the availability of amounts appropriated for this specific purpose, the personal needs allowance shall be adjusted for economic trends and conditions by increasing the allowance by the percentage cost-of-living adjustment for old-age, survivors, and disability social security benefits as published by the federal social security administration. However, in no case shall the personal needs allowance exceed the maximum personal needs allowance permissible under the federal social security act. [2017 c 270 § 2.]

Findings—Intent—2017 c 270: "(1) The legislature finds that through the medicaid program, state and federal government fund long-term care, mental health, and medical services for many elderly persons and people with disabilities, both in institutions and in community alternatives. The legislature also finds that a significant portion of these individuals' social security benefits is retained by the state to assist with the cost of their care. The legislature intends that these individuals retain for their own use a reasonable and modest personal needs allowance which may be used to purchase clothing, postage, barber services, travel, and other personal items not covered by their care setting, in order to promote their autonomy and personal dignity.

(2) It is the intent of the legislature to adjust the personal needs allowance annually to reflect cost-of-living adjustments to federal social security benefits for medicaid-eligible residents in institutions and community-based residential settings receiving long-term care, developmental disabilities, or mental health services." [2017 c 270 § 1.]

Effective date—2017 c 270: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2017." [2017 c 270 § 3.]

74.09.475 Newborn delivery services to medical assistance clients—Policies and procedures—Reporting.

[2017 RCW Supp—page 830]

(1) Effective January 1, 2018, the authority shall require that all health care facilities that provide newborn delivery services to medical assistance clients establish policies and procedures to provide:

(a) Skin-to-skin placement of the newborn on the mother's chest immediately following birth to promote the initiation of breastfeeding, except as otherwise indicated by authority guidelines; and

(b) Room-in practices in which a newborn and a mother share the same room for the duration of their postdelivery stay at the facility, except as otherwise indicated by authority guidelines.

(2) The authority shall provide guidelines for hospitals to use when establishing policies and procedures for services under subsection (1) of this section, including circumstances in which providing the services is not appropriate.

(3) The authority shall require managed care organizations to report on the frequency with which each facility they contract with is able to adhere to the policies and procedures and the most common reasons for nonadherence. The authority shall include a summary of this information in the biennial report required under RCW 74.09.480(3). [2017 c 294 § 2.]

Findings—2017 c 294: "(1) The legislature finds that the state has an interest in assuring that children are given the opportunity to have a healthy start in life. Because approximately half of all births in Washington state are funded by state resources, and over eight hundred thousand children in Washington state are enrolled in the apple health program, the state is in a unique position to make a difference in the health of children in Washington.

(2) The legislature also finds that there may be gaps in programs that could greatly benefit children. Where programs may benefit children in their early stages of development, the state must assure they receive these benefits. Where children are not receiving services because the public is unaware of the services, opportunities for outreach must be explored.

(3) The legislature additionally finds that several hospitals have begun adopting the best practices of the baby-friendly hospital initiative. The state can use its resources to encourage hospitals to adopt some of the most critical components by incorporating the standards into medicaid contracts.

(4) The legislature further finds that providing children with a healthy start also requires promoting healthy pregnancies. In one national survey, pregnant workers said they needed more frequent breaks while pregnant. Prenatal care is also critical for positive birth outcomes, and pregnant women have cited the need for flexibility in their work schedule for the purposes of attending doctor visits. Reasonable accommodations for pregnant women in the workplace can go a long way to promoting healthy pregnancies without producing an undue hardship on employers." [2017 c 294 § 1.]

74.09.480 Performance measures—Provider rate increases—Report. (1) The authority, in collaboration with the department of health, department of social and health services, health carriers, local public health jurisdictions, children's health care providers including pediatricians, family practitioners, advanced registered nurse practitioners, certified nurse midwives, and pediatric subspecialists, community and migrant health centers, parents, and other purchasers, shall establish a concise set of explicit performance measures that can indicate whether children enrolled in the program are receiving health care through an established and effective medical home, and whether the overall health of enrolled children is improving. Such indicators may include, but are not limited to:

(a) Childhood immunization rates;

(b) Well child care utilization rates, including the use of behavioral and oral health screening, and validated, structured developmental screens using tools, that are consistent with nationally accepted pediatric guidelines and recom-

mended administration schedule, once funding is specifically appropriated for this purpose;

- (c) Care management for children with chronic illnesses;
- (d) Emergency room utilization;
- (e) Visual acuity and eye health;
- (f) Preventive oral health service utilization; and
- (g) Children's mental health status. In defining these measures the authority shall be guided by the measures provided in RCW 71.36.025.

Performance measures and targets for each performance measure must be established and monitored each biennium, with a goal of achieving measurable, improved health outcomes for the children of Washington state each biennium.

(2) Beginning in calendar year 2009, targeted provider rate increases shall be linked to quality improvement measures established under this section. The authority, in conjunction with those groups identified in subsection (1) of this section, shall develop parameters for determining criteria for increased payment, alternative payment methodologies, or other incentives for those practices and health plans that incorporate evidence-based practice and improve and achieve sustained improvement with respect to the measures.

(3) The department shall provide a report to the governor and the legislature related to provider performance on these measures, as well as the information collected under RCW 74.09.475, beginning in September 2010 for 2007 through 2009 and the authority shall provide the report biennially thereafter. [2017 c 294 § 4; 2011 1st sp.s. c 15 § 22; 2009 c 463 § 4; 2007 c 5 § 4.]

Findings—2017 c 294: See note following RCW 74.09.475.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Findings—Intent—Short title—2009 c 463: See notes following RCW 74.09.470.

74.09.492 Children's mental health—Treatment and services—Authority's duties. (Expires June 30, 2020.) (1) For children who are eligible for medical assistance and who have been identified as requiring mental health treatment, the authority must oversee the coordination of resources and services through (a) the managed health care system as defined in RCW 74.09.325 and (b) tribal organizations providing health care services. The authority must ensure the child receives treatment and appropriate care based on their assessed needs, regardless of whether the referral occurred through primary care, school-based services, or another practitioner.

(2) The authority must require each managed health care system as defined in RCW 74.09.325 and each behavioral health organization to develop and maintain adequate capacity to facilitate child mental health treatment services in the community or transfers to a behavioral health organization, depending on the level of required care. Managed health care systems and behavioral health organizations must:

- (a) Follow up with individuals to ensure an appointment has been secured;
- (b) Coordinate with and report back to primary care provider offices on individual treatment plans and medication management, in accordance with patient confidentiality laws;

(c) Provide information to health plan members and primary care providers about the behavioral health resource line available twenty-four hours a day, seven days a week; and

(d) Maintain an accurate list of providers contracted to provide mental health services to children and youth. The list must contain current information regarding the providers' availability to provide services. The current list must be made available to health plan members and primary care providers.

(3) This section expires June 30, 2020. [2017 c 202 § 2.]

Findings—Intent—2017 c 202: "The legislature finds that children and their families face systemic barriers to accessing necessary mental health services. These barriers include a workforce shortage of mental health providers throughout the system of care. Of particular concern are shortages of providers in underserved rural areas of our state and a shortage of providers statewide who can deliver culturally and linguistically appropriate services. The legislature further finds that greater coordination across systems, including early learning, K-12 education, and health care, is necessary to provide children and their families with coordinated care.

The legislature further finds that until mental health and physical health services are fully integrated in the year 2020, children who are eligible for medicaid services and require mental health treatment should receive coordinated mental health and physical health services to the fullest extent possible.

The legislature further finds that in 2013, the department of social and health services and the health care authority reported that only forty percent of the children on medicaid who had mental health treatment needs were receiving services and that mental health treatment needs increase with the number of adverse childhood experiences that a child has undergone.

The legislature further finds that children with mental health service needs have higher rates of emergency room use, criminal justice system involvement, and an increased risk of homelessness, and that trauma-informed care can mitigate some of these negative outcomes.

Therefore, the legislature intends to implement recommendations from the children's mental health work group, as reported in December 2016, in order to improve mental health care access for children and their families through the early learning, K-12 education, and health care systems. The legislature further intends to encourage providers to use behavioral health therapies and other therapies that are empirically supported or evidence-based and only prescribe medications for children and youth as a last resort." [2017 c 202 § 1.]

74.09.495 Behavioral health services—Access by children—Report. To better assure and understand issues related to network adequacy and access to services, the authority and the department shall report to the appropriate committees of the legislature by December 1, 2017, and annually thereafter, on the status of access to behavioral health services for children birth through age seventeen using data collected pursuant to RCW 70.320.050.

(1) At a minimum, the report must include the following components broken down by age, gender, and race and ethnicity:

(a) The percentage of discharges for patients ages six through seventeen who had a visit to the emergency room with a primary diagnosis of mental health or alcohol or other drug dependence during the measuring year and who had a follow-up visit with any provider with a corresponding primary diagnosis of mental health or alcohol or other drug dependence within thirty days of discharge;

(b) The percentage of health plan members with an identified mental health need who received mental health services during the reporting period; and

(c) The percentage of children served by behavioral health organizations, including the types of services provided.

(2) The report must also include the number of children's mental health providers available in the previous year, the

languages spoken by those providers, and the overall percentage of children's mental health providers who were actively accepting new patients. [2017 c 226 § 6; 2017 c 202 § 3; 2016 c 96 § 3.]

Sustainable solutions for the integration of behavioral and physical health—2017 c 226: See note following RCW 74.09.497.

Findings—Intent—2017 c 202: See note following RCW 74.09.492.

Findings—Intent—2016 c 96: "(1) The legislature understands that adverse childhood experiences, such as family mental health issues, substance abuse, serious economic hardship, and domestic violence, all increase the likelihood of developmental delays and later health and mental health problems. The legislature further understands that early intervention services for children and families at high risk for adverse childhood experience help build secure parent-child attachment and bonding, which allows young children to thrive and form strong relationships in the future. The legislature finds that early identification and intervention are critical for children exhibiting aggressive or depressive behaviors indicative of early mental health problems. The legislature intends to improve access to adequate, appropriate, and culturally responsive mental health services for children and youth. **The legislature further intends to encourage the use of behavioral health therapies and other therapies that are empirically supported or evidence-based and only prescribe medications for children and youth as a last resort.**

(2) The legislature finds that nearly half of Washington's children are enrolled in medicaid and have a higher incidence of serious health problems compared to children who have commercial insurance. The legislature recognizes that disparities also exist in the diagnosis and initiation of treatment services for children of color, with studies demonstrating that children of color are diagnosed and begin receiving early interventions at a later age. The legislature finds that within the current system of care, families face barriers to receiving a full range of services for children experiencing behavioral health problems. The legislature intends to identify what network adequacy requirements, if strengthened, would increase access, continuity, and coordination of behavioral health services for children and families. The legislature further intends to encourage managed care plans and behavioral health organizations to contract with the same providers that serve children so families are not required to duplicate mental health screenings, and to recommend provider rates for mental health services to children and youth which will ensure an adequate network and access to quality based care.

(3) The legislature recognizes that early and accurate recognition of behavioral health issues coupled with appropriate and timely intervention enhances health outcomes while minimizing overall expenditures. The legislature intends to assure that annual depression screenings are done consistently with the highly vulnerable medicaid population and that children and families benefit from earlier access to services." [2016 c 96 § 1.]

Reviser's note: The language in bold print was a part of the underlying Session Law but was inadvertently omitted from the original publication of this section in the Revised Code of Washington. The Code Reviser has restored the language to accurately reflect the law.

Children's mental health work group—2016 c 96: "(1) The children's mental health work group is established to identify barriers to accessing mental health services for children and families, and to advise the legislature on statewide mental health services for this population.

(2)(a) The work group shall include diverse, statewide representation from the public and nonprofit and for-profit entities. Its membership shall reflect regional, racial, and cultural diversity to adequately represent the needs of all children and families in the state.

(b) The work group shall consist of not more than twenty-five members, as follows:

(i) The president of the senate shall appoint one member and one alternative member from each of the two largest caucuses of the senate.

(ii) The speaker of the house of representatives shall appoint one member and one alternative member from each of the two largest caucuses in the house of representatives.

(iii) The governor shall appoint at least one representative from each of the following: The *department of early learning, the department of social and health services, the health care authority, the department of health, and a representative of the governor.

(iv) The superintendent of public instruction shall appoint one representative from the office of the superintendent of public instruction.

(v) The governor shall request participation by a representative of tribal governments.

(vi) The governor shall appoint one representative from each of the following: Behavioral health organizations, community mental health agencies, medicaid managed care organizations, pediatricians or primary care providers, providers that specialize in early childhood mental health, child health advocacy groups, early learning and child care providers, the managed health care plan for foster children, the evidence-based practice institute, parents or caregivers who have been a recipient of early childhood mental health services, and foster parents.

(c) The work group shall seek input and participation from stakeholders interested in the improvement of statewide mental health services for children and families.

(d) The work group shall choose two cochairs, one from among its legislative membership and one representative of a state agency. The representative from the health care authority shall convene the initial meeting of the work group.

(3) The children's mental health work group shall review the barriers that exist to identifying and treating mental health issues in children with a particular focus on birth to five and report to the appropriate committees of the legislature. At a minimum the work group must:

(a) Review and recommend developmentally, culturally, and linguistically appropriate assessment tools and diagnostic approaches that managed care plans and behavioral health organizations should use as the mechanism to establish eligibility for services;

(b) Identify and review billing issues related to serving the parent or caregiver in a treatment dyad and the billing issues related to services that are appropriate for serving children, including children birth to five;

(c) Evaluate and identify barriers to billing and payment for behavioral health services provided within primary care settings in an effort to promote and increase the use of behavioral health professionals within primary care settings;

(d) Review workforce issues related to serving children and families, including issues specifically related to birth to five;

(e) Recommend strategies for increasing workforce diversity and the number of professionals qualified to provide children's mental health services;

(f) Review and make recommendations on the development and adoption of standards for training and endorsement of professionals to become qualified to provide mental health services to children birth to five and their parents or caregivers;

(g) Analyze, in consultation with the *department of early learning, the health care authority, and the department of social and health services, existing and potential mental health supports for child care providers to reduce expulsions of children in child care and preschool; and

(h) Identify outreach strategies that will successfully disseminate information to parents, providers, schools, and other individuals who work with children and youth on the mental health services offered through the health care plans, including referrals to parenting programs, community providers, and behavioral health organizations.

(4) Legislative members of the work group are reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members are not entitled to be reimbursed for travel expenses if they are elected officials or are participating on behalf of an employer, governmental entity, or other organization. Any reimbursement for other nonlegislative members is subject to chapter 43.03 RCW.

(5) The expenses of the work group must be paid jointly by the senate and the house of representatives. Work group expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

(6) The work group shall report its findings and recommendations to the appropriate committees of the legislature by December 1, 2016.

(7) Staff support for the committee must be provided by the house of representatives office of program research, the senate committee services, and the office of financial management.

(8) This section expires December 1, 2017." [2016 c 96 § 2.]

***Reviser's note:** The department of early learning was abolished and its powers, duties, and functions were transferred to the department of children, youth, and families by 2017 3rd sp.s. c 6 § 802, effective July 1, 2018.

74.09.497 Authority review of payment codes available to health plans and providers related to primary care and behavioral health—Requirements—Principles considered—Matrices—Reporting. (1) By August 1, 2017, the authority must complete a review of payment codes available to health plans and providers related to primary care and

behavioral health. The review must include adjustments to payment rules if needed to facilitate bidirectional integration. The review must involve stakeholders and include consideration of the following principles to the extent allowed by federal law:

(a) Payment rules must allow professionals to operate within the full scope of their practice;

(b) Payment rules should allow medically necessary behavioral health services for covered patients to be provided in any setting;

(c) Payment rules should allow medically necessary primary care services for covered patients to be provided in any setting;

(d) Payment rules and provider communications related to payment should facilitate integration of physical and behavioral health services through multifaceted models, including primary care behavioral health, whole-person care in behavioral health, collaborative care, and other models;

(e) Payment rules should be designed liberally to encourage innovation and ease future transitions to more integrated models of payment and more integrated models of care;

(f) Payment rules should allow health and behavior codes to be reimbursed for all patients in primary care settings as provided by any licensed behavioral health professional operating within their scope of practice, including but not limited to psychiatrists, psychologists, psychiatric advanced registered nurse professionals, physician assistants working with a supervising psychiatrist, psychiatric nurses, mental health counselors, social workers, chemical dependency professionals, chemical dependency professional trainees, marriage and family therapists, and mental health counselor associates under the supervision of a licensed clinician;

(g) Payment rules should allow health and behavior codes to be reimbursed for all patients in behavioral health settings as provided by any licensed health care provider within the provider's scope of practice;

(h) Payment rules which limit same-day billing for providers using the same provider number, require prior authorization for low-level or routine behavioral health care, or prohibit payment when the patient is not present should be implemented only when consistent with national coding conventions and consonant with accepted best practices in the field.

(2) Concurrent with the review described in subsection (1) of this section, the authority must create matrices listing the following codes available for provider payment through medical assistance programs: All behavioral health-related codes; and all physical health-related codes available for payment when provided in licensed behavioral health agencies. The authority must clearly explain applicable payment rules in order to increase awareness among providers, standardize billing practices, and reduce common and avoidable billing errors. The authority must disseminate this information in a manner calculated to maximally reach all relevant plans and providers. The authority must update the provider billing guide to maintain consistency of information.

(3) The authority must inform the governor and relevant committees of the legislature by letter of the steps taken pursuant to this section and results achieved once the work has been completed. [2017 c 226 § 2.]

Contingent effective date—2017 c 226 § 2: "Section 2 of this act takes effect only if Engrossed Substitute House Bill No. 1340 (including any later amendments or substitutes) is not signed into law by the governor by July 23, 2017." [2017 c 226 § 10.] Engrossed Substitute House Bill No. 1340 was not signed into law by July 23, 2017.

Sustainable solutions for the integration of behavioral and physical health—2017 c 226: "Health transformation in Washington state requires a multifaceted approach to implement sustainable solutions for the integration of behavioral and physical health. Effective integration requires a holistic approach and cannot be limited to one strategy or model. Bidirectional integration of primary care and behavioral health is a foundational strategy to reduce health disparities and provide better care coordination for patients regardless of where they choose to receive care.

An important component to health care integration supported both by research and experience in Washington is primary care behavioral health, a model in which behavioral health providers, sometimes called behavioral health consultants, are fully integrated in primary care. The primary care behavioral health model originated more than two decades ago, has become standard practice nationally in patient centered medical homes, and has been endorsed as a viable integration strategy by Washington's Dr. Robert J. Bree Collaborative.

Primary care settings are a gateway for many individuals with behavioral health and primary care needs. An estimated one in four primary care patients have an identifiable behavioral health need and as many as seventy percent of primary care visits are impacted by a psychosocial component. A behavioral health consultant engages primary care patients and their caregivers on the same day as a medical visit, often in the same exam room. This warm hand-off approach fosters coordinated whole-person care, increases access to behavioral health services, and reduces stigma and cultural barriers in a cost-effective manner. Patients are provided evidence-based brief interventions and skills training, with more severe needs being effectively engaged, assessed, and referred to appropriate specialized care.

While the benefits of primary care behavioral health are not restricted to children, the primary care behavioral health model also provides a unique opportunity to engage children who have a strong relationship with primary care, identify problems early, and assure healthy development. Investment in primary care behavioral health creates opportunities for prevention and early detection that pay dividends throughout the life cycle.

The legislature also recognizes that for individuals with more complex behavioral health disorders, there are tremendous barriers to accessing primary care. Whole-person care in behavioral health is an evidence-based model for integrating primary care into behavioral health settings where these patients already receive care. Health disparities among people with behavioral health disorders have been well-documented for decades. People with serious mental illness or substance use disorders continue to experience multiple chronic health conditions and dramatically reduced life expectancy while also constituting one of the highest-cost and highest-risk populations. Two-thirds of premature deaths are due to preventable or treatable medical conditions such as cardiovascular, pulmonary, and infectious diseases, and forty-four percent of all cigarettes consumed nationally are smoked by people with serious mental illness.

The whole-person care in behavioral health model allows behavioral health providers to take responsibility for managing the full array of physical health needs, providing routine basic health screening, and ensuring integrated primary care by actively coordinating with or providing on-site primary care services.

Providers in Washington need guidance on how to effectively implement bidirectional integration models in a manner that is also financially sustainable. Payment methodologies must be scrutinized to remove nonessential restrictions and limitations that restrict the scope of practice of behavioral health professionals, impede same-day billing for behavioral health and primary care services, avert billing errors, and stymie innovation that supports wellness and health integration." [2017 c 226 § 1.]

74.09.510 Medical assistance—Eligibility. (Effective July 1, 2018.) Medical assistance may be provided in accordance with eligibility requirements established by the authority, as defined in the social security Title XIX state plan for mandatory categorically needy persons and:

(1) Individuals who would be eligible for cash assistance except for their institutional status;

(2) Individuals who are under twenty-one years of age, who would be eligible for medicaid, but do not qualify as

dependent children and who are in (a) foster care, (b) subsidized adoption, (c) a nursing facility or an intermediate care facility for persons with intellectual disabilities, or (d) inpatient psychiatric facilities;

(3) Individuals who:

(a) Are under twenty-one years of age;

(b) On or after July 22, 2007, were in foster care under the legal responsibility of the department of social and health services, the department of children, youth, and families, or a federally recognized tribe located within the state; and

(c) On their eighteenth birthday, were in foster care under the legal responsibility of the department of children, youth, and families or a federally recognized tribe located within the state;

(4) Persons who are aged, blind, or disabled who: (a) Receive only a state supplement, or (b) would not be eligible for cash assistance if they were not institutionalized;

(5) Categorically eligible individuals who meet the income and resource requirements of the cash assistance programs;

(6) Individuals who are enrolled in managed health care systems, who have otherwise lost eligibility for medical assistance, but who have not completed a current six-month enrollment in a managed health care system, and who are eligible for federal financial participation under Title XIX of the social security act;

(7) Children and pregnant women allowed by federal statute for whom funding is appropriated;

(8) Working individuals with disabilities authorized under section 1902(a)(10)(A)(ii) of the social security act for whom funding is appropriated;

(9) Other individuals eligible for medical services under RCW 74.09.700 for whom federal financial participation is available under Title XIX of the social security act;

(10) Persons allowed by section 1931 of the social security act for whom funding is appropriated; and

(11) Women who: (a) Are under sixty-five years of age; (b) have been screened for breast and cervical cancer under the national breast and cervical cancer early detection program administered by the department of health or tribal entity and have been identified as needing treatment for breast or cervical cancer; and (c) are not otherwise covered by health insurance. Medical assistance provided under this subsection is limited to the period during which the woman requires treatment for breast or cervical cancer, and is subject to any conditions or limitations specified in the omnibus appropriations act. [2017 3rd sp.s. c 6 § 337; 2013 2nd sp.s. c 10 § 6. Prior: 2011 1st sp.s. c 36 § 9; 2011 1st sp.s. c 15 § 25; 2010 c 94 § 24; 2007 c 315 § 1; prior: 2001 2nd sp.s. c 15 § 3; 2001 1st sp.s. c 4 § 1; prior: 1997 c 59 § 14; 1997 c 58 § 201; 1991 sp.s. c 8 § 8; 1989 1st ex.s. c 10 § 8; 1989 c 87 § 2; 1985 c 5 § 2; 1981 2nd ex.s. c 3 § 5; 1981 1st ex.s. c 6 § 20; 1981 c 8 § 19; 1971 ex.s. c 169 § 4; 1970 ex.s. c 60 § 1; 1967 ex.s. c 30 § 4.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—2013 2nd sp.s. c 10: See note following RCW 74.62.030.

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Purpose—2010 c 94: See note following RCW 44.04.280.

Conflict with federal requirements—2007 c 315: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2007 c 315 § 3.]

Findings—Intent—2001 2nd sp.s. c 15: See note following RCW 74.09.540.

Additional notes found at www.leg.wa.gov

74.09.520 Medical assistance—Care and services included—Funding limitations. (1) The term "medical assistance" may include the following care and services subject to rules adopted by the authority or department: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and X-ray services; (d) nursing facility services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary or director; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical and occupational therapy and related services; (k) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a child by a school district in a manner consistent with the requirements of this chapter. For the purposes of this section, neither the authority nor the department may cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services.

(2) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care for clients requiring health-related consultation for assessment and service planning may be reviewed by a nurse.

(c) The department shall determine by rule which clients have a health-related assessment or service planning need requiring registered nurse consultation or review. This defini-

tion may include clients that meet indicators or protocols for review, consultation, or visit.

(3) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for funding reasons should be accomplished in a manner that assures that priority for maintaining services is given to persons with the greatest need as determined by the assessment of functional disability.

(4) Effective July 1, 1989, the authority shall offer hospice services in accordance with available funds.

(5) For Title XIX personal care services administered by aging and disability services administration of the department, the department shall contract with area agencies on aging:

(a) To provide case management services to individuals receiving Title XIX personal care services in their own home; and

(b) To reassess and reauthorize Title XIX personal care services or other home and community services as defined in RCW 74.39A.009 in home or in other settings for individuals consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive Title XIX personal care services or other home and community services as defined in RCW 74.39A.009; and

(ii) Who, at the time of reassessment and reauthorization, are receiving such services in their own home.

(6) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract or an individual consumer's need for case management services will be met through an alternative delivery system, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found.

(7) Subject to the availability of amounts appropriated for this specific purpose, the authority may offer medicare part D prescription drug copayment coverage to full benefit dual eligible beneficiaries.

(8) Effective January 1, 2016, the authority shall require universal screening and provider payment for autism and developmental delays as recommended by the bright futures guidelines of the American academy of pediatrics, as they existed on August 27, 2015. This requirement is subject to the availability of funds.

(9) Subject to the availability of amounts appropriated for this specific purpose, effective January 1, 2018, the authority shall require provider payment for annual depression screening for youth ages twelve through eighteen as recommended by the bright futures guidelines of the American academy of pediatrics, as they existed on January 1, 2017. Providers may include, but are not limited to, primary care providers, public health nurses, and other providers in a clinical setting. This requirement is subject to the availability of funds appropriated for this specific purpose.

(10) Subject to the availability of amounts appropriated for this specific purpose, effective January 1, 2018, the authority shall require provider payment for maternal depres-

sion screening for mothers of children ages birth to six months. This requirement is subject to the availability of funds appropriated for this specific purpose. [2017 c 202 § 4; 2015 1st sp.s. c 8 § 2; 2011 1st sp.s. c 15 § 27; 2007 c 3 § 1; 2004 c 141 § 2; 2003 c 279 § 1; 1998 c 245 § 145; 1995 1st sp.s. c 18 § 39; 1994 c 21 § 4. Prior: 1993 c 149 § 10; 1993 c 57 § 1; 1991 sp.s. c 8 § 9; prior: 1991 c 233 § 1; 1991 c 119 § 1; prior: 1990 c 33 § 594; 1990 c 25 § 1; prior: 1989 c 427 § 10; 1989 c 400 § 3; 1985 c 5 § 3; 1982 1st ex.s. c 19 § 4; 1981 1st ex.s. c 6 § 21; 1981 c 8 § 20; 1979 c 141 § 344; 1969 ex.s. c 173 § 11; 1967 ex.s. c 30 § 5.]

Findings—Intent—2017 c 202: See note following RCW 74.09.492.

Findings—2015 1st sp.s. c 8: "(1) The bright futures guidelines issued by the American academy of pediatrics outline recommended well-child visit schedules and universal screening of children for autism and developmental delays. Private health plans established after March 2010 are required to comply with the bright futures guidelines as the standard for preventive services. The federal law does not require medicaid programs to follow the guidelines; however, thirty states completely cover the bright futures guidelines, six states cover all but one well-child screen, and six additional states cover all but developmental and autism screens as part of their medicaid programs.

(2) The 2012 Washington state legislature directed the Washington state institute for public policy to assess the costs and benefits of implementing the guidelines. The research indicates that fewer than half of children with developmental delays are identified before starting school and roughly half of children with autism spectrum disorder are diagnosed only after entering school, by which time significant delays may have occurred and opportunities for treatment may have been missed. Adopting the universal screening guidelines improves early diagnosis and enables early intervention with appropriate therapies and services. The annual cost to society for caring for children with autism or developmental delays can be significant, including cost of services, special education, informal care, and lost productivity. Early intervention and access to appropriate therapies mitigate long-term societal costs and improve the health and opportunity for the child.

(3) The more adverse experiences a child has, such as the burden of family economic hardship and social bias, the greater the likelihood of developmental delays and later health problems. Over forty-six percent of Washington's children have medicaid apple health for kids and have a much greater likelihood of reporting poor to very poor health compared to children who have commercial insurance. Disparities also exist in the diagnosis and initiation of treatment services for children of color. Research shows that children of color are diagnosed later and begin receiving early intervention services later. This health equity gap can be addressed by identifying and supporting children early through universal screening.

(4) Primary care providers currently see ninety-nine percent of children between birth and three years of age and are uniquely situated to access nearly all children with universal screening." [2015 1st sp.s. c 8 § 1.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Intent—1989 c 400: See note following RCW 28A.150.390.

Legislative confirmation of effect of 1994 c 21: RCW 43.20B.090.

Additional notes found at www.leg.wa.gov

74.09.5225 Medical assistance—Payments for services provided by rural hospitals—Participation in Washington rural health access preservation pilot. (1) Payments for recipients eligible for medical assistance programs under this chapter for services provided by hospitals, regardless of the beneficiary's managed care enrollment status, shall be made based on allowable costs incurred during the year, when services are provided by a rural hospital certified by the centers for medicare and medicaid services as a critical access hospital, unless the critical access hospital is participating in the Washington rural health access preserva-

tion pilot described in subsection (2)(b) of this section. Any additional payments made by the authority for the healthy options program shall be no more than the additional amounts per service paid under this section for other medical assistance programs.

(2)(a) Beginning on July 24, 2005, except as provided in (b) of this subsection, a moratorium shall be placed on additional hospital participation in critical access hospital payments under this section. However, rural hospitals that applied for certification to the centers for medicare and medicaid services prior to January 1, 2005, but have not yet completed the process or have not yet been approved for certification, remain eligible for medical assistance payments under this section.

(b)(i) The purpose of the Washington rural health access preservation pilot is to develop an alternative service and payment system to the critical access hospital authorized under section 1820 of the social security act to sustain essential services in rural communities.

(ii) For the purposes of state law, any rural hospital approved by the department of health for participation in critical access hospital payments under this section that participates in the Washington rural health access preservation pilot identified by the state office of rural health and ceases to participate in critical access hospital payments may renew participation in critical access hospital associated payment methodologies under this section at any time.

(iii) The Washington rural health access preservation pilot is subject to the following requirements:

(A) In the pilot formation or development, the department of health, health care authority, and Washington state hospital association will identify goals for the pilot project before any hospital joins the pilot project;

(B) Participation in the pilot is optional and no hospital may be required to join the pilot;

(C) Before a hospital enters the pilot program, the health care authority must provide information to the hospital regarding how the hospital could end its participation in the pilot if the pilot is not working in its community;

(D) Payments for services delivered by public health care service districts participating in the Washington rural health access preservation pilot to recipients eligible for medical assistance programs under this chapter must be based on an alternative, value-based payment methodology established by the authority. Subject to the availability of amounts appropriated for this specific purpose, the payment methodology must provide sufficient funding to sustain essential services in the areas served, including but not limited to emergency and primary care services. The methodology must adjust payment amounts based on measures of quality and value, rather than volume. As part of the pilot, the health care authority shall encourage additional payers to use the adopted payment methodology for services delivered by the pilot participants to individuals insured by those payers;

(E) The department of health, health care authority, and Washington state hospital association will report interim progress to the legislature no later than December 1, 2018, and will report on the results of the pilot no later than six months following the conclusion of the pilot. The reports will describe any policy changes identified during the course of

the pilot that would support small critical access hospitals; and

(F) Funds appropriated for the Washington rural health access preservation pilot will be used to help participating hospitals transition to a new payment methodology and will not extend beyond the anticipated three-year pilot period.

(3)(a) Beginning January 1, 2015, payments for recipients eligible for medical assistance programs under this chapter for services provided by a hospital, regardless of the beneficiary's managed care enrollment status, shall be increased to one hundred twenty-five percent of the hospital's fee-for-service rates, when services are provided by a rural hospital that:

(i) Was certified by the centers for medicare and medicaid services as a sole community hospital as of January 1, 2013;

(ii) Had a level III adult trauma service designation from the department of health as of January 1, 2014;

(iii) Had less than one hundred fifty acute care licensed beds in fiscal year 2011; and

(iv) Is owned and operated by the state or a political subdivision.

(b) The enhanced payment rates under this subsection shall be considered the hospital's medicaid payment rate for purposes of any other state or private programs that pay hospitals according to medicaid payment rates.

(c) Hospitals participating in the certified public expenditures program may not receive the increased reimbursement rates provided in this subsection (3) for inpatient services. [2017 c 198 § 1; 2016 sp.s. c 31 § 2; 2014 c 57 § 2; 2011 1st sp.s. c 15 § 31; 2005 c 383 § 1; 2001 2nd sp.s. c 2 § 2.]

Finding—Intent—2016 sp.s. c 31: "The legislature finds that small critical access hospitals provide essential services to their communities. The legislature recognizes the need to offer small critical access hospitals the opportunity to pilot different delivery and payment models than may be currently allowed under the critical access hospital program. The legislature also intends to allow these participating hospitals to return to the critical access hospital program if they so choose." [2016 sp.s. c 31 § 1.]

Findings—2014 c 57: "The legislature finds that promoting a financially viable health care system in all parts of the state is a critical interest. The federal centers for medicare and medicaid services has recognized the crucial role hospitals play in providing care in rural areas by creating the sole community hospital program, which allows certain small rural hospitals to receive enhanced payments for medicare services. The legislature further finds that creating a similar reimbursement system for the state's medicaid program for sole community hospitals will promote the long-term financial viability of the rural health care system in those communities." [2014 c 57 § 1.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Findings—2001 2nd sp.s. c 2: "The legislature finds that promoting a financially viable health care system in all parts of the state is a paramount interest. The health care financing administration has recognized the crucial role that hospitals play in providing care in rural areas by creating the critical access hospital program to allow small, rural hospitals that qualify to receive reasonable cost-based reimbursement for medicare services. The legislature further finds that creating a similar reimbursement system for the state's medical assistance programs in small, rural hospitals that qualify will help assure the long-term financial viability of the rural health system in those communities." [2001 2nd sp.s. c 2 § 1.]

74.09.717 Dental health aide therapist services—Federal funding. (1) It is the intent of the legislature to provide that dental health aide therapist services are eligible for

medicaid funding in order to promote increased dental care access for persons served in settings operated by Indian tribes, tribal organizations, and urban Indian organizations.

(2) The health care authority is directed to coordinate with the centers for medicare and medicaid services to provide that dental health aide therapist services authorized in chapter 70.350 RCW are eligible for federal funding of up to one hundred percent. [2017 c 5 § 8.]

Chapter 74.12 RCW

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Sections

- 74.12.037 Repealed. *(Effective July 1, 2018.)*
- 74.12.901 Repealed.

74.12.037 Repealed. *(Effective July 1, 2018.)* See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

Chapter 74.12A RCW

INCENTIVE TO WORK—ECONOMIC INDEPENDENCE

Sections

- 74.12A.030 Repealed.

74.12A.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 74.13 RCW

CHILD WELFARE SERVICES

Sections

- 74.13.017 Repealed.
- 74.13.020 Definitions. *(Effective July 1, 2018.)*
- 74.13.025 Counties may administer and provide services under RCW 13.32A.197—Plan for at-risk youth required. *(Effective July 1, 2018.)*
- 74.13.031 Duties of department—Child welfare services—Children's services advisory committee.
- 74.13.039 Runaway hotline. *(Effective July 1, 2018.)*
- 74.13.062 Eligible relatives appointed as guardians—Receipt and expenditure of federal funds—Implementation of subsidy program—Department to adopt rules—Relative guardianship subsidy agreements. *(Effective July 1, 2018.)*
- 74.13.1051 Foster youth education and plans for the future—Memoranda of understanding among agencies—Transfer of responsibilities from the department—Indicators relating to education outcomes—Reports. *(Effective July 1, 2018.)*
- 74.13.107 Child and family reinvestment account—Methodology for calculating savings resulting from reductions in foster care caseloads and per capita costs.
- 74.13.110 Child welfare system improvement account.
- 74.13.270 Respite care.
- 74.13.335 Foster care—Reimbursement—Property damage. *(Effective July 1, 2018.)*
- 74.13.338 Driver's license support for foster youth.
- 74.13.621 Kinship care oversight committee. *(Expires June 30, 2019.)*

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

74.13.020 Definitions. *(Effective July 1, 2018.)* The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Case management" means convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan, coordinating and monitoring services needed by the child and family, caseworker-child visits, family visits, and the assumption of court-related duties, excluding legal representation, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child is progressing toward permanency within state and federal mandates, including the Indian child welfare act.

(2) "Child" means:

(a) A person less than eighteen years of age; or

(b) A person age eighteen to twenty-one years who is eligible to receive the extended foster care services authorized under RCW 74.13.031.

(3) "Child protective services" has the same meaning as in RCW 26.44.020.

(4) "Child welfare services" means social services including voluntary and in-home services, out-of-home care, case management, and adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

(a) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(b) Protecting and caring for dependent, abused, or neglected children;

(c) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children, with services designed to resolve such conflicts;

(d) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(e) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

"Child welfare services" does not include child protection services.

(5) "Committee" means the child welfare transformation design committee.

(6) "Department" means the department of children, youth, and families.

(7) "Extended foster care services" means residential and other support services the department is authorized to provide to foster children. These services include, but are not limited to, placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

(8) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child abuse or neglect, and family strengths and needs that is applied to a child abuse or neglect report. Family assessment does not include a determination as to whether child abuse or neglect occurred, but does determine the need for services to address the safety of the child and the risk of subsequent maltreatment.

(9) "Measurable effects" means a statistically significant change which occurs as a result of the service or services a supervising agency is assigned in a performance-based contract, in time periods established in the contract.

(10) "Medical condition" means, for the purposes of qualifying for extended foster care services, a physical or mental health condition as documented by any licensed health care provider regulated by a disciplining authority under RCW 18.130.040.

(11) "Nonminor dependent" means any individual age eighteen to twenty-one years who is participating in extended foster care services authorized under RCW 74.13.031.

(12) "Out-of-home care services" means services provided after the shelter care hearing to or for children in out-of-home care, as that term is defined in RCW 13.34.030, and their families, including the recruitment, training, and management of foster parents, the recruitment of adoptive families, and the facilitation of the adoption process, family reunification, independent living, emergency shelter, residential group care, and foster care, including relative placement.

(13) "Performance-based contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts shall also include provisions that link the performance of the contractor to the level and timing of reimbursement.

(14) "Permanency services" means long-term services provided to secure a child's safety, permanency, and well-being, including foster care services, family reunification services, adoption services, and preparation for independent living services.

(15) "Primary prevention services" means services which are designed and delivered for the primary purpose of enhancing child and family well-being and are shown, by analysis of outcomes, to reduce the risk to the likelihood of the initial need for child welfare services.

(16) "Secretary" means the secretary of the department.

(17) "Supervised independent living" includes, but is not limited to, apartment living, room and board arrangements, college or university dormitories, and shared roommate settings. Supervised independent living settings must be approved by the children's administration or the court.

(18) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services, as defined in this section. This definition is applicable on or after December 30, 2015.

(19) "Unsupervised" has the same meaning as in RCW 43.43.830.

(20) "Voluntary placement agreement" means, for the purposes of extended foster care services, a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purposes of participating in the extended foster care program. [2017 3rd sp.s. c 6 § 401; 2015 c 240 § 2. Prior: 2013 c 332 § 8; (2013 c 332 § 7 expired December 1, 2013); 2013 c 162 § 5; (2013 c 162 § 4 expired December 1, 2013); prior: 2012 c

259 § 7; 2012 c 205 § 12; prior: 2011 c 330 § 4; 2010 c 291 § 3; prior: 2009 c 520 § 2; 2009 c 235 § 3; 1999 c 267 § 7; 1979 c 155 § 76; 1977 ex.s. c 291 § 21; 1975-'76 2nd ex.s. c 71 § 3; 1971 ex.s. c 292 § 66; 1965 c 30 § 3.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective date—2015 c 240: See note following RCW 13.34.267.

Effective date—2013 c 332 §§ 8 and 10: "Sections 8 and 10 of this act take effect December 1, 2013." [2013 c 332 § 17.]

Expiration date—2013 c 332 §§ 7 and 9: "Sections 7 and 9 of this act expire December 1, 2013." [2013 c 332 § 16.]

Findings—Recommendations—Application—2013 c 332: See notes following RCW 13.34.267.

Effective date—2013 c 162 § 5: "Section 5 of this act takes effect December 1, 2013." [2013 c 162 § 10.]

Expiration date—2013 c 162 § 4: "Section 4 of this act expires December 1, 2013." [2013 c 162 § 9.]

Findings—Rules—2013 c 162: See notes following RCW 74.13.700.

Effective date—2012 c 259 §§ 1 and 3-10: See note following RCW 26.44.020.

Intent—2011 c 330: See note following RCW 13.04.011.

Findings—2010 c 291: "The legislature finds that, based upon the work of the child welfare transformation design committee established pursuant to 2SHB 2106 during the 2009 legislative session, several narrowly based amendments to that legislation need to be made, mainly for clarifying purposes. The legislature further finds that two deadlines need to be extended by six months, the first to allow the department of social and health services additional time to complete the conversion of its contracts to performance-based contracts and the second to allow the department additional time to gradually transfer existing cases to supervising agencies in the demonstration sites. The legislature finds that the addition of a foster youth on the child welfare transformation design committee will greatly assist the committee in its work.

The legislature recognizes that clarifying language regarding Indian tribes should be added regarding the government-to-government relationship the tribes have with the state. The legislature further recognizes that language is needed regarding the department's ability to receive federal funding based upon the recommendations made by the child welfare transformation design committee." [2010 c 291 § 1.]

Findings—Intent—2009 c 235: See note following RCW 74.13.031.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Additional notes found at www.leg.wa.gov

74.13.025 Counties may administer and provide services under RCW 13.32A.197—Plan for at-risk youth required. (Effective July 1, 2018.) Any county or group of counties may make application to the department in the manner and form prescribed by the department to administer and provide the services established under RCW 13.32A.197. Any such application must include a plan or plans for providing such services to at-risk youth. [2017 3rd sp.s. c 6 § 402; 1998 c 296 § 1.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Findings—Intent—1998 c 296: "The legislature finds it is often necessary for parents to obtain mental health or chemical dependency treatment for their minor children prior to the time the child's condition presents a likelihood of serious harm or the child becomes gravely disabled. The legislature finds that treatment of such conditions is not the equivalent of incarceration

or detention, but is a legitimate act of parental discretion, when supported by decisions of credentialed professionals. The legislature finds that, consistent with *Parham v. J.R.*, 442 U.S. 584 (1979), state action is not involved in the determination of a parent and professional person to admit a minor child to treatment and finds this act provides sufficient independent review by the department of social and health services, as a neutral fact finder, to protect the interests of all parties. The legislature intends and recognizes that children affected by the provisions of this act are not children whose mental or substance abuse problems are adequately addressed by chapters *70.96A and 71.34 RCW. Therefore, the legislature finds it is necessary to provide parents a statutory process, other than the petition process provided in chapters *70.96A and 71.34 RCW, to obtain treatment for their minor children without the consent of the children.

The legislature finds that differing standards of admission and review in parent-initiated mental health and chemical dependency treatment for their minor children are necessary and the admission standards and procedures under state involuntary treatment procedures are not adequate to provide safeguards for the safety and well-being of all children. The legislature finds the timeline for admission and reviews under existing law do not provide sufficient opportunities for assessment of the mental health and chemically dependent status of every minor child and that additional time and different standards will facilitate the likelihood of successful treatment of children who are in need of assistance but unwilling to obtain it voluntarily. The legislature finds there are children whose behavior presents a clear need of medical treatment but is not so extreme as to require immediate state intervention under the state involuntary treatment procedures." [1998 c 296 § 6.]

*Reviser's note: Chapter 70.96A RCW was repealed and/or recodified in its entirety pursuant to 2016 sp.s. c 29 §§ 301, effective April 1, 2018, 601, and 701.

Additional notes found at www.leg.wa.gov

74.13.031 Duties of department—Child welfare services—Children's services advisory committee. (1) The department and supervising agencies shall develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, the department and supervising agencies shall recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and the department shall annually report to the governor and the legislature concerning the department's and supervising agency's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) The department shall investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against

a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) As provided in RCW 26.44.030(11), the department may respond to a report of child abuse or neglect by using the family assessment response.

(5) The department or supervising agencies shall offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(6) The department or supervising agencies shall monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. Under this section children in out-of-home care and in-home dependencies and their caregivers shall receive a private and individual face-to-face visit each month. The department and the supervising agencies shall randomly select no less than ten percent of the caregivers currently providing care to receive one unannounced face-to-face visit in the caregiver's home per year. No caregiver will receive an unannounced visit through the random selection process for two consecutive years. If the caseworker makes a good faith effort to conduct the unannounced visit to a caregiver and is unable to do so, that month's visit to that caregiver need not be unannounced. The department and supervising agencies are encouraged to group monthly visits to caregivers by geographic area so that in the event an unannounced visit cannot be completed, the caseworker may complete other required monthly visits. The department shall use a method of random selection that does not cause a fiscal impact to the department.

The department or supervising agencies shall conduct the monthly visits with children and caregivers to whom it is providing child welfare services.

(7) The department and supervising agencies shall have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(8) The department and supervising agency shall have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(9) The department and supervising agency shall have authority to purchase care for children.

(10) The department shall establish a children's services advisory committee with sufficient members representing supervising agencies which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(11)(a) The department and supervising agencies shall provide continued extended foster care services to nonminor dependents who are:

- (i) Enrolled in a secondary education program or a secondary education equivalency program;
- (ii) Enrolled and participating in a postsecondary academic or postsecondary vocational education program;
- (iii) Participating in a program or activity designed to promote employment or remove barriers to employment;
- (iv) Engaged in employment for eighty hours or more per month; or
- (v) Not able to engage in any of the activities described in (a)(i) through (iv) of this subsection due to a documented medical condition.

(b) To be eligible for extended foster care services, the nonminor dependent must have been dependent and in foster care at the time that he or she reached age eighteen years. If the dependency case of the nonminor dependent was dismissed pursuant to RCW 13.34.267, he or she may receive extended foster care services pursuant to a voluntary placement agreement under RCW 74.13.336 or pursuant to an order of dependency issued by the court under RCW 13.34.268. A nonminor dependent whose dependency case was dismissed by the court must have requested extended foster care services before reaching age nineteen years. Eligible nonminor dependents may unenroll and reenroll in extended foster care through a voluntary placement agreement once between ages eighteen and twenty-one.

(c) The department shall develop and implement rules regarding youth eligibility requirements.

(d) The department shall make efforts to ensure that extended foster care services maximize medicaid reimbursements. This must include the department ensuring that health and mental health extended foster care providers participate in medicaid, unless the condition of the extended foster care youth requires specialty care that is not available among participating medicaid providers or there are no participating medicaid providers in the area. The department shall coordinate other services to maximize federal resources and the most cost-efficient delivery of services to extended foster care youth.

(e) The department shall allow a youth who has received extended foster care services, but lost his or her eligibility, to reenter the extended foster care program once through a voluntary placement agreement when he or she meets the eligibility criteria again.

(12) The department shall have authority to provide adoption support benefits, or relative guardianship subsidies on behalf of youth ages eighteen to twenty-one years who achieved permanency through adoption or a relative guardianship at age sixteen or older and who meet the criteria described in subsection (11) of this section.

(13) The department shall refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be

referred to the division of child support unless required by federal law.

(14) The department and supervising agencies shall have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order. The purchase of such care is exempt from the requirements of chapter 74.13B RCW and may be purchased from the federally recognized Indian tribe or tribally licensed child-placing agency, and shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200, 43.185C.295, 74.13.035, and 74.13.036, or of this section all services to be provided by the department under subsections (4), (7), and (8) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(15) Within amounts appropriated for this specific purpose, the supervising agency or department shall provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(16) The department and supervising agencies shall have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

(17) The department and supervising agencies shall consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department and supervising agencies are performing the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels.

(18)(a) The department shall, within current funding levels, place on its public web site a document listing the duties and responsibilities the department has to a child subject to a dependency petition including, but not limited to, the following:

- (i) Reasonable efforts, including the provision of services, toward reunification of the child with his or her family;
- (ii) Sibling visits subject to the restrictions in RCW 13.34.136(2)(b)(ii);
- (iii) Parent-child visits;
- (iv) Statutory preference for placement with a relative or other suitable person, if appropriate; and
- (v) Statutory preference for an out-of-home placement that allows the child to remain in the same school or school district, if practical and in the child's best interests.

(b) The document must be prepared in conjunction with a community-based organization and must be updated as needed.

(19) The department shall have the authority to purchase legal representation for parents of children who are at risk of being dependent, or who are dependent, to establish or modify a parenting plan under chapter 26.09 or 26.26 RCW, when it is necessary for the child's safety, permanence, or well-being. This subsection does not create an entitlement to legal representation purchased by the department and does not create judicial authority to order the department to purchase legal representation for a parent. Such determinations are solely within the department's discretion. [2017 3rd sp.s. c 20 § 7; 2017 c 265 § 2; 2015 c 240 § 3; 2014 c 122 § 2. Prior: 2013 c 332 § 10; (2013 c 332 § 9 expired December 1, 2013); 2013 c 32 § 2; (2013 c 32 § 1 expired December 1, 2013); prior: 2012 c 259 § 8; 2012 c 52 § 2; prior: 2011 c 330 § 5; 2011 c 160 § 2; prior: 2009 c 520 § 51; 2009 c 491 § 7; (2009 c 235 § 4 expired October 1, 2010); 2009 c 235 § 2; 2008 c 267 § 6; 2007 c 413 § 10; prior: 2006 c 266 § 1; 2006 c 221 § 3; 2004 c 183 § 3; 2001 c 192 § 1; 1999 c 267 § 8; 1998 c 314 § 10; prior: 1997 c 386 § 32; 1997 c 272 § 1; 1995 c 191 § 1; 1990 c 146 § 9; prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

Reviser's note: This section was amended by 2017 c 265 § 2 and by 2017 3rd sp.s. c 20 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

Finding—Intent—2017 c 265: "The legislature finds that a large number of foster youth experience homelessness. The legislature intends that individuals who are eligible for extended foster care services are able to receive those services to help prevent them from experiencing homelessness. The 2016 office of homeless youth annual report identifies ensuring that youth exiting public systems are not released into homelessness as a goal and recommends expanding options for youth to enroll in extended foster care." [2017 c 265 § 1.]

Effective date—2015 c 240: See note following RCW 13.34.267.

Effective date—2014 c 122: See note following RCW 13.34.267.

Effective date—2013 c 332 §§ 8 and 10: See note following RCW 74.13.020.

Expiration date—2013 c 332 §§ 7 and 9: See note following RCW 74.13.020.

Findings—Recommendations—Application—2013 c 332: See notes following RCW 13.34.267.

Effective date—2013 c 32 § 2: "Section 2 of this act takes effect December 1, 2013." [2013 c 32 § 3.]

Expiration date—2013 c 32 § 1: "Section 1 of this act expires December 1, 2013." [2013 c 32 § 4.]

Effective date—2012 c 259 §§ 1 and 3-10: See note following RCW 26.44.020.

Intent—2012 c 52: "Since 2006, under a program known as "foster care to 21," the Washington state legislature has provided services to young adults transitioning out of foster care in order for them to enroll in and complete their postsecondary educations. In 2008, the United States congress passed the fostering connections to success and increasing adoptions act of 2008, which allows states to receive a federal match for state dollars expended in supporting youth transitioning out of foster care. In 2011, the Washington state legislature opted to create the "extended foster care program," in order to receive the federal match for youth completing high school. It is the intent of this act to enable the state to receive the federal match to offset costs expended on supporting youth seeking postsecondary education. This act would result in these youth being served under the extended foster care program, for which there is a federal match, instead of the foster care to 21 program, which relies solely on state dollars. It is the

intent of the legislature to allow all youth currently enrolled in the foster care to 21 program for the purposes of postsecondary education to remain enrolled until they turn twenty-one, are no longer otherwise eligible, or choose to leave the program. Within three years of June 7, 2012, the "foster care to 21" program will cease to operate, and youth seeking a postsecondary education will be solely served by the extended foster care program." [2012 c 52 § 1.]

Intent—2011 c 330: See note following RCW 13.04.011.

Findings—2011 c 160: "The legislature finds that foster parents are a critical piece of the dependency system. The legislature further finds that the majority of foster parents provide excellent care to children in the dependency system, many of whom have suffered serious damage in their families of origin. It is the legislature's belief that through the selfless dedication of many foster parents that abused and neglected children are able to heal and go on to lead productive lives. The legislature also believes that some foster parents act in ways that are damaging to the children in their care and it is the department of social and health services' responsibility to make sure all children in care are safe. The legislature finds that unannounced visits to caregivers' homes is another method by which the department of social and health services can make sure the children in foster care are safe." [2011 c 160 § 1.]

Effective date—2009 c 235 § 2: "Section 2 of this act takes effect October 1, 2010." [2009 c 235 § 7.]

Expiration date—2009 c 235 § 4: "Section 4 of this act expires October 1, 2010." [2009 c 235 § 8.]

Findings—Intent—2009 c 235: "(1) The legislature finds that the federal fostering connections to success and increasing adoptions act of 2008 provides important new opportunities for the state to use federal funding to promote permanency and positive outcomes for youth in foster care and for those who age out of the foster care system.

(2) The legislature also finds that research regarding former foster youth is generally sobering. Longitudinal research on the adult functioning of former foster youth indicates a disproportionate likelihood that youth aging out of foster care and those who spent several years in care will experience poor outcomes in a variety of areas, including limited human capital upon which to build economic security; untreated mental or behavioral health problems; involvement in the criminal justice and corrections systems; and early parenthood combined with second-generation child welfare involvement. The legislature further finds that research also demonstrates that access to adequate and appropriate supports during the period of transition from foster care to independence can have significant positive impacts on adult functioning and can improve outcomes relating to educational attainment and post-secondary enrollment; employment and earnings; and reduced rates of teen pregnancies.

(3) The legislature intends to clarify existing authority for foster care services beyond age eighteen and to establish authority for future expansion of housing and other supports for youth aging out of foster care and youth who achieved permanency in later adolescence." [2009 c 235 § 1.]

Effective date—2008 c 267 § 6: "Section 6 of this act takes effect December 31, 2008." [2008 c 267 § 14.]

Severability—2007 c 413: See note following RCW 13.34.215.

Finding—2006 c 221: See note following RCW 13.34.315.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Declaration of purpose—1967 c 172: See RCW 74.15.010.

Abuse of child: Chapter 26.44 RCW.

Licensing of agencies caring for or placing children, expectant mothers, and individuals with developmental disabilities: Chapter 74.15 RCW.

Additional notes found at www.leg.wa.gov

74.13.039 Runaway hotline. (Effective July 1, 2018.)

The department shall maintain a toll-free hotline to assist parents of runaway children. The hotline shall provide parents with a complete description of their rights when dealing with their runaway child. [2017 3rd sp.s. c 6 § 403; 1994 sp.s. c 7 § 501.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

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

74.13.062 Eligible relatives appointed as guardians—Receipt and expenditure of federal funds—Implementation of subsidy program—Department to adopt rules—Relative guardianship subsidy agreements. (Effective July 1, 2018.) (1) The department shall adopt rules consistent with federal regulations for the receipt and expenditure of federal funds and implement a subsidy program for eligible relatives appointed by the court as a guardian under RCW 13.36.050.

(2) For the purpose of licensing a relative seeking to be appointed as a guardian and eligible for a guardianship subsidy under this section, the department shall, on a case-by-case basis, and when determined to be in the best interests of the child:

- (a) Waive nonsafety licensing standards; and
- (b) Apply the list of disqualifying crimes in the adoption and safe families act, unless doing so would compromise the child's safety, or would adversely affect the state's ability to continue to obtain federal funding for child welfare related functions.

(3) Relative guardianship subsidy agreements shall be designed to promote long-term permanency for the child, and may include provisions for periodic review of the subsidy amount and the needs of the child. [2017 3rd sp.s. c 6 § 404; 2010 c 272 § 12.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

74.13.1051 Foster youth education and plans for the future—Memoranda of understanding among agencies—Transfer of responsibilities from the department—Indicators relating to education outcomes—Reports. (Effective July 1, 2018.) (1) In order to proactively support foster youth to complete high school, enroll and complete postsecondary education, and successfully implement their own plans for their futures, the department, the student achievement council, and the office of the superintendent of public instruction shall enter into, or revise existing, memoranda of understanding that:

(a) Facilitate student referral, data and information exchange, agency roles and responsibilities, and cooperation and collaboration among state agencies and nongovernmental entities; and

(b) Effectuate the transfer of responsibilities from the department to the office of the superintendent of public instruction with respect to the programs in RCW 28A.300.592, and from the department to the student achievement council with respect to the program in RCW 28B.77.250 in a smooth, expedient, and coordinated fashion.

(2) The student achievement council and the office of the superintendent of public instruction shall establish a set of indicators relating to the outcomes provided in RCW 28A.300.590 and 28A.300.592 to provide consistent services for youth, facilitate transitions among contractors, and sup-

port outcome-driven contracts. The student achievement council and the superintendent of public instruction shall collaborate with nongovernmental contractors and the department to develop a list of the most critical indicators, establishing a common set of indicators to be used in the outcome-driven contracts in RCW 28A.300.590 and 28A.300.592. A list of these indicators must be included in the report provided in subsection (3) of this section.

(3) By November 1, 2017, and biannually thereafter, the department, the student achievement council, and the office of the superintendent of public instruction, in consultation with the nongovernmental entities engaged in public-private partnerships shall submit a joint report to the governor and the appropriate education and human services committees of the legislature regarding each of these programs, individually, as well as the collective progress the state has made toward the following goals:

(a) To make Washington number one in the nation for foster care graduation rates;

(b) To make Washington number one in the nation for foster care enrollment in postsecondary education; and

(c) To make Washington number one in the nation for foster care postsecondary completion.

(4) The department, the student achievement council, and the office of the superintendent of public instruction, in consultation with the nongovernmental entities engaged in public-private partnerships, shall also submit one report by November 1, 2018, to the governor and the appropriate education and human service committees of the legislature regarding the transfer of responsibilities from the department to the office of the superintendent of public instruction with respect to the programs in RCW 28A.300.592, and from the department to the student achievement council with respect to the program in RCW 28B.77.250 and whether these transfers have resulted in better coordinated services for youth. [2017 3rd sp.s. c 6 § 405; 2016 c 71 § 6.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Intent—2016 c 71: See note following RCW 28A.300.590.

74.13.107 Child and family reinvestment account—Methodology for calculating savings resulting from reductions in foster care caseloads and per capita costs. [2013 c 332 § 12; 2012 c 204 § 2.]

Reviser's note: RCW 74.13.107 was amended by 2017 3rd sp.s. c 6 § 406 without reference to its repeal by 2017 3rd sp.s. c 20 § 15. It has been decodified for publication purposes under RCW 1.12.025.

74.13.110 Child welfare system improvement account. (1) The child welfare system improvement account is created in the state treasury. Moneys in the account may be spent only after appropriation. Moneys in the account may be expended solely for the following: (a) Foster home licensing; (b) achieving permanency for children; (c) support and assistance provided to foster parents in order to improve foster home retention and stability of placements; (d) improving and increasing placement options for youth in out-of-home care; and (e) preventing out-of-home placement.

(2) Revenues to the child welfare system improvement account consist of: (a) Legislative appropriations; and (b) any other public or private funds appropriated to or deposited in the account. [2017 3rd sp.s. c 20 § 14.]

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

74.13.270 Respite care. (1) The legislature recognizes the need for temporary short-term relief for foster parents who care for children with emotional, mental, or physical handicaps. For purposes of this section, respite care means appropriate, temporary, short-term care for these foster children placed with licensed foster parents. The purpose of this care is to give the foster parents temporary relief from the stresses associated with the care of these foster children. The department shall design a program of respite care that will minimize disruptions to the child and will serve foster parents within these priorities, based on input from foster parents, foster parent associations, and reliable research if available.

(2)(a) For the purposes of this section, and subject to funding appropriated specifically for this purpose, short-term support shall include case aides who provide temporary assistance to foster parents as needed with the overall goal of supporting the parental efforts of the foster parents except that this assistance shall not include overnight assistance. The department shall contract with nonprofit community-based organizations in each region to establish a statewide pool of individuals to provide the support described in this subsection. These individuals shall be hired by the nonprofit community-based organization and shall have the appropriate training, background checks, and qualifications as determined by the department. Short-term support as described in this subsection shall be available to all licensed foster parents in the state as funding is available and shall be phased in by geographic region. To obtain the assistance of a case aide for this purpose, the foster parent may request the services from the nonprofit community-based organization and the nonprofit community-based organization may offer assistance to licensed foster families. If the requests for the short-term support provided in this subsection exceed the funding available, the nonprofit community-based organization shall have discretion to determine the assignment of case aides. The nonprofit community-based organization shall report all short-term support provided under this subsection to the department.

(b) Subject to funding appropriated specifically for this purpose, the Washington state institute for public policy shall prepare an outcome evaluation of the short-term support described in this subsection. The evaluation will, to the maximum extent possible, assess the impact of the short-term support services described in this subsection on the retention of foster homes and the number of placements a foster child receives while in out-of-home care as well as the return on investment to the state. The institute shall submit a preliminary report to the appropriate committees of the legislature and the governor by December 1, 2018, that describes the initial implementation of these services and descriptive statistics of the families utilizing these services. A final report shall be submitted to the appropriate committees of the legislature by

June 30, 2020. At no cost to the institute, the department shall provide all data necessary to discharge this duty.

(c) Costs associated with case aides as described in this subsection shall not be included in the forecast.

(d) Pursuant to RCW 41.06.142(3), performance-based contracting under (a) of this subsection is expressly mandated by the legislature and is not subject to the processes set forth in RCW 41.06.142 (1), (4), and (5). [2017 3rd sp.s. c 20 § 1; 1990 c 284 § 8.]

Construction—Competitive procurement process and contract provisions—2017 3rd sp.s. c 20: "Pursuant to RCW 41.06.142(3), the competitive procurement process and contract provisions in this act are expressly mandated by the legislature and are not subject to the processes of RCW 41.06.142 (1), (4), and (5)." [2017 3rd sp.s. c 20 § 19.]

Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: "If any part of this act is found to be in conflict with P.L. 95-608 Indian Child Welfare Act of 1978 or federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements of P.L. 95-608 Indian Child Welfare Act of 1978 and federal requirements that are a necessary condition to the receipt of federal funds by the state." [2017 3rd sp.s. c 20 § 23.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.335 Foster care—Reimbursement—Property damage. (Effective July 1, 2018.) Within available funds and subject to such conditions and limitations as may be established by the department or by the legislature in the omnibus appropriations act, the department shall reimburse foster parents for property damaged or destroyed by foster children placed in their care. The department shall establish by rule a maximum amount that may be reimbursed for each occurrence. The department shall reimburse the foster parent for the replacement value of any property covered by this section. If the damaged or destroyed property is covered and reimbursed under an insurance policy, the department shall reimburse foster parents for the amount of the deductible associated with the insurance claim, up to the limit per occurrence as established by the department. [2017 3rd sp.s. c 6 § 407; 1999 c 338 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Intent—1999 c 338: "The legislature recognizes that Washington state is experiencing a significant shortage of quality foster homes and that the majority of children entering the system are difficult to place due to their complex needs. The legislature intends to provide additional assistance to those families willing to serve as foster parents." [1999 c 338 § 1.]

74.13.338 Driver's license support for foster youth. (1) Subject to the availability of funds appropriated for this specific purpose, the department shall contract with a private nonprofit organization that agrees to work collaboratively with independent living providers and the department and is selected after a competitive application process to provide driver's license support for foster youth, including youth receiving extended foster care services.

(2) The nonprofit organization selected pursuant to subsection (1) of this section shall provide support for foster

youth ages fifteen through twenty-one, including youth receiving extended foster care services, in navigating the driver's licensing process. This support must include:

(a) Reimbursement of fees necessary for a foster youth to obtain a driver's instruction permit, an intermediate license, and a standard or enhanced driver's license, including any required examination fees, as described in chapter 46.20 RCW;

(b) Reimbursement of fees required for a foster youth to complete a driver training education course, if the foster youth is under the age of eighteen, as outlined in chapter 46.82 or 28A.220 RCW;

(c) Reimbursement of the increase in motor vehicle liability insurance costs incurred by foster parents, relative placements, or other foster placements adding a foster youth to his or her motor vehicle liability insurance policy, with a preference on reimbursements for those foster youth who practice safe driving and avoid moving violations and at-fault collisions.

(3) By December 1, 2019, the nonprofit organization selected pursuant to subsection (1) of this section shall submit a report to the department and the appropriate committees of the legislature, including the transportation committees of the legislature, documenting the number of foster youth served by the program; the average cost per youth served; the extent to which foster youth report any negative outcomes of the program, including a foster parent's inappropriate use of a foster youth's driving authorization; and recommendations for future policy or statutory or funding changes necessary to more effectively allow foster youth to obtain drivers' licenses and motor vehicle liability insurance. [2017 c 206 § 1.]

74.13.621 Kinship care oversight committee. (Expires June 30, 2019.) (1) Within existing resources, the department shall establish an oversight committee to monitor, guide, and report on kinship care recommendations and implementation activities. The committee shall:

(a) Draft a kinship care definition that is restricted to persons related by blood, marriage, or adoption, including marriages that have been dissolved, or for a minor defined as an "Indian child" under the federal Indian child welfare act (25 U.S.C. Sec. 1901 et seq.), the definition of "extended family member" under the federal Indian child welfare act, and a set of principles. If the committee concludes that one or more programs or services would be more efficiently and effectively delivered under a different definition of kin, it shall state what definition is needed, and identify the program or service in the report. It shall also provide evidence of how the program or service will be more efficiently and effectively delivered under the different definition. The department shall not adopt rules or policies changing the definition of kin without authorizing legislation;

(b) Monitor and provide consultation on the implementation of recommendations contained in the 2002 kinship care report, including but not limited to the recommendations relating to legal and respite care services and resources;

(c) Partner with nonprofit organizations and private sector businesses to guide a public education awareness campaign; and

(d) Assist with developing future recommendations on kinship care issues.

(2) The department shall consult with the oversight committee on its efforts to better collaborate and coordinate services to benefit kinship care families.

(3) The oversight committee must consist of a minimum of thirty percent kinship caregivers, who shall represent a diversity of kinship families. Statewide representation by geographic, ethnic, and gender diversity is required. Other members shall include representatives of the department, representatives of relevant state agencies, representatives of the private nonprofit and business sectors, child advocates, representatives of Washington state Indian tribes as defined under the federal Indian welfare act (25 U.S.C. Sec. 1901 et seq.), and representatives of the legal or judicial field. Birth parents, foster parents, and others who have an interest in these issues may also be included.

(4) To the extent funding is available, the department may reimburse nondepartmental members of the oversight committee for costs incurred in participating in the meetings of the oversight committee.

(5) The kinship care oversight committee shall update the legislature and governor annually on committee activities, with the first update due by January 1, 2006.

(6) This section expires June 30, 2019. [2017 3rd sp.s. c 1 § 982; 2015 3rd sp.s. c 4 § 970; 2013 2nd sp.s. c 4 § 996; (2011 1st sp.s. c 50 § 965 expired June 30, 2013); 2009 c 564 § 954; 2005 c 439 § 1.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2009 c 564: See note following RCW 2.68.020.

Chapter 74.13A RCW ADOPTION SUPPORT

Sections

- 74.13A.025 Factors determining payments or adjustment in standards.
- 74.13A.030 Both continuing payments and lump sum payments authorized.
- 74.13A.047 Adoption assistance payments—Expenditure limits.
- 74.13A.060 Nonrecurring adoption expenses. (*Effective July 1, 2018.*)
- 74.13A.075 "Secretary" and "department" defined. (*Effective July 1, 2018.*)
- 74.13A.085 Adoption support reconsideration program. (*Effective July 1, 2018.*)

74.13A.025 Factors determining payments or adjustment in standards. The factors to be considered by the secretary in setting the amount of any payment or payments to be made pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080 and in adjusting standards hereunder shall include: The size of the family including the adoptive child, the usual living expenses of the family, the special needs of any family member including education needs, the family income, the family resources and plan for savings, the medical and hospitalization needs of the family, the family's means of purchasing or otherwise receiving such care, and any other expenses likely to be needed by the child to be adopted. In setting the amount of any initial payment made pursuant to RCW 26.33.320 and 74.13A.005 through

74.13A.080, the secretary is authorized to establish maximum payment amounts that are reasonable and allow permanency planning goals related to adoption of children under RCW 13.34.145 to be achieved at the earliest possible date. To encourage adoption of children between the ages of fourteen and eighteen, and in particular those children between the ages of fourteen and eighteen who are hard to place for adoption, the secretary is authorized to include as part of any new negotiated adoption agreement executed after October 19, 2017, continued eligibility for the Washington college bound scholarship pursuant to RCW 28B.118.010.

The amounts paid for the support of a child pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080 may vary from family to family and from year to year. Due to changes in economic circumstances or the needs of the child such payments may be discontinued and later resumed.

Payments under RCW 26.33.320 and 74.13A.005 through 74.13A.080 may be continued by the secretary subject to review as provided for herein, if such parent or parents having such child in their custody establish their residence in another state or a foreign jurisdiction.

In fixing the standards to govern the amount and character of payments to be made for the support of adopted children pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080 and before issuing rules and regulations to carry out the provisions of RCW 26.33.320 and 74.13A.005 through 74.13A.080, the secretary shall consider the comments and recommendations of the committee designated by the secretary to advise him or her with respect to child welfare. [2017 3rd sp.s. c 20 § 8; 2013 c 23 § 210; 1996 c 130 § 1; 1985 c 7 § 136; 1971 ex.s. c 63 § 5. Formerly RCW 74.13.112.]

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

74.13A.030 Both continuing payments and lump sum payments authorized. To carry out the program authorized by RCW 26.33.320 and 74.13A.005 through 74.13A.080, the secretary may make continuing payments or lump sum payments of adoption support. In lieu of continuing payments, or in addition to them, the secretary may make one or more specific lump sum payments for or on behalf of a hard to place child either to the adoptive parents or directly to other persons to assist in correcting any condition causing such child to be hard to place for adoption.

Consistent with a particular child's needs, continuing adoption support payments shall include, if necessary to facilitate or support the adoption of a special needs child, an amount sufficient to remove any reasonable financial barrier to adoption as determined by the secretary under RCW 74.13A.025.

After determination by the secretary of the amount of a payment or the initial amount of continuing payments, the prospective parent or parents who desire such support shall sign an agreement with the secretary providing for the payment, in the manner and at the time or times prescribed in regulations to be issued by the secretary subject to the provisions of RCW 26.33.320 and 74.13A.005 through 74.13A.080, of the amount or amounts of support so determined.

Payments shall be subject to review as provided in RCW 26.33.320 and 74.13A.005 through 74.13A.080. [2017 3rd sp.s. c 20 § 9; 1996 c 130 § 2; 1985 c 7 § 137; 1971 ex.s. c 63 § 6. Formerly RCW 74.13.115.]

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

74.13A.047 Adoption assistance payments—Expenditure limits. (1) To ensure expenditures continue to remain within available funds as required by RCW 74.13A.005 and 74.13A.020, the secretary shall not set the amount of any adoption assistance payment or payments, made pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080, to more than eighty percent of the foster care maintenance payment for that child had he or she remained in a foster family home during the same period. This subsection applies prospectively to adoption assistance agreements established on or after July 1, 2013, through June 30, 2017.

(2)(a) To ensure expenditures continue to remain within available funds as required by RCW 74.13A.005 and 74.13A.020, the secretary shall not set the amount of any adoption assistance payment or payments, made pursuant to RCW 26.33.320 and 74.13A.005 through 74.13A.080, to more than the following:

(i) For a child under the age of five, no more than eighty percent of the foster care maintenance payment for that child had he or she remained in a foster family home during the same period.

(ii) For a child aged five through nine, no more than ninety percent of the foster care maintenance payment for that child had he or she remained in a foster family home during the same period.

(iii) For a child aged ten through eighteen, no more than ninety-five percent of the foster care maintenance payment for that child had he or she remained in a foster family home during the same period.

(b) This subsection applies prospectively to adoption assistance agreements established on or after October 19, 2017.

(3) The department must establish a central unit of adoption support negotiators to help ensure consistent negotiation of adoption support agreements that will balance the needs of adoptive families with the state's need to remain fiscally responsible.

(4) The department must request, in writing, that adoptive families with existing adoption support contracts renegotiate their contracts to establish lower adoption assistance payments if it is fiscally feasible for the family to do so. The department shall explain that adoption support contracts may be renegotiated as needs arise. [2017 3rd sp.s. c 20 § 10; 2012 c 147 § 2.]

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

74.13A.060 Nonrecurring adoption expenses. (Effective July 1, 2018.) The secretary may authorize the payment, from the appropriations available from the general fund, of all or part of the nonrecurring adoption expenses incurred by a prospective parent. "Nonrecurring adoption expenses"

means those expenses incurred by a prospective parent in connection with the adoption of a difficult to place child including, but not limited to, attorneys' fees, court costs, and agency fees. Payment shall be made in accordance with rules adopted by the department. [2017 3rd sp.s. c 6 § 502; 1990 c 285 § 8; 1985 c 7 § 142; 1979 ex.s. c 67 § 9; 1971 ex.s. c 63 § 11. Formerly RCW 74.13.130.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Findings—Purpose—Severability—1990 c 285: See notes following RCW 74.04.005.

Additional notes found at www.leg.wa.gov

74.13A.075 "Secretary" and "department" defined. (Effective July 1, 2018.) As used in RCW 26.33.320 and 74.13A.005 through 74.13A.080 the following definitions shall apply:

(1) "Department" means the department of children, youth, and families.

(2) "Secretary" means the secretary of the department. [2017 3rd sp.s. c 6 § 501; 2013 c 23 § 212; 1985 c 7 § 145; 1971 ex.s. c 63 § 15. Formerly RCW 74.13.139.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

74.13A.085 Adoption support reconsideration program. (Effective July 1, 2018.) (1) The department shall establish, within funds appropriated for the purpose, a reconsideration program to provide medical and counseling services through the adoption support program for children of families who apply for services after the adoption is final. Families requesting services through the program shall provide any information requested by the department for the purpose of processing the family's application for services.

(2) A child meeting the eligibility criteria for registration with the program is one who:

(a) Was residing in a preadoptive placement funded by the department or in foster care funded by the department immediately prior to the adoptive placement;

(b) Had a physical or mental handicap or emotional disturbance that existed and was documented prior to the adoption or was at high risk of future physical or mental handicap or emotional disturbance as a result of conditions exposed to prior to the adoption; and

(c) Resides in the state of Washington with an adoptive parent who lacks the necessary financial means to care for the child's special need.

(3) If a family is accepted for registration and meets the criteria in subsection (2) of this section, the department may enter into an agreement for services. Prior to entering into an agreement for services through the program, the medical needs of the child must be reviewed and approved by the department.

(4) Any services provided pursuant to an agreement between a family and the department shall be met from the

department's medical program. Such services shall be limited to:

(a) Services provided after finalization of an agreement between a family and the department pursuant to this section;

(b) Services not covered by the family's insurance or other available assistance; and

(c) Services related to the eligible child's identified physical or mental handicap or emotional disturbance that existed prior to the adoption.

(5) Any payment by the department for services provided pursuant to an agreement shall be made directly to the physician or provider of services according to the department's established procedures.

(6) The total costs payable by the department for services provided pursuant to an agreement shall not exceed twenty thousand dollars per child. [2017 3rd sp.s. c 6 § 503; 1997 c 131 § 1; 1990 c 285 § 5. Formerly RCW 74.13.150.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Findings—Purpose—Severability—1990 c 285: See notes following RCW 74.04.005.

Chapter 74.13B RCW

CHILD WELFARE SYSTEM—CONTRACTING FOR SERVICES

Sections

74.13B.005 Findings—Intent. (*Effective July 1, 2018.*)

74.13B.010 Definitions. (*Effective July 1, 2018.*)

74.13B.005 Findings—Intent. (Effective July 1, 2018.) (1) The legislature finds that:

(a) The state of Washington and several Indian tribes in the state of Washington assume legal responsibility for abused or neglected children when their parents or caregivers are unable or unwilling to adequately provide for their safety, health, and welfare;

(b) Washington state has a strong history of partnership between the department and contracted service providers who currently serve children and families in the child welfare system. The department and its contracted service providers have responsibility for providing services to address parenting deficiencies resulting in child maltreatment, and the needs of children impacted by maltreatment;

(c) Department caseworkers and contracted service providers each play a critical and complementary role in the child welfare system;

(d) The current system of contracting for services needed by children and families in the child welfare system is fragmented, inflexible, and lacks incentives for improving outcomes for children and families.

(2) The legislature intends:

(a) To reform the delivery of certain services to children and families in the child welfare system by creating a flexible, accountable community-based system of care that utilizes performance-based contracting, maximizes the use of evidence-based, research-based, and promising practices, and expands the capacity of community-based agencies to

leverage local funding and other resources to benefit children and families served by the department;

(b) To achieve improved child safety, child permanency, including reunification, and child well-being outcomes through the collaborative efforts of the department and contracted service providers and the prioritization of these goals in performance-based contracting; and

(c) To implement performance-based contracting under chapter 205, Laws of 2012 in a manner that supports and complies with the federal and Washington state Indian child welfare act. [2017 3rd sp.s. c 6 § 504; 2012 c 205 § 1.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

74.13B.010 Definitions. (Effective July 1, 2018.) For purposes of this chapter:

(1) "Case management" means convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan, coordinating and monitoring services needed by the child and family, caseworker-child visits, family visits, and the assumption of court-related duties, excluding legal representation, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child is progressing toward permanency within state and federal mandates, including the Indian child welfare act.

(2) "Child" means:

(a) A person less than eighteen years of age; or

(b) A person age eighteen to twenty-one years who is eligible to receive the extended foster care services authorized under RCW 74.13.031.

(3) "Child-placing agency" has the same meaning as in RCW 74.15.020.

(4) "Child welfare services" means social services including voluntary and in-home services, out-of-home care, case management, and adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

(a) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(b) Protecting and caring for dependent, abused, or neglected children;

(c) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children, with services designed to resolve such conflicts;

(d) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(e) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

(5) "Department" means the department of children, youth, and families.

(6) "Evidence-based" means a program or practice that is cost-effective and includes at least two randomized or statistically controlled evaluations that have demonstrated improved outcomes for its intended population.

(7) "Network administrator" means an entity that contracts with the department to provide defined services to children and families in the child welfare system through its provider network, as provided in RCW 74.13B.020.

(8) "Performance-based contracting" means structuring all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes and linking payment for services to contractor performance.

(9) "Promising practice" means a practice that presents, based upon preliminary information, potential for becoming a research-based or consensus-based practice.

(10) "Provider network" means those service providers who contract with a network administrator to provide services to children and families in the geographic area served by the network administrator.

(11) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices. [2017 3rd sp.s. c 6 § 505; 2012 c 205 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Chapter 74.14A RCW

CHILDREN AND FAMILY SERVICES

Sections

74.14A.030 Treatment of juvenile offenders—Nonresidential community-based programs. *(Effective July 1, 2019.)*

74.14A.040 Treatment of juvenile offenders—Involvement of family unit. *(Effective July 1, 2019.)*

74.14A.030 Treatment of juvenile offenders—Non-residential community-based programs. (Effective July 1, 2019.) The department of children, youth, and families shall address the needs of juvenile offenders whose standard range sentences do not include commitment by developing nonresidential community-based programs designed to reduce the incidence of manifest injustice commitments when consistent with public safety. [2017 3rd sp.s. c 6 § 625; 1983 c 192 § 3.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

74.14A.040 Treatment of juvenile offenders—Involvement of family unit. (Effective July 1, 2019.) The department of children, youth, and families shall involve a juvenile offender's family as a unit in the treatment process. The department need not involve the family as a unit in cases when family ties have by necessity been irrevocably broken. When the natural parents have been or will be replaced by a foster family or guardian, the new family will be involved in the treatment process. [2017 3rd sp.s. c 6 § 626; 1983 c 192 § 4.]

Effective date—2017 3rd sp.s. c 6 §§ 601-631, 701-728, and 804: See note following RCW 13.04.011.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

Chapter 74.14B RCW CHILDREN'S SERVICES

Sections

- 74.14B.010 Children's services workers—Hiring and training. (*Effective July 1, 2018.*)
- 74.14B.050 Child abuse and neglect—Counseling referrals. (*Effective July 1, 2018.*)
- 74.14B.070 Child victims of sexual assault or sexual abuse—Early identification, treatment. (*Effective July 1, 2018.*)
- 74.14B.080 Liability insurance for foster parents. (*Effective July 1, 2018.*)
- 74.14B.900 Decodified.

74.14B.010 Children's services workers—Hiring and training. (*Effective July 1, 2018.*) (1) Caseworkers employed in children services shall meet minimum standards established by the department. Comprehensive training for caseworkers shall be completed before such caseworkers are assigned to case-carrying responsibilities without direct supervision. Intermittent, part-time, and standby workers shall be subject to the same minimum standards and training.

(2) Ongoing specialized training shall be provided for persons responsible for investigating child sexual abuse. Training participants shall have the opportunity to practice interview skills and receive feedback from instructors.

(3) The department, the criminal justice training commission, the Washington association of sheriffs and police chiefs, and the Washington association of prosecuting attorneys shall design and implement statewide training that contains consistent elements for persons engaged in the interviewing of children, including law enforcement, prosecution, and child protective services.

(4) The training shall: (a) Be based on research-based practices and standards; (b) minimize the trauma of all persons who are interviewed during abuse investigations; (c) provide methods of reducing the number of investigative interviews necessary whenever possible; (d) assure, to the extent possible, that investigative interviews are thorough, objective, and complete; (e) recognize needs of special populations, such as persons with developmental disabilities; (f) recognize the nature and consequences of victimization; (g) require investigative interviews to be conducted in a manner most likely to permit the interviewed persons the maximum emotional comfort under the circumstances; (h) address record retention and retrieval; and (i) documentation of investigative interviews.

(5) The identification of domestic violence is critical in ensuring the safety of children in the child welfare system. As a result, ongoing domestic violence training and consultation shall be provided to caseworkers, including how to use the children's administration's practice guide to domestic violence. [2017 3rd sp.s. c 6 § 506; 2013 c 254 § 5; 1999 c 389 § 5; 1987 c 503 § 8.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

[2017 RCW Supp—page 848]

74.14B.050 Child abuse and neglect—Counseling referrals. (*Effective July 1, 2018.*) The department shall inform victims of child abuse and neglect and their families of the availability of state-supported counseling through the crime victims' compensation program, community mental health centers, domestic violence and sexual assault programs, and other related programs. The department shall assist victims with referrals to these services. [2017 3rd sp.s. c 6 § 507; 1987 c 503 § 14.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

74.14B.070 Child victims of sexual assault or sexual abuse—Early identification, treatment. (*Effective July 1, 2018.*) The department shall, subject to available funds, establish a system of early identification and referral to treatment of child victims of sexual assault or sexual abuse. The system shall include schools, physicians, sexual assault centers, domestic violence centers, child protective services, and foster parents. A mechanism shall be developed to identify communities that have experienced success in this area and share their expertise and methodology with other communities statewide. [2017 3rd sp.s. c 6 § 508; 1990 c 3 § 1403.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

74.14B.080 Liability insurance for foster parents. (*Effective July 1, 2018.*) (1) Subject to subsection (2) of this section, the secretary shall provide liability insurance to foster parents licensed under chapter 74.15 RCW. The coverage shall be for personal injury and property damage caused by foster parents or foster children that occurred while the children were in foster care. Such insurance shall cover acts of ordinary negligence but shall not cover illegal conduct or bad faith acts taken by foster parents in providing foster care. Moneys paid from liability insurance for any claim are limited to the amount by which the claim exceeds the amount available to the claimant from any valid and collectible liability insurance.

(2) The secretary may purchase the insurance required in subsection (1) of this section or may choose a self-insurance method. The total moneys expended pursuant to this authorization shall not exceed five hundred thousand dollars per biennium. If the secretary elects a method of self-insurance, the expenditure shall include all administrative and staff costs. If the secretary elects a method of self-insurance, he or she may, by rule, place a limit on the maximum amount to be paid on each claim.

(3) Nothing in this section or RCW 4.24.590 is intended to modify the foster parent reimbursement plan in place on July 1, 1991.

(4) The liability insurance program shall be available by July 1, 1991. [2017 3rd sp.s. c 6 § 509; 1991 c 283 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Findings—1991 c 283: "The legislature recognizes the unique legal risks that foster parents face in taking children into their care. Third parties have filed claims against foster parents for losses and damage caused by foster children. Additionally, foster children and their parents have sued foster parents for actions occurring while the children were in foster care. The legislature finds that some potential foster parents are unwilling to subject themselves to potential liability without insurance protection. The legislature further finds that to encourage those people to serve as foster parents, it is necessary to assure that such insurance is available to them." [1991 c 283 § 1.]

Additional notes found at www.leg.wa.gov

74.14B.900 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 74.14C RCW

FAMILY PRESERVATION SERVICES

Sections

- 74.14C.005 Findings and intent. (*Effective July 1, 2018.*)
 74.14C.010 Definitions. (*Effective July 1, 2018.*)
 74.14C.070 Appropriations—Transfer of funds from foster care services to family preservation services—Annual report. (*Effective July 1, 2018.*)
 74.14C.090 Reports on referrals and services. (*Effective July 1, 2018.*)

74.14C.005 Findings and intent. (*Effective July 1, 2018.*) (1) The legislature believes that protecting the health and safety of children is paramount. The legislature recognizes that the number of children entering out-of-home care is increasing and that a number of children receive long-term foster care protection. Reasonable efforts by the department to shorten out-of-home placement or avoid it altogether should be a major focus of the child welfare system. It is intended that providing up-front services decrease the number of children entering out-of-home care and have the effect of eventually lowering foster care expenditures and strengthening the family unit.

Within available funds, the legislature directs the department to focus child welfare services on protecting the child, strengthening families and, to the extent possible, providing necessary services in the family setting, while drawing upon the strengths of the family. The legislature intends services be locally based and offered as early as possible to avoid disruption to the family, out-of-home placement of the child, and entry into the dependency system. The legislature also intends that these services be used for those families whose children are returning to the home from out-of-home care. These services are known as family preservation services and intensive family preservation services and are characterized by the following values, beliefs, and goals:

- (a) Safety of the child is always the first concern;
- (b) Children need their families and should be raised by their own families whenever possible;
- (c) Interventions should focus on family strengths and be responsive to the individual family's cultural values and needs;
- (d) Participation should be voluntary; and
- (e) Improvement of family functioning is essential in order to promote the child's health, safety, and welfare and

thereby allow the family to remain intact and allow children to remain at home.

(2) Subject to the availability of funds for such purposes, the legislature intends for these services to be made available to all eligible families on a statewide basis through a phased-in process. Except as otherwise specified by statute, the department shall have the authority and discretion to implement and expand these services as provided in RCW 74.14C.010 through 74.14C.100. The department shall consult with the community public health and safety networks when assessing a community's resources and need for services.

(3) It is the legislature's intent that, within available funds, the department develop services in accordance with RCW 74.14C.010 through 74.14C.100.

(4) Nothing in RCW 74.14C.010 through 74.14C.100 shall be construed to create an entitlement to services nor to create judicial authority to order the provision of preservation services to any person or family if the services are unavailable or unsuitable or that the child or family are not eligible for such services. [2017 3rd sp.s. c 6 § 510; 1995 c 311 § 1; 1992 c 214 § 1.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

74.14C.010 Definitions. (*Effective July 1, 2018.*)

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

(1) "Community support systems" means the support that may be organized through extended family members, friends, neighbors, religious organizations, community programs, cultural and ethnic organizations, or other support groups or organizations.

(2) "Department" means the department of children, youth, and families.

(3) "Family preservation services" means in-home or community-based services drawing on the strengths of the family and its individual members while addressing family needs to strengthen and keep the family together where possible and may include:

(a) Respite care of children to provide temporary relief for parents and other caregivers;

(b) Services designed to improve parenting skills with respect to such matters as child development, family budgeting, coping with stress, health, safety, and nutrition; and

(c) Services designed to promote the well-being of children and families, increase the strength and stability of families, increase parents' confidence and competence in their parenting abilities, promote a safe, stable, and supportive family environment for children, and otherwise enhance children's development.

Family preservation services shall have the characteristics delineated in RCW 74.14C.020 (2) and (3).

(4) "Imminent" means a decision has been made by the department that, without intensive family preservation services, a petition requesting the removal of a child from the family home will be immediately filed under chapter 13.32A

or 13.34 RCW, or that a voluntary placement agreement will be immediately initiated.

(5) "Intensive family preservation services" means community-based services that are delivered primarily in the home, that follow intensive service models with demonstrated effectiveness in reducing or avoiding the need for unnecessary imminent out-of-home placement, and that have all of the characteristics delineated in RCW 74.14C.020 (1) and (3).

(6) "Out-of-home placement" means a placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(7) "Paraprofessional worker" means any individual who is trained and qualified to provide assistance and community support systems development to families and who acts under the supervision of a preservation services therapist. The paraprofessional worker is not intended to replace the role and responsibilities of the preservation services therapist.

(8) "Preservation services" means family preservation services and intensive family preservation services that consider the individual family's cultural values and needs.

(9) "Secretary" means the secretary of the department. [2017 3rd sp.s. c 6 § 511; 1996 c 240 § 2; 1995 c 311 § 2; 1992 c 214 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

74.14C.070 Appropriations—Transfer of funds from foster care services to family preservation services—Annual report. (Effective July 1, 2018.) The secretary or the secretary's designee may transfer funds appropriated for foster care services to purchase preservation services and other preventive services for children at imminent risk of out-of-home placement or who face a substantial likelihood of out-of-home placement. This transfer may be made in those regions that lower foster care expenditures through efficient use of preservation services and permanency planning efforts. The transfer shall be equivalent to the amount of reduced foster care expenditures and shall be made in accordance with the provisions of this chapter and with the approval of the office of financial management. The department shall present an annual report to the legislature regarding any transfers under this section only if transfers occur. The department shall include caseload, expenditure, cost avoidance, identified improvements to the out-of-home care system, and outcome data related to the transfer in the report. The department shall also include in the report information regarding:

(1) The percent of cases where a child is placed in out-of-home care after the provision of intensive family preservation services or family preservation services;

(2) The average length of time before the child is placed out-of-home;

(3) The average length of time the child is placed out-of-home; and

(4) The number of families that refused the offer of either family preservation services or intensive family preservation services. [2017 3rd sp.s. c 6 § 512; 2003 c 207 § 3; 1995 c 311 § 11; 1994 c 288 § 3; 1992 c 214 § 9.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Funds transfer review: "The juvenile issues task force established under chapter 234, Laws of 1991, shall review the advisability of transferring appropriated funds from foster care to purchase family preservation services for children at imminent risk of foster care placement and include findings and recommendations on the transfer of funds to the appropriate committees of the senate and house of representatives by December 15, 1992. The task force shall identify ways to improve the foster care system and expand family preservation services with the savings generated by avoiding the placement of children at imminent risk of foster care placement through the provision of family preservation services." [1992 c 214 § 10.]

74.14C.090 Reports on referrals and services. (Effective July 1, 2018.) Each department caseworker who refers a client for preservation services shall file a report with his or her direct supervisor stating the reasons for which the client was referred. The caseworker's supervisor shall verify in writing his or her belief that the family who is the subject of a referral for preservation services meets the eligibility criteria for services as provided in this chapter. The direct supervisor shall report monthly to the regional administrator on the provision of these services. The regional administrator shall report to the secretary quarterly on the provision of these services for the entire region. The secretary shall post on the department's web site a semiannual report on the provision of these services on a statewide basis. [2017 3rd sp.s. c 6 § 513; 1995 c 311 § 8.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Chapter 74.15 RCW

CARE OF CHILDREN, EXPECTANT MOTHERS, PERSONS WITH DEVELOPMENTAL DISABILITIES

Sections

74.15.020	Definitions. (Effective until July 1, 2018.)
74.15.020	Definitions. (Effective July 1, 2018.)
74.15.030	Powers and duties of secretary. (Effective July 1, 2018.)
74.15.060	Health protection—Powers and duties of secretary of health. (Effective July 1, 2018.)
74.15.070	Articles of incorporation and amendments—Copies to be furnished to department. (Effective July 1, 2018.)
74.15.080	Access to agencies, records. (Effective July 1, 2018.)
74.15.120	Initial licenses. (Effective July 1, 2018.)
74.15.127	Expedited foster licensing process.
74.15.134	License or certificate suspension—Noncompliance with support order—Reissuance. (Effective July 1, 2018.)
74.15.200	Child abuse and neglect prevention training to parents and day care providers. (Effective July 1, 2018.)
74.15.901	Federal waivers—1999 c 267 §§ 10-26. (Effective July 1, 2018.)

74.15.020 Definitions. (Effective until July 1, 2018.) The definitions in this section apply throughout this chapter

and RCW 74.13.031 unless the context clearly requires otherwise.

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers, or persons with developmental disabilities for services rendered:

(a) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(b) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

(c) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 43.185C.295 through 43.185C.310;

(d) "Emergency respite center" is an agency that may be commonly known as a crisis nursery, that provides emergency and crisis care for up to seventy-two hours to children who have been admitted by their parents or guardians to prevent abuse or neglect. Emergency respite centers may operate for up to twenty-four hours a day, and for up to seven days a week. Emergency respite centers may provide care for children ages birth through seventeen, and for persons eighteen through twenty with developmental disabilities who are admitted with a sibling or siblings through age seventeen. Emergency respite centers may not substitute for crisis residential centers or HOPE centers, or any other services defined under this section, and may not substitute for services which are required under chapter 13.32A or 13.34 RCW;

(e) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(f) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(g) "HOPE center" means an agency licensed by the secretary to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other

street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

(h) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(i) "Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to seventy-two hours, excluding Saturdays, Sundays, and holidays to children who have been removed from their parent's or guardian's care by child protective services or law enforcement;

(j) "Responsible living skills program" means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have been unable to live in his or her legally authorized residence and, as a result, the minor lived outdoors or in another unsafe location not intended for occupancy by the minor. Dependent minors ages fourteen and fifteen may be eligible if no other placement alternative is available and the department approves the placement;

(k) "Service provider" means the entity that operates a community facility.

(2) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (a)(i), (ii), or (iii) of this subsection (2), even after the marriage is terminated;

(v) Relatives, as named in (a)(i), (ii), (iii), or (iv) of this subsection (2), of any half sibling of the child; or

(vi) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to international

children who have entered the country by obtaining visas that meet the criteria for medical care as established by the United States citizenship and immigration services, or persons who have the care of such an international child in their home;

(f) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(g) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and assisted living facilities licensed under chapter 18.20 RCW;

(h) Licensed physicians or lawyers;

(i) Facilities approved and certified under chapter 71A.22 RCW;

(j) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(k) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(l) An agency operated by any unit of local, state, or federal government or an agency licensed by an Indian tribe pursuant to RCW 74.15.190;

(m) A maximum or medium security program for juvenile offenders operated by or under contract with the department;

(n) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(o) A host home program, and host home, operated by a tax exempt organization for youth not in the care of or receiving services from the department, if that program: (i) Recruits and screens potential homes in the program, including performing background checks on individuals over the age of eighteen residing in the home through the Washington state patrol or equivalent law enforcement agency and performing physical inspections of the home; (ii) screens and provides case management services to youth in the program; (iii) obtains a notarized permission slip or limited power of attorney from the parent or legal guardian of the youth authorizing the youth to participate in the program and the authorization is updated every six months when a youth remains in a host home longer than six months; (iv) obtains insurance for the program through an insurance provider authorized under Title 48 RCW; (v) provides mandatory reporter and confidentiality training; and (vi) registers with the secretary of state as provided in RCW 24.03.550. A host home is a private home that volunteers to host youth in need of temporary placement that is associated with a host home program. Any host home program that receives local, state, or government funding shall report the following information to the office of homeless youth prevention and protection programs annually by December 1st of each year: The number of children the program served, why the child was placed with a host home, and where the child went after leaving the host home, includ-

ing but not limited to returning to the parents, running away, reaching the age of majority, or becoming a dependent of the state. A host home program shall not receive more than one hundred thousand dollars per year of public funding, including local, state, and federal funding. A host home shall not receive any local, state, or government funding.

(3) "Department" means the state department of social and health services.

(4) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(5) "Performance-based contracts" or "contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts may also include provisions that link the performance of the contractor to the level and timing of the reimbursement.

(6) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(7) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(8) "Secretary" means the secretary of social and health services.

(9) "Street youth" means a person under the age of eighteen who lives outdoors or in another unsafe location not intended for occupancy by the minor and who is not residing with his or her parent or at his or her legally authorized residence.

(10) "Supervising agency" means an agency licensed by the state under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 that has entered into a performance-based contract with the department to provide child welfare services.

(11) "Transitional living services" means at a minimum, to the extent funds are available, the following:

(a) Educational services, including basic literacy and computational skills training, either in local alternative or public high schools or in a high school equivalency program that leads to obtaining a high school equivalency degree;

(b) Assistance and counseling related to obtaining vocational training or higher education, job readiness, job search assistance, and placement programs;

(c) Counseling and instruction in life skills such as money management, home management, consumer skills, parenting, health care, access to community resources, and transportation and housing options;

(d) Individual and group counseling; and

(e) Establishing networks with federal agencies and state and local organizations such as the United States department of labor, employment and training administration programs including the workforce innovation and opportunity act which administers private industry councils and the job corps; vocational rehabilitation; and volunteer programs. [2017 c 39 § 11; 2016 c 166 § 1; 2013 c 105 § 2; 2012 c 10 § 61; 2009 c 520 § 13; 2007 c 412 § 1. Prior: 2006 c 265 § 401; 2006 c 90 § 1; 2006 c 54 § 7; prior: 2001 c 230 § 1; 2001 c 144 § 1; 2001 c 137 § 3; 1999 c 267 § 11; 1998 c 269 § 3; 1997 c 245 § 7; prior: 1995 c 311 § 18; 1995 c 302 § 3; 1994

c 273 § 21; 1991 c 128 § 14; 1988 c 176 § 912; 1987 c 170 § 12; 1982 c 118 § 5; 1979 c 155 § 83; 1977 ex.s. c 80 § 71; 1967 c 172 § 2.]

Report to legislature—2016 c 166: "By July 1, 2017, the department of commerce must report to the governor and the legislature recommendations and best practices for host home programs." [2016 c 166 § 2.]

Findings—Intent—2013 c 105: See note following RCW 74.15.311.

Application—2012 c 10: See note following RCW 18.20.010.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

Intent—1995 c 302: See note following RCW 74.15.010.

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

Additional notes found at www.leg.wa.gov

74.15.020 Definitions. (Effective July 1, 2018.) The definitions in this section apply throughout this chapter and RCW 74.13.031 unless the context clearly requires otherwise.

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers, or persons with developmental disabilities for services rendered:

(a) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(b) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

(c) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 43.185C.295 through 43.185C.310;

(d) "Emergency respite center" is an agency that may be commonly known as a crisis nursery, that provides emergency and crisis care for up to seventy-two hours to children who have been admitted by their parents or guardians to prevent abuse or neglect. Emergency respite centers may operate for up to twenty-four hours a day, and for up to seven days a week. Emergency respite centers may provide care for children ages birth through seventeen, and for persons eighteen through twenty with developmental disabilities who are admitted with a sibling or siblings through age seventeen. Emergency respite centers may not substitute for crisis residential centers or HOPE centers, or any other services defined under this section, and may not substitute for services which are required under chapter 13.32A or 13.34 RCW;

(e) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(f) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(g) "HOPE center" means an agency licensed by the secretary to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

(h) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(i) "Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to seventy-two hours, excluding Saturdays, Sundays, and holidays to children who have been removed from their parent's or guardian's care by child protective services or law enforcement;

(j) "Responsible living skills program" means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have been unable to live in his or her legally authorized residence and, as a result, the minor lived outdoors or in another unsafe location not intended for occupancy by the minor. Dependent minors ages fourteen and fifteen may be eligible if no other placement alternative is available and the department approves the placement;

(k) "Service provider" means the entity that operates a community facility.

(2) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (a)(i), (ii), or (iii) of this subsection (2), even after the marriage is terminated;

(v) Relatives, as named in (a)(i), (ii), (iii), or (iv) of this subsection (2), of any half sibling of the child; or

(vi) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to international children who have entered the country by obtaining visas that meet the criteria for medical care as established by the United States citizenship and immigration services, or persons who have the care of such an international child in their home;

(f) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(g) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and assisted living facilities licensed under chapter 18.20 RCW;

(h) Licensed physicians or lawyers;

(i) Facilities approved and certified under chapter 71A.22 RCW;

(j) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(k) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(l) An agency operated by any unit of local, state, or federal government or an agency licensed by an Indian tribe pursuant to RCW 74.15.190;

(m) A maximum or medium security program for juvenile offenders operated by or under contract with the department;

(n) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(o) A host home program, and host home, operated by a tax exempt organization for youth not in the care of or receiving services from the department, if that program: (i) Recruits and screens potential homes in the program, including performing background checks on individuals over the age of

eighteen residing in the home through the Washington state patrol or equivalent law enforcement agency and performing physical inspections of the home; (ii) screens and provides case management services to youth in the program; (iii) obtains a notarized permission slip or limited power of attorney from the parent or legal guardian of the youth authorizing the youth to participate in the program and the authorization is updated every six months when a youth remains in a host home longer than six months; (iv) obtains insurance for the program through an insurance provider authorized under Title 48 RCW; (v) provides mandatory reporter and confidentiality training; and (vi) registers with the secretary of state as provided in RCW 24.03.550. A host home is a private home that volunteers to host youth in need of temporary placement that is associated with a host home program. Any host home program that receives local, state, or government funding shall report the following information to the office of homeless youth prevention and protection programs annually by December 1st of each year: The number of children the program served, why the child was placed with a host home, and where the child went after leaving the host home, including but not limited to returning to the parents, running away, reaching the age of majority, or becoming a dependent of the state. A host home program shall not receive more than one hundred thousand dollars per year of public funding, including local, state, and federal funding. A host home shall not receive any local, state, or government funding.

(3) "Department" means the department of children, youth, and families.

(4) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(5) "Performance-based contracts" or "contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts may also include provisions that link the performance of the contractor to the level and timing of the reimbursement.

(6) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(7) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(8) "Secretary" means the secretary of the department.

(9) "Street youth" means a person under the age of eighteen who lives outdoors or in another unsafe location not intended for occupancy by the minor and who is not residing with his or her parent or at his or her legally authorized residence.

(10) "Supervising agency" means an agency licensed by the state under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 that has entered into a performance-based contract with the department to provide child welfare services.

(11) "Transitional living services" means at a minimum, to the extent funds are available, the following:

(a) Educational services, including basic literacy and computational skills training, either in local alternative or

public high schools or in a high school equivalency program that leads to obtaining a high school equivalency degree;

(b) Assistance and counseling related to obtaining vocational training or higher education, job readiness, job search assistance, and placement programs;

(c) Counseling and instruction in life skills such as money management, home management, consumer skills, parenting, health care, access to community resources, and transportation and housing options;

(d) Individual and group counseling; and

(e) Establishing networks with federal agencies and state and local organizations such as the United States department of labor, employment and training administration programs including the workforce innovation and opportunity act which administers private industry councils and the job corps; vocational rehabilitation; and volunteer programs. [2017 3rd sp.s. c 6 § 408; 2017 c 39 § 11; 2016 c 166 § 1; 2013 c 105 § 2; 2012 c 10 § 61; 2009 c 520 § 13; 2007 c 412 § 1. Prior: 2006 c 265 § 401; 2006 c 90 § 1; 2006 c 54 § 7; prior: 2001 c 230 § 1; 2001 c 144 § 1; 2001 c 137 § 3; 1999 c 267 § 11; 1998 c 269 § 3; 1997 c 245 § 7; prior: 1995 c 311 § 18; 1995 c 302 § 3; 1994 c 273 § 21; 1991 c 128 § 14; 1988 c 176 § 912; 1987 c 170 § 12; 1982 c 118 § 5; 1979 c 155 § 83; 1977 ex.s. c 80 § 71; 1967 c 172 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Report to legislature—2016 c 166: "By July 1, 2017, the department of commerce must report to the governor and the legislature recommendations and best practices for host home programs." [2016 c 166 § 2.]

Findings—Intent—2013 c 105: See note following RCW 74.15.311.

Application—2012 c 10: See note following RCW 18.20.010.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

Intent—1995 c 302: See note following RCW 74.15.010.

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

Additional notes found at www.leg.wa.gov

74.15.030 Powers and duties of secretary. (Effective July 1, 2018.) The secretary shall have the power and it shall be the secretary's duty:

(1) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages, sex and other characteristics of persons served, variations in the purposes and services offered or size or structure of the agencies to be licensed hereunder, or because of any other factor relevant thereto;

(2) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed.

The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(b) Obtaining background information and any out-of-state equivalent, to determine whether the applicant or service provider is disqualified and to determine the character, competence, and suitability of an agency, the agency's employees, volunteers, and other persons associated with an agency;

(c) Conducting background checks for those who will or may have unsupervised access to children or expectant mothers; however, a background check is not required if a caregiver approves an activity pursuant to the prudent parent standard contained in RCW 74.13.710;

(d) Obtaining child protective services information or records maintained in the department case management information system. No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under this chapter;

(e) Submitting a fingerprint-based background check through the Washington state patrol under chapter 10.97 RCW and through the federal bureau of investigation for:

(i) Agencies and their staff, volunteers, students, and interns when the agency is seeking license or relicense;

(ii) Foster care and adoption placements; and

(iii) Any adult living in a home where a child may be placed;

(f) If any adult living in the home has not resided in the state of Washington for the preceding five years, the department shall review any child abuse and neglect registries maintained by any state where the adult has resided over the preceding five years;

(g) The cost of fingerprint background check fees will be paid as required in RCW 43.43.837;

(h) National and state background information must be used solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children or expectant mothers;

(i) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;

(j) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children or expectant mothers;

(k) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;

(l) The financial ability of an agency to comply with minimum requirements established pursuant to this chapter and RCW 74.13.031; and

(m) The maintenance of records pertaining to the admission, progress, health and discharge of persons served;

(3) To investigate any person, including relatives by blood or marriage except for parents, for character, suitability, and competence in the care and treatment of children or expectant mothers prior to authorizing that person to care for

children or expectant mothers. However, if a child is placed with a relative under RCW 13.34.065 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment the criminal history background check required by this section need not be completed before placement, but shall be completed as soon as possible after placement;

(4) On reports of alleged child abuse and neglect, to investigate agencies in accordance with chapter 26.44 RCW, including child day-care centers and family day-care homes, to determine whether the alleged abuse or neglect has occurred, and whether child protective services or referral to a law enforcement agency is appropriate;

(5) To issue, revoke, or deny licenses to agencies pursuant to this chapter and RCW 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;

(6) To prescribe the procedures and the form and contents of reports necessary for the administration of this chapter and RCW 74.13.031 and to require regular reports from each licensee;

(7) To inspect agencies periodically to determine whether or not there is compliance with this chapter and RCW 74.13.031 and the requirements adopted hereunder;

(8) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation with affected groups for child day-care requirements and with the children's services advisory committee for requirements for other agencies; and

(9) To consult with public and private agencies in order to help them improve their methods and facilities for the care of children or expectant mothers. [2017 3rd sp.s. c 6 § 409; 2014 c 104 § 2. Prior: 2007 c 387 § 5; 2007 c 17 § 14; prior: 2006 c 265 § 402; 2006 c 54 § 8; 2005 c 490 § 11; prior: 2000 c 162 § 20; 2000 c 122 § 40; 1997 c 386 § 33; 1995 c 302 § 4; 1988 c 189 § 3; prior: 1987 c 524 § 13; 1987 c 486 § 14; 1984 c 188 § 5; 1982 c 118 § 6; 1980 c 125 § 1; 1979 c 141 § 355; 1977 ex.s. c 80 § 72; 1967 c 172 § 3.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Intent—1995 c 302: See note following RCW 74.15.010.

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

Additional notes found at www.leg.wa.gov

74.15.060 Health protection—Powers and duties of secretary of health. (Effective July 1, 2018.) The secretary of health shall have the power and it shall be his or her duty:

In consultation with the children's services advisory committee and with the advice and assistance of persons representative of the various type agencies to be licensed, to develop minimum requirements pertaining to each category of agency established pursuant to chapter 74.15 RCW and RCW 74.13.031, necessary to promote the health of all persons residing therein.

The secretary of health or the city, county, or district health department designated by the secretary shall have the power and the duty:

[2017 RCW Supp—page 856]

(1) To make or cause to be made such inspections and investigations of agencies as may be deemed necessary; and

(2) To issue to applicants for licenses hereunder who comply with the requirements adopted hereunder, a certificate of compliance, a copy of which shall be presented to the department before a license shall be issued, except that an initial license may be issued as provided in RCW 74.15.120. [2017 3rd sp.s. c 6 § 410; 1991 c 3 § 376; 1989 1st ex.s. c 9 § 265; 1987 c 524 § 14; 1982 c 118 § 9; 1970 ex.s. c 18 § 14; 1967 c 172 § 6.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

74.15.070 Articles of incorporation and amendments—Copies to be furnished to department. (Effective July 1, 2018.) A copy of the articles of incorporation of any agency or amendments to the articles of existing corporation agencies shall be sent by the secretary of state to the department at the time such articles or amendments are filed. [2017 3rd sp.s. c 6 § 411; 1979 c 141 § 358; 1967 c 172 § 7.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

74.15.080 Access to agencies, records. (Effective July 1, 2018.) All agencies subject to chapter 74.15 RCW and RCW 74.13.031 shall accord the department, the secretary of health, the chief of the Washington state patrol, and the director of fire protection, or their designees, the right of entrance and the privilege of access to and inspection of records for the purpose of determining whether or not there is compliance with the provisions of chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted thereunder. [2017 3rd sp.s. c 6 § 412; 1995 c 369 § 63; 1989 1st ex.s. c 9 § 266; 1986 c 266 § 124; 1979 c 141 § 359; 1967 c 172 § 8.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Additional notes found at www.leg.wa.gov

74.15.120 Initial licenses. (Effective July 1, 2018.) The secretary may, at his or her discretion, issue an initial license instead of a full license, to an agency or facility for a period not to exceed six months, renewable for a period not to exceed two years, to allow such agency or facility reasonable time to become eligible for full license. An initial license shall not be granted to any foster-family home except as specified in this section. An initial license may be granted to a foster-family home only if the following three conditions are met: (1) The license is limited so that the licensee is authorized to provide care only to a specific child or specific children; (2) the department has determined that the licensee has a relationship with the child, and the child is comfortable with the licensee, or that it would otherwise be in the child's

best interest to remain or be placed in the licensee's home; and (3) the initial license is issued for a period not to exceed ninety days. [2017 3rd sp.s. c 6 § 413; 1995 c 311 § 22; 1979 c 141 § 361; 1967 c 172 § 12.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

74.15.127 Expedited foster licensing process. (1) The department shall design and implement an expedited foster licensing process.

(2) The expedited foster licensing process described in this section shall be available to individuals who:

(a) Were licensed within the last five years;

(b) Were not the subject of an adverse licensing action or a voluntary relinquishment;

(c) Seek licensure for the same residence for which he or she was previously licensed provided that any changes to family constellation since the previous license is limited to individuals leaving the family constellation; and

(d) Apply to the same agency for which he or she was previously licensed, with the understanding that the agency must be agreeable to supervise the home.

(3) The department shall make every effort to ensure that individuals qualifying for and seeking an expedited license are able to become licensed within forty days of the department receiving his or her application.

(4) The department shall only issue a foster license pursuant to this section after receiving a completed fingerprint-based background check, and may delay issuance of an expedited license solely based on awaiting the results of a background check.

(5) The department may issue a provisional expedited license pursuant to this section before completing a home study, but shall complete the home study as soon as possible after issuing a provisional expedited license.

(6) The department and its officers, agents, employees, and volunteers are not liable for injuries caused by the expedited foster licensing process. [2017 3rd sp.s. c 20 § 4.]

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

74.15.134 License or certificate suspension—Non-compliance with support order—Reissuance. (*Effective July 1, 2018.*) The secretary shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the secretary's receipt of a release issued by the department stating that the licensee is in compliance with the order. [2017 3rd sp.s. c 6 § 414; 1997 c 58 § 858.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

74.15.200 Child abuse and neglect prevention training to parents and day care providers. (*Effective July 1, 2018.*) The department shall have primary responsibility for providing child abuse and neglect prevention training to parents and licensed child day care providers of preschool age children participating in day care programs meeting the requirements of chapter 74.15 RCW. The department may limit training under this section to trainers' workshops and curriculum development using existing resources. [2017 3rd sp.s. c 6 § 415; 1987 c 489 § 5.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Intent—1987 c 489: See note following RCW 28A.300.150.

74.15.901 Federal waivers—1999 c 267 §§ 10-26. (*Effective July 1, 2018.*) (1) The department of social and health services shall seek any necessary federal waivers for federal funding of the programs created under sections 10 through 26, chapter 267, Laws of 1999. The department shall pursue federal funding sources for the programs created under sections 10 through 26, chapter 267, Laws of 1999, and report to the legislature any statutory barriers to federal funding.

(2) The department of children, youth, and families shall seek any necessary federal waivers for federal funding of the programs created under sections 10 through 26, chapter 267, Laws of 1999. The department shall pursue federal funding sources for the programs created under sections 10 through 26, chapter 267, Laws of 1999, and report to the legislature any statutory barriers to federal funding. [2017 3rd sp.s. c 6 § 416; 1999 c 267 § 23.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Chapter 74.18 RCW

DEPARTMENT OF SERVICES FOR THE BLIND

Sections

74.18.903 Decodified.

74.18.903 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 74.20A RCW

SUPPORT OF DEPENDENT CHILDREN— ALTERNATIVE METHOD—1971 ACT

Sections

74.20A.320 License suspension—Notice of noncompliance with a child support order—License renewal and reinstatement.

74.20A.320 License suspension—Notice of noncompliance with a child support order—License renewal and reinstatement. (1) The department may serve upon a responsible parent a notice informing the responsible parent of the department's intent to submit the parent's name to the department of licensing and any appropriate licensing entity as a licensee who is not in compliance with a child support order.

(a) If the support order establishing or modifying the child support obligation includes a statement required under RCW 26.23.050 that the responsible parent's privileges to obtain and maintain a license may not be renewed or may be suspended if the parent is not in compliance with a support order, the department may send the notice required by this section to the responsible parent by regular mail, addressed to the responsible parent's last known mailing address on file with the department or by personal service. Notice by regular mail is deemed served three days from the date the notice was deposited with the United States postal service.

(b) If the support order does not include a statement as required under RCW 26.23.050 that the responsible parent's privileges to obtain and maintain a license may not be renewed or may be suspended if the parent is not in compliance with a support order, service of the notice required by this section to the responsible parent must be by certified mail, return receipt requested. If service by certified mail is not successful, service shall be by personal service.

(2) The notice of noncompliance must include the following information:

(a) The address and telephone number of the department's division of child support office that issued the notice;

(b) That in order to prevent the department from certifying the parent's name to the department of licensing or any other licensing entity, the parent has twenty days from receipt of the notice to contact the department and:

(i) Pay the overdue support amount in full;

(ii) Request an adjudicative proceeding as provided in RCW 74.20A.322;

(iii) Agree to a payment schedule with the department as provided in RCW 74.20A.326; or

(iv) File an action to modify the child support order with the appropriate court or administrative forum, in which case the department will stay the certification process up to six months;

(c) That failure to contact the department within twenty days of receipt of the notice will result in certification of the responsible parent's name to the department of licensing and any other appropriate licensing entity for noncompliance with a child support order. Upon receipt of the notice:

(i) The licensing entity will suspend or not renew the parent's license and the department of licensing will suspend or not renew any driver's license that the parent holds until the parent provides the department of licensing and the licensing entity with a release from the department stating that the responsible parent is in compliance with the child support order;

(ii) The department of fish and wildlife will suspend a fishing license, hunting license, occupational licenses, such as a commercial fishing license, or any other license issued under chapter 77.32 RCW that the responsible parent may possess, and suspension of a license by the department of fish

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and wildlife may also affect the parent's ability to obtain permits, such as special hunting permits, issued by the department. Notice from the department of licensing that a responsible parent's driver's license has been suspended shall serve as notice of the suspension of a license issued under chapter 77.32 RCW;

(d) That suspension of a license will affect insurability if the responsible parent's insurance policy excludes coverage for acts occurring after the suspension of a license;

(e) If the responsible parent subsequently comes into compliance with the child support order, the department will promptly provide the parent and the appropriate licensing entities with a release stating that the parent is in compliance with the order.

(3) When a responsible parent who is served notice under subsection (1) of this section subsequently complies with the child support order, a copy of a release stating that the responsible parent is in compliance with the order shall be transmitted by the department to the appropriate licensing entities.

(4) The department of licensing and a licensing entity may renew, reinstate, or otherwise extend a license in accordance with the licensing entity's or the department of licensing's rules after the licensing entity or the department of licensing receives a copy of the release specified in subsection (3) of this section. The department of licensing and a licensing entity may waive any applicable requirement for reissuance, renewal, or other extension if it determines that the imposition of that requirement places an undue burden on the person and that waiver of the requirement is consistent with the public interest. [2017 c 269 § 6; 2009 c 408 § 1; 1997 c 58 § 802.]

***Reviser's note:** Subsection (1) of this section was vetoed by the governor. The vetoed language is as follows:

"(1) Sections 1, 2, 101 through 110, 201 through 207, 301 through 329, 401 through 404, 501 through 506, 601, 705, 706, 888, 891 through 943, 945 through 948, and 1002 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately."

Intent—1997 c 58: "It is the intent of the legislature to provide a strong incentive for persons owing child support to make timely payments, and to cooperate with the department of social and health services to establish an appropriate schedule for the payment of any arrears. To further ensure that child support obligations are met, sections 801 through 890 of this act establish a program by which certain licenses may be suspended or not renewed if a person is one hundred eighty days or more in arrears on child support payments.

In the implementation and management of this program, it is the legislature's intent that the objective of the department of social and health services be to obtain payment in full of arrears, or where that is not possible, to enter into agreements with delinquent obligors to make timely support payments and make reasonable payments towards the arrears. The legislature intends that if the obligor refuses to cooperate in establishing a fair and reasonable payment schedule for arrears or refuses to make timely support payments, the department shall proceed with certification to a licensing entity or the department of licensing that the person is not in compliance with a child support order." [1997 c 58 § 801.]

Additional notes found at www.leg.wa.gov

Chapter 74.34 RCW ABUSE OF VULNERABLE ADULTS

Sections

74.34.020 Definitions.

- 74.34.063 Response to reports—Timing—Reports to law enforcement agencies—Notification to licensing authority. (*Effective July 1, 2018.*)
- 74.34.320 Written protocol—Counties encouraged to develop for handling criminal cases involving vulnerable adults—Vulnerable adult advocacy teams—Confidentiality—Disclosure of information.

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

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding.

(c) "Mental abuse" means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(d) "Personal exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(e) "Improper use of restraint" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that: (i) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW; (ii) is not medically authorized; or (iii) otherwise constitutes abuse under this section.

(3) "Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

(4) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

(5) "Department" means the department of social and health services.

(6) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, assisted living facilities; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed or certified by the department.

(7) "Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

(8) "Financial institution" has the same meaning as in RCW 30A.22.040 and 30A.22.041. For purposes of this chapter only, "financial institution" also means a "broker-dealer" or "investment adviser" as defined in RCW 21.20.005.

(9) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW and any employee, agent, officer, director, or independent contractor thereof.

(10) "Incapacitated person" means a person who is at a significant risk of personal or financial harm under RCW 11.88.010(1) (a), (b), (c), or (d).

(11) "Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

(12) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

(13)(a) "Isolate" or "isolation" means to restrict a vulnerable adult's ability to communicate, visit, interact, or otherwise associate with persons of his or her choosing. Isolation may be evidenced by acts including but not limited to:

(i) Acts that prevent a vulnerable adult from sending, making, or receiving his or her personal mail, electronic communications, or telephone calls; or

(ii) Acts that prevent or obstruct the vulnerable adult from meeting with others, such as telling a prospective visitor or caller that a vulnerable adult is not present, or does not wish contact, where the statement is contrary to the express wishes of the vulnerable adult.

(b) The term "isolate" or "isolation" may not be construed in a manner that prevents a guardian or limited guardian from performing his or her fiduciary obligations under chapter 11.92 RCW or prevents a hospital or facility from providing treatment consistent with the standard of care for delivery of health services.

(14) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

(15) "Mechanical restraint" means any device attached or adjacent to the vulnerable adult's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are (a) medically authorized, as required, and (b) used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

(16) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

(17) "Permissive reporter" means any person, including, but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

(18) "Physical restraint" means the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include (a) briefly holding without undue force a vulnerable adult in order to calm or comfort him or her, or (b) holding a vulnerable adult's hand to safely escort him or her from one area to another.

(19) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

(20) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

(21) "Social worker" means:

(a) A social worker as defined in RCW 18.320.010(2); or

(b) Anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of vulnerable adults, or providing social services to vulnerable adults, whether in an individual capacity or as an employee or agent of any public or private organization or institution.

(22) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Found incapacitated under chapter 11.88 RCW; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from an individual provider; or

(g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

(23) "Vulnerable adult advocacy team" means a team of three or more persons who coordinate a multidisciplinary process, in compliance with chapter 266, Laws of 2017 and the protocol governed by RCW 74.34.320, for preventing, identifying, investigating, prosecuting, and providing services related to abuse, neglect, or financial exploitation of vulnerable adults. [2017 c 268 § 2; 2017 c 266 § 12; 2015 c 268 § 1; 2013 c 263 § 1; 2012 c 10 § 62. Prior: 2011 c 170 § 1; 2011 c 89 § 18; 2010 c 133 § 2; 2007 c 312 § 1; 2006 c 339 § 109; 2003 c 230 § 1; 1999 c 176 § 3; 1997 c 392 § 523; 1995 1st sp.s. c 18 § 84; 1984 c 97 § 8.]

Reviser's note: This section was amended by 2017 c 266 § 12 and by 2017 c 268 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2017 c 266: See note following RCW 9A.42.020.

Application—2012 c 10: See note following RCW 18.20.010.

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Intent—2006 c 339: "It is the intent of the legislature to provide assistance for jurisdictions enforcing illegal drug laws that have historically been underserved by federally funded state narcotics task forces and are considered to be major transport areas of narcotics traffickers." [2006 c 339 § 103.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Additional notes found at www.leg.wa.gov

74.34.063 Response to reports—Timing—Reports to law enforcement agencies—Notification to licensing

authority. (Effective July 1, 2018.) (1) The department shall initiate a response to a report, no later than twenty-four hours after knowledge of the report, of suspected abandonment, abuse, financial exploitation, neglect, or self-neglect of a vulnerable adult.

(2) When the initial report or investigation by the department indicates that the alleged abandonment, abuse, financial exploitation, or neglect may be criminal, the department shall make an immediate report to the appropriate law enforcement agency. The department and law enforcement will coordinate in investigating reports made under this chapter. The department may provide protective services and other remedies as specified in this chapter.

(3) The law enforcement agency or the department shall report the incident in writing to the proper county prosecutor or city attorney for appropriate action whenever the investigation reveals that a crime may have been committed.

(4) The department and law enforcement may share information contained in reports and findings of abandonment, abuse, financial exploitation, and neglect of vulnerable adults, consistent with RCW 74.04.060, chapter 42.56 RCW, and other applicable confidentiality laws.

(5) Unless prohibited by federal law, the department of social and health services may share with the department of children, youth, and families information contained in reports and findings of abandonment, abuse, financial exploitation, and neglect of vulnerable adults.

(6) The department shall notify the proper licensing authority concerning any report received under this chapter that alleges that a person who is professionally licensed, certified, or registered under Title 18 RCW has abandoned, abused, financially exploited, or neglected a vulnerable adult. [2017 3rd sp.s. c 6 § 818; 2005 c 274 § 354; 1999 c 176 § 8.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.320 Written protocol—Counties encouraged to develop for handling criminal cases involving vulnerable adults—Vulnerable adult advocacy teams—Confidentiality—Disclosure of information. (1) Each county is encouraged to develop a written protocol for handling criminal cases involving vulnerable adults. The protocol shall:

(a) Address the coordination of vulnerable adult mistreatment investigations among the following groups as appropriate and when available: The prosecutor's office; law enforcement; adult protective services; vulnerable adult advocacy centers; local advocacy groups; community victim advocacy programs; professional guardians; medical examiners or coroners; financial analysts or forensic accountants; social workers with experience or training related to the mistreatment of vulnerable adults; medical personnel; the state long-term care ombuds or a regional long-term care ombuds specifically designated by the state long-term care ombuds; developmental disabilities ombuds; the attorney general's office; and any other local agency involved in the criminal investigation of vulnerable adult mistreatment;

(b) Be developed by the prosecuting attorney with the assistance of the agencies referenced in this subsection;

(c) Provide that participation as a member of the vulnerable adult advocacy team is voluntary;

(d) Include a brief statement provided by the state long-term care ombuds, without alteration, that describes the confidentiality laws and policies governing the state long-term care ombuds program, and includes citations to relevant federal and state laws;

(e) Require the development and use of a confidentiality agreement, in compliance with this section, that includes, but is not limited to, terms governing the type of information that must be shared, and the means by which it is shared; the existing confidentiality obligations of team members; and the circumstances under which team members may disclose information outside of the team;

(f) Require the vulnerable adult advocacy team to make a good faith effort to obtain the participation of the state long-term care ombuds prior to addressing any issue related to abuse, neglect, or financial exploitation of a vulnerable adult residing in a long-term care facility during the relevant time period.

(2) Members of a vulnerable adult advocacy team must disclose to each other confidential or sensitive information and records, if the team member disclosing the information or records reasonably believes the disclosure is relevant to the duties of the vulnerable adult advocacy team. The disclosure and receipt of confidential information between vulnerable adult advocacy team members shall be governed by the requirements of this section, and by the county protocol developed pursuant to this section.

(3) Prior to participation, each member of the vulnerable adult advocacy team must sign a confidentiality agreement that requires compliance with all governing federal and state confidentiality laws.

(4) The information or records obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(5) Information and records communicated or provided to vulnerable adult advocacy team members, as well as information and records created in the course of an investigation, shall be deemed private and confidential and shall be protected from discovery and disclosure by all applicable statutory and common law protections. The disclosed information may not be further disclosed except by law or by court order. [2017 c 266 § 13.]

Finding—Intent—2017 c 266: See note following RCW 9A.42.020.

Chapter 74.39A RCW

LONG-TERM CARE SERVICES OPTIONS—EXPANSION

Sections

- 74.39A.035 Expansion of nutrition services through the meals on wheels program.
- 74.39A.074 Training requirements for long-term care workers.
- 74.39A.076 Training requirements for individual providers caring for family members.
- 74.39A.078 Rules for the approval of curricula for facility-based caregivers serving persons with behavioral health needs and geriatric behavioral health workers—Curricula requirements.
- 74.39A.270 Collective bargaining—Circumstances in which individual providers are considered public employees—Exceptions—

Individual provider pay—Joint legislative-executive over-time oversight task force.

74.39A.326 In-home personal care or respite services to family members—Department not authorized to pay—Exceptions—Enforcement—Rules.

74.39A.035 Expansion of nutrition services through the meals on wheels program. (1) Subject to the availability of amounts appropriated for this specific purpose, the department of social and health services must develop a program to expand nutrition services through the meals on wheels program.

(a) At least sixty-five percent of the moneys may be distributed according to formulae to existing providers of meals on wheels programs to expand the number of people served.

(b) Up to twenty-five percent of the moneys may be distributed by a competitive grant process to expand the meals on wheels program into areas not presently being served.

(c) Up to five percent of the moneys may be used by the department administration, monitoring of the grants, and providing technical assistance to existing and new meals on wheels providers.

(2) The department must develop criteria for awarding grants under subsection (1)(b) of this section. The criteria must include, but is not limited to:

(a) Expanding service in areas with the greatest need to assist low-income homebound seniors who are unable to prepare food for themselves and lack a caregiver that prepares meals;

(b) Expanding services in areas where senior citizens have limited access to community support services and facilities; and

(c) Geographic diversity within the state and between rural and urban areas.

(3) None of the grant moneys awarded under subsection (1)(b) of this section may be used to supplant existing funds the provider receives for the meals on wheels program. [2017 c 287 § 2.]

Findings—2017 c 287: "The legislature finds that:

(1) Washingtonians sixty-five years of age and older will nearly double in the next twenty-five years, from twelve percent of our population in 2015 to almost twenty-two percent of our population in 2040. Younger people with disabilities will also require supportive long-term care services.

(2) The long-term care system should support autonomy and self-determination. Furthermore, the long-term care system should promote personal planning and savings combined with public support, when needed.

(3) Whenever possible, the long-term care system should utilize evidence-based practices to improve the general health of Washingtonians over their lifetime[s] and reduce related health care and long-term care costs.

(4) Nutrition programs, such as the meals on wheels program, are a low-cost method of helping seniors remain independent." [2017 c 287 § 1.]

74.39A.074 Training requirements for long-term care workers. (1)(a) Except for long-term care workers exempt from certification under RCW 18.88B.041(1)(a), all persons hired as long-term care workers must meet the minimum training requirements in this section within one hundred twenty calendar days after the date of being hired.

(b) Except as provided in RCW 74.39A.076, the minimum training requirement is seventy-five hours of entry-level training approved by the department. A long-term care worker must successfully complete five of these seventy-five hours before being eligible to provide care.

(c) Training required by (d) of this subsection applies toward the training required under RCW 18.20.270 or

70.128.230 or any statutory or regulatory training requirements for long-term care workers employed by community residential service businesses.

(d) The seventy-five hours of entry-level training required shall be as follows:

(i) Before a long-term care worker is eligible to provide care, he or she must complete:

(A) Two hours of orientation training regarding his or her role as caregiver and the applicable terms of employment; and

(B) Three hours of safety training, including basic safety precautions, emergency procedures, and infection control; and

(ii) Seventy hours of long-term care basic training, including training related to:

(A) Core competencies; and

(B) Population specific competencies, including identification of individuals with potential hearing loss and how to seek assistance if hearing loss is suspected.

(2) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors on the competencies and training topics in this section.

(3) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.

(4) The department shall adopt rules to implement this section. [2017 c 216 § 1; 2012 c 164 § 401; 2012 c 1 § 107 (Initiative Measure No. 1163, approved November 8, 2011).]

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Intent—Findings—Performance audits—Spending limits—Contingent effective dates—Application—Construction—Effective date—Short title—2012 c 1 (Initiative Measure No. 1163): See notes following RCW 74.39A.056.

74.39A.076 Training requirements for individual providers caring for family members. (1) Beginning January 7, 2012, except for long-term care workers exempt from certification under RCW 18.88B.041(1)(a):

(a) A biological, step, or adoptive parent who is the individual provider only for his or her developmentally disabled son or daughter must receive twelve hours of training relevant to the needs of adults with developmental disabilities within the first one hundred twenty days after becoming an individual provider.

(b) A person working as an individual provider who provides respite care services only for individuals with developmental disabilities receiving services under Title 71A RCW and works three hundred hours or less in any calendar year must complete fourteen hours of training within the first one hundred twenty days after becoming an individual provider. Five of the fourteen hours must be completed before becoming eligible to provide care, including two hours of orientation training regarding the caregiving role and terms of employment and three hours of safety training. The training partnership identified in RCW 74.39A.360 must offer at least

twelve of the fourteen hours online, and five of those online hours must be individually selected from elective courses.

(c) Individual providers identified in (c)(i) or (ii) of this subsection must complete thirty-five hours of training within the first one hundred twenty days after becoming an individual provider. Five of the thirty-five hours must be completed before becoming eligible to provide care. Two of these five hours shall be devoted to an orientation training regarding an individual provider's role as caregiver and the applicable terms of employment, and three hours shall be devoted to safety training, including basic safety precautions, emergency procedures, and infection control. Individual providers subject to this requirement include:

(i) An individual provider caring only for his or her biological, step, or adoptive child or parent unless covered by (a) of this subsection;

(ii) A person working as an individual provider who provides twenty hours or less of care for one person in any calendar month; and

(iii) A person working as an individual provider who only provides respite services and works less than three hundred hours in any calendar year, unless covered by subsection (1)(b) of this section.

(2) In computing the time periods in this section, the first day is the date of hire.

(3) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(4) The department shall adopt rules to implement this section. [2017 c 267 § 1; 2015 c 152 § 2; 2014 c 139 § 7; 2012 c 164 § 402; 2012 c 1 § 108 (Initiative Measure No. 1163, approved November 8, 2011).]

Finding—Intent—Program development—Implementation—Program funding—2014 c 139: See notes following RCW 71A.16.050.

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Intent—Findings—Performance audits—Spending limits—Continuing effective dates—Application—Construction—Effective date—Short title—2012 c 1 (Initiative Measure No. 1163): See notes following RCW 74.39A.056.

74.39A.078 Rules for the approval of curricula for facility-based caregivers serving persons with behavioral health needs and geriatric behavioral health workers—Curricula requirements. The department shall adopt rules to establish minimum competencies and standards for the approval of curricula for facility-based caregivers serving persons with behavioral health needs and geriatric behavioral health workers. The curricula must include at least thirty hours of training specific to the diagnosis, care, and crisis management of residents with a mental health disorder, traumatic brain injury, or dementia. The curricula must be outcome-based, and the effectiveness measured by demonstrated competency in the core specialty areas through the use of a competency test. [2017 c 200 § 1.]

74.39A.270 Collective bargaining—Circumstances in which individual providers are considered public employees—Exceptions—Individual provider pay—Joint legislative-executive overtime oversight task force. (1) Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the public employer, as defined in chapter 41.56 RCW, of individual providers, who, solely for the purposes of collective bargaining, are public employees as defined in chapter 41.56 RCW. To accommodate the role of the state as payor for the community-based services provided under this chapter and to ensure coordination with state employee collective bargaining under chapter 41.80 RCW and the coordination necessary to implement RCW 74.39A.300, the public employer shall be represented for bargaining purposes by the governor or the governor's designee appointed under chapter 41.80 RCW. The governor or governor's designee shall periodically consult with the authority during the collective bargaining process to allow the authority to communicate issues relating to the long-term in-home care services received by consumers. The department shall solicit input from the developmental disabilities council, the governor's committee on disability issues and employment, the state council on aging, and other consumer advocacy organizations to obtain informed input from consumers on their interests, including impacts on consumer choice, for all issues proposed for collective bargaining under subsections (5) and (6) of this section.

(2) Chapter 41.56 RCW governs the collective bargaining relationship between the governor and individual providers, except as otherwise expressly provided in this chapter and except as follows:

(a) The only unit appropriate for the purpose of collective bargaining under RCW 41.56.060 is a statewide unit of all individual providers;

(b) The showing of interest required to request an election under RCW 41.56.060 is ten percent of the unit, and any intervener seeking to appear on the ballot must make the same showing of interest;

(c) The mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

(i) With respect to commencement of negotiations between the governor and the bargaining representative of individual providers, negotiations shall be commenced by May 1st of any year prior to the year in which an existing collective bargaining agreement expires; and

(ii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and fringe benefit provisions of the arbitrated collective bargaining agreement, is not binding on the authority or the state;

(d) Individual providers do not have the right to strike; and

(e) Individual providers who are related to, or family members of, consumers or prospective consumers are not, for that reason, exempt from this chapter or chapter 41.56 RCW.

(3) Individual providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of

the state, its political subdivisions, or an area agency on aging for any purpose. Chapter 41.56 RCW applies only to the governance of the collective bargaining relationship between the employer and individual providers as provided in subsections (1) and (2) of this section.

(4) Consumers and prospective consumers retain the right to select, hire, supervise the work of, and terminate any individual provider providing services to them. Consumers may elect to receive long-term in-home care services from individual providers who are not referred to them by the authority.

(5) Except as expressly limited in this section and RCW 74.39A.300, the wages, hours, and working conditions of individual providers are determined solely through collective bargaining as provided in this chapter. Except as described in subsection (9) of this section, no agency or department of the state may establish policies or rules governing the wages or hours of individual providers. This subsection does not modify:

(a) The department's authority to establish a plan of care for each consumer or its core responsibility to manage long-term in-home care services under this chapter, including determination of the level of care that each consumer is eligible to receive. However, at the request of the exclusive bargaining representative, the governor or the governor's designee appointed under chapter 41.80 RCW shall engage in collective bargaining, as defined in RCW 41.56.030(4), with the exclusive bargaining representative over how the department's core responsibility affects hours of work for individual providers. This subsection shall not be interpreted to require collective bargaining over an individual consumer's plan of care;

(b)(i) The requirement that the number of hours the department may pay any single individual provider is limited to:

(A) Sixty hours each workweek if the individual provider was working an average number of hours in excess of forty hours for the workweeks during January 2016, except for fiscal years 2016, 2017, and 2018, the limit is sixty-five hours each workweek; or

(B) Forty hours each workweek if the individual provider was not working an average number of hours in excess of forty hours for the workweeks during January 2016, or had no reported hours for the month of January 2016.

(ii) Additional hours may be authorized under criteria established by rules adopted by the department under subsection (9) of this section.

(iii) Additional hours may be authorized for required training under RCW 74.39A.074, 74.39A.076, and 74.39A.341.

(iv) An individual provider may appeal to the department for qualification for the hour limitation in (b)(i)(A) of this subsection if the average weekly hours the individual provider was working in January 2016 materially underrepresent the average weekly hours worked by the individual provider during the first three months of 2016.

(v) No individual provider is subject to the hour limitations in (b)(i)(A) of this subsection until the department has conducted a review of the plan of care for the consumers served by the individual provider. The department shall

review plans of care expeditiously, starting with consumers connected with the most individual provider overtime;

(c) The requirement that the total number of additional hours in excess of forty hours authorized under (b) of this subsection and subsection (9) of this section are limited by the total hours as provided in subsection (10) of this section;

(d) The department's authority to terminate its contracts with individual providers who are not adequately meeting the needs of a particular consumer, or to deny a contract under RCW 74.39A.095(8);

(e) The consumer's right to assign hours to one or more individual providers consistent with the rules adopted under this chapter and his or her plan of care;

(f) The consumer's right to select, hire, terminate, supervise the work of, and determine the conditions of employment for each individual provider providing services to the consumer under this chapter;

(g) The department's obligation to comply with the federal medicaid statute and regulations and the terms of any community-based waiver granted by the federal department of health and human services and to ensure federal financial participation in the provision of the services; and

(h) The legislature's right to make programmatic modifications to the delivery of state services under this title, including standards of eligibility of consumers and individual providers participating in the programs under this title, and the nature of services provided. The governor shall not enter into, extend, or renew any agreement under this chapter that does not expressly reserve the legislative rights described in this subsection (5)(h).

(6) At the request of the exclusive bargaining representative, the governor or the governor's designee appointed under chapter 41.80 RCW shall engage in collective bargaining, as defined in RCW 41.56.030(4), with the exclusive bargaining representative over employer contributions to the training partnership for the costs of: (a) Meeting all training and peer mentoring required under this chapter; and (b) other training intended to promote the career development of individual providers.

(7) The state, the department, the area agencies on aging, or their contractors under this chapter may not be held vicariously or jointly liable for the action or inaction of any individual provider or prospective individual provider, whether or not that individual provider or prospective individual provider was included on the referral registry or referred to a consumer or prospective consumer. The existence of a collective bargaining agreement, the placement of an individual provider on the referral registry, or the development or approval of a plan of care for a consumer who chooses to use the services of an individual provider and the provision of case management services to that consumer, by the department or an area agency on aging, does not constitute a special relationship with the consumer.

(8) Nothing in this section affects the state's responsibility with respect to unemployment insurance for individual providers. However, individual providers are not to be considered, as a result of the state assuming this responsibility, employees of the state.

(9) The department may not pay any single individual provider more than the hours listed in subsection (5)(b) of this section unless the department authorizes additional hours

under criteria established by rule. The criteria must be limited in scope to reduce the state's exposure to payment of overtime, address travel time from worksite to worksite, and address the following needs of consumers:

(a) Ensuring that consumers are not at increased risk for institutionalization;

(b) When there is a limited number of individual providers within the geographic region of the consumer;

(c) When there is a limited number of individual providers available to support a consumer with complex medical and behavioral needs or specific language needs;

(d) Emergencies that could pose a health and safety risk for consumers; and

(e) Instances where the cost of the allowed hour is less than other alternatives to provide care to a consumer, distinct from any increased risk of institutionalization.

(10)(a) Each fiscal year, the department shall establish a spending plan and a system to monitor the authorization and cost of hours in excess of forty hours each workweek from subsections (5)(b) and (9) of this section beginning July 1, 2016, and each fiscal year thereafter. Expenditures for hours in excess of forty hours each workweek under subsections (5)(b) and (9) of this section shall not exceed 8.75 percent of the total average authorized personal care hours for the fiscal year as projected by the caseload forecast council. The caseload forecast council may adopt a temporary adjustment to the 8.75 percent of the total average hours projection for that fiscal year, up to a maximum of 10.0 percent, if it finds a higher percentage of overtime hours is necessitated by a shortage of individual providers to provide adequate client care, taking into consideration factors including the criteria in subsection (9) of this section. If the council elects to temporarily increase the limit, it may do so only upon a majority vote of the council.

(b) The department also shall provide expenditure reports beginning September 1, 2016, and on a quarterly basis thereafter. If the department determines, based upon quarterly expenditure reports, that the annual expenditures will exceed the limitation established in (a) of this subsection, the department shall take those actions necessary to ensure compliance with the limitation.

(c) The spending plan and expenditure reports must be submitted to the legislative fiscal committees and the joint legislative-executive overtime oversight task force. The joint legislative-executive overtime oversight task force members are as follows:

(i) Two members from each of the two largest caucuses of the senate, appointed by the respective caucus leaders.

(ii) The speaker of the house of representatives shall appoint two members from each of the two largest caucuses of the house of representatives.

(iii) The governor shall appoint members representing the department of social and health services and the office of financial management.

(iv) The governor shall appoint two members representing individual providers and two members representing consumers receiving personal care or respite care services from an individual provider.

(d) The task force shall meet at least annually, but may meet more frequently as desired by the task force. The task force shall choose cochairs, one from among the legislative

members and one from among the executive branch members.

(e) The department is authorized to adopt rules, including emergency rules under RCW 34.05.350, to implement this subsection. [2017 3rd sp.s. c 24 § 1; 2016 sp.s. c 30 § 1; 2011 1st sp.s. c 21 § 10; 2007 c 361 § 7; 2007 c 278 § 3; 2006 c 106 § 1; 2004 c 3 § 1; 2002 c 3 § 6 (Initiative Measure No. 775, approved November 6, 2001).]

Effective date—2017 3rd sp.s. c 24: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 6, 2017]." [2017 3rd sp.s. c 24 § 2.]

Effective date—2016 sp.s. c 30: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 18, 2016]." [2016 sp.s. c 30 § 4.]

Overtime emergency rules—2016 sp.s. c 30: "The department of social and health services shall immediately adopt emergency rules under RCW 34.05.350 to limit the number of hours per workweek that the department may pay any single provider to forty hours and to establish criteria to authorize additional hours in accordance with section 1 of this act. The emergency rules shall remain in effect until permanent rules can be adopted." [2016 sp.s. c 30 § 2.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Effective date—2007 c 361 §§ 7 and 8: "Sections 7 and 8 of this act take effect March 1, 2008." [2007 c 361 § 14.]

Construction—Severability—Captions not law—Short title—2007 c 361: See notes following RCW 74.39A.009.

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

Additional notes found at www.leg.wa.gov

74.39A.326 In-home personal care or respite services to family members—Department not authorized to pay—

Exceptions—Enforcement—Rules. (1)(a) Except as provided under (b) of this subsection, the department shall not pay a home care agency licensed under chapter 70.127 RCW for in-home personal care or respite services provided under this chapter, Title 71A RCW, or chapter 74.39 RCW if the care is provided to a client by a family member of the client. To the extent permitted under federal law, the provisions of this subsection shall not apply if the family member providing care is older than the client.

(b) The department may, on a case-by-case basis based on the client's health and safety, make exceptions to (a) of this subsection to authorize payment or to provide for payment during a transition period of up to three months. Within available funds, the restrictions under (a) of this subsection do not apply when the care is provided to: (i) A client who is an enrolled member of a federally recognized Indian tribe; or (ii) a client who resides in the household of an enrolled member of a federally recognized Indian tribe.

(2) The department shall take appropriate enforcement action against a home care agency found to have charged the state for hours of service for which the department is not authorized to pay under this section, including requiring recoupment of any payment made for those hours and, under criteria adopted by the department by rule, terminating the contract of an agency that violates a recoupment requirement.

(3) For purposes of this section:

(a) "Client" means a person who has been deemed eligible by the department to receive in-home personal care or respite services.

(b) "Family member" shall be liberally construed to include, but not be limited to, a parent, child, sibling, aunt, uncle, cousin, grandparent, grandchild, grandniece, or grandnephew, or such relatives when related by marriage.

(4) The department shall adopt rules to implement this section. The rules shall not result in affecting the amount, duration, or scope of the personal care or respite services benefit to which a client may be entitled pursuant to RCW 74.09.520 or Title XIX of the federal social security act. [2017 3rd sp.s. c 34 § 3; 2009 c 571 § 1.]

Findings—Intent—2017 3rd sp.s. c 34: "The legislature finds that the most common form of long-term care provided to persons who are elderly, disabled, or have a developmental disability is provided by a family member in a personal residence. The legislature also finds that care provided by a family member who is chosen by the recipient is often the most appropriate form of care, allowing vulnerable individuals to remain independent while maintaining a sense of dignity and choice. The current system of medicaid services has complexities that may create obstacles for consumers who wish to be cared for by a family member and for family members who enter the system solely to provide care for their loved ones.

Therefore, the legislature intends to direct a study of the current options allowing for the delivery of medicaid personal care services by caregivers who are family members of the state's citizens who are aging, disabled, or who have a developmental disability. The legislature intends to promote more flexibility for clients to access their benefits and to reduce obstacles for clients who wish to hire family members to provide their care." [2017 3rd sp.s. c 34 § 1.]

Conflict with federal requirements—Effective date—2009 c 571: See notes following RCW 74.39A.325.

Chapter 74.42 RCW

NURSING HOMES—RESIDENT CARE, OPERATING STANDARDS

Sections

74.42.010	Definitions.
74.42.360	Adequate staff—Minimum staffing standards—Exceptions—Definition.

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

(1) "Department" means the department of social and health services and the department's employees.

(2) "Direct care staff" means the staffing domain identified and defined in the center for medicare and medicaid service's five-star quality rating system and as reported through the center for medicare and medicaid service's payroll-based journal.

(3) "Facility" refers to a nursing home as defined in RCW 18.51.010.

(4) "Geriatric behavioral health worker" means a person who has received specialized training devoted to mental illness and treatment of older adults.

(5) "Licensed practical nurse" means a person licensed to practice practical nursing under chapter 18.79 RCW.

(6) "Medicaid" means Title XIX of the Social Security Act enacted by the social security amendments of 1965 (42 U.S.C. Sec. 1396; 79 Stat. 343), as amended.

(7) "Nurse practitioner" means a person licensed to practice advanced registered nursing under chapter 18.79 RCW.

(8) "Nursing care" means that care provided by a registered nurse, an advanced registered nurse practitioner, a licensed practical nurse, or a nursing assistant in the regular performance of their duties.

(9) "Physician" means a person practicing pursuant to chapter 18.57 or 18.71 RCW, including, but not limited to, a physician employed by the facility as provided in chapter 18.51 RCW.

(10) "Physician assistant" means a person practicing pursuant to chapter 18.57A or 18.71A RCW.

(11) "Qualified therapist" means:

(a) An activities specialist who has specialized education, training, or experience specified by the department.

(b) An audiologist who is eligible for a certificate of clinical competence in audiology or who has the equivalent education and clinical experience.

(c) A mental health professional as defined in chapter 71.05 RCW.

(d) An intellectual disabilities professional who is a qualified therapist or a therapist approved by the department and has specialized training or one year experience in treating or working with persons with intellectual or developmental disabilities.

(e) An occupational therapist who is a graduate of a program in occupational therapy or who has equivalent education or training.

(f) A physical therapist as defined in chapter 18.74 RCW.

(g) A social worker as defined in RCW 18.320.010(2).

(h) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has equivalent education and clinical experience.

(12) "Registered nurse" means a person licensed to practice registered nursing under chapter 18.79 RCW.

(13) "Resident" means an individual residing in a nursing home, as defined in RCW 18.51.010. [2017 c 200 § 2. Prior: 2016 c 131 § 3; prior: 2011 c 228 § 2; 2011 c 89 § 19; prior: 2010 c 94 § 27; 1994 sp.s. c 9 § 750; 1993 c 508 § 4; 1979 ex.s. c 211 § 1.]

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Purpose—2010 c 94: See note following RCW 44.04.280.

Additional notes found at www.leg.wa.gov

74.42.360 Adequate staff—Minimum staffing standards—Exceptions—Definition. (1) The facility shall have staff on duty twenty-four hours daily sufficient in number and qualifications to carry out the provisions of RCW 74.42.010 through 74.42.570 and the policies, responsibilities, and programs of the facility.

(2) The department shall institute minimum staffing standards for nursing homes. Beginning July 1, 2016, facilities must provide a minimum of 3.4 hours per resident day of direct care. Direct care staff has the same meaning as defined in RCW 74.42.010. The minimum staffing standard includes the time when such staff are providing hands-on care related to activities of daily living and nursing-related tasks, as well as care planning. The legislature intends to increase the min-

imum staffing standard to 4.1 hours per resident day of direct care, but the effective date of a standard higher than 3.4 hours per resident day of direct care will be identified if and only if funding is provided explicitly for an increase of the minimum staffing standard for direct care.

(a) The department shall establish in rule a system of compliance of minimum direct care staffing standards by January 1, 2016. Oversight must be done at least quarterly using the center for medicare and medicaid service's payroll-based journal and nursing home facility census and payroll data.

(b) The department shall establish in rule by January 1, 2016, a system of financial penalties for facilities out of compliance with minimum staffing standards. No monetary penalty may be issued during the implementation period of July 1, 2016, through September 30, 2016. If a facility is found noncompliant during the implementation period, the department shall provide a written notice identifying the staffing deficiency and require the facility to provide a sufficiently detailed correction plan to meet the statutory minimum staffing levels. Monetary penalties begin October 1, 2016. Monetary penalties must be established based on a formula that calculates the cost of wages and benefits for the missing staff hours. If a facility meets the requirements in subsection (3) or (4) of this section, the penalty amount must be based solely on the wages and benefits of certified nurse aides. The first monetary penalty for noncompliance must be at a lower amount than subsequent findings of noncompliance. Monetary penalties established by the department may not exceed two hundred percent of the wage and benefit costs that would have otherwise been expended to achieve the required staffing minimum hours per resident day for the quarter. A facility found out of compliance must be assessed a monetary penalty at the lowest penalty level if the facility has met or exceeded the requirements in subsection (2) of this section for three or more consecutive years. Beginning July 1, 2016, pursuant to rules established by the department, funds that are received from financial penalties must be used for technical assistance, specialized training, or an increase to the quality enhancement established in RCW 74.46.561.

(c) The department shall establish in rule an exception allowing geriatric behavioral health workers as defined in RCW 74.42.010 to be recognized in the minimum staffing requirements as part of the direct care service delivery to individuals who have a behavioral health condition. Hours worked by geriatric behavioral health workers may be recognized as direct care hours for purposes of the minimum staffing requirements only up to a portion of the total hours equal to the proportion of resident days of clients with a behavioral health condition identified at that facility on the most recent semiannual minimum data set. In order to qualify for the exception:

(i) The worker must:

(A) Have at least three years experience providing care for individuals with chronic mental health issues, dementia, or intellectual and developmental disabilities in a long-term care or behavioral health care setting; or

(B) Have successfully completed a facility-based behavioral health curriculum approved by the department under RCW 74.39A.078;

(ii) The worker must have advanced practice knowledge in aging, disability, mental illness, Alzheimer's disease, and developmental disabilities; and

(iii) Any geriatric behavioral health worker holding less than a master's degree in social work must be directly supervised by an employee who has a master's degree in social work or a registered nurse.

(d)(i) The department shall establish a limited exception to the 3.4 hours per resident day staffing requirement for facilities demonstrating a good faith effort to hire and retain staff.

(ii) To determine initial facility eligibility for exception consideration, the department shall send surveys to facilities anticipated to be below, at, or slightly above the 3.4 hours per resident day requirement. These surveys must measure the hours per resident day in a manner as similar as possible to the centers for medicare and medicaid services' payroll-based journal and cover the staffing of a facility from October through December of 2015, January through March of 2016, and April through June of 2016. A facility must be below the 3.4 staffing standard on all three surveys to be eligible for exception consideration. If the staffing hours per resident day for a facility declines from any quarter to another during the survey period, the facility must provide sufficient information to the department to allow the department to determine if the staffing decrease was deliberate or a result of neglect, which is the lack of evidence demonstrating the facility's efforts to maintain or improve its staffing ratio. The burden of proof is on the facility and the determination of whether or not the decrease was deliberate or due to neglect is entirely at the discretion of the department. If the department determines a facility's decline was deliberate or due to neglect, that facility is not eligible for an exception consideration.

(iii) To determine eligibility for exception approval, the department shall review the plan of correction submitted by the facility. Before a facility's exception may be renewed, the department must determine that sufficient progress is being made towards reaching the 3.4 hours per resident day staffing requirement. When reviewing whether to grant or renew an exception, the department must consider factors including but not limited to: Financial incentives offered by the facilities such as recruitment bonuses and other incentives; the robustness of the recruitment process; county employment data; specific steps the facility has undertaken to improve retention; improvements in the staffing ratio compared to the baseline established in the surveys and whether this trend is continuing; and compliance with the process of submitting staffing data, adherence to the plan of correction, and any progress toward meeting this plan, as determined by the department.

(iv) Only facilities that have their direct care component rate increase capped according to RCW 74.46.561 are eligible for exception consideration. Facilities that will have their direct care component rate increase capped for one or two years are eligible for exception consideration through June 30, 2017. Facilities that will have their direct care component rate increase capped for three years are eligible for exception consideration through June 30, 2018.

(v) The department may not grant or renew a facility's exception if the facility meets the 3.4 hours per resident day

staffing requirement and subsequently drops below the 3.4 hours per resident day staffing requirement.

(vi) The department may grant exceptions for a six-month period per exception. The department's authority to grant exceptions to the 3.4 hours per resident day staffing requirement expires June 30, 2018.

(3)(a) Large nonessential community providers must have a registered nurse on duty directly supervising resident care twenty-four hours per day, seven days per week.

(b) The department shall establish a limited exception process to facilities that can demonstrate a good faith effort to hire a registered nurse for the last eight hours of required coverage per day. In granting an exception, the department may consider wages and benefits offered and the availability of registered nurses in the particular geographic area. A one-year exception may be granted and may be renewable for up to three consecutive years; however, the department may limit the admission of new residents, based on medical conditions or complexities, when a registered nurse is not on-site and readily available. If a facility receives an exemption, that information must be included in the department's nursing home locator. After June 30, 2019, the department, along with a stakeholder work group established by the department, shall conduct a review of the exceptions process to determine if it is still necessary.

(4) Essential community providers and small nonessential community providers must have a registered nurse on duty directly supervising resident care a minimum of sixteen hours per day, seven days per week, and a registered nurse or a licensed practical nurse on duty directly supervising resident care the remaining eight hours per day, seven days per week.

(5) For the purposes of this section, "behavioral health condition" means one or more of the behavioral symptoms specified in section E of the minimum data set. [2017 c 200 § 3; 2016 c 131 § 2; 2015 2nd sp.s. c 2 § 7; 1979 ex.s. c 211 § 36.]

Effective date—2015 2nd sp.s. c 2: See note following RCW 74.46.501.

Chapter 74.46 RCW

NURSING FACILITY MEDICAID PAYMENT SYSTEM

Sections

74.46.485	Case mix classification methodology—Notice of implementation.
74.46.561	Nursing home payment rates—System components—Quality incentive—Reimbursement of safety net assessment—Rate reductions or increases limited.

74.46.485 Case mix classification methodology—Notice of implementation. (1) The legislature recognizes that staff and resources needed to adequately care for individuals with cognitive or behavioral impairments is not limited to support for activities of daily living. Therefore, the department shall:

(a) Employ the resource utilization group IV case mix classification methodology. The department shall use the fifty-seven group index maximizing model for the resource utilization group IV grouper version MDS 3.05, but the department may revise or update the classification methodol-

ogy to reflect advances or refinements in resident assessment or classification, subject to federal requirements. The department may adjust by no more than thirteen percent the case mix index for resource utilization group categories beginning with PA1 through PB2 to any case mix index that aids in achieving the purpose and intent of RCW 74.39A.007 and cost-efficient care, excluding behaviors, and allowing for exceptions for limited placement options; and

(b) Implement minimum data set 3.0 under the authority of this section. The department must notify nursing home contractors twenty-eight days in advance the date of implementation of the minimum data set 3.0. In the notification, the department must identify for all semiannual rate settings following the date of minimum data set 3.0 implementation a previously established semiannual case mix adjustment established for the semiannual rate settings that will be used for semiannual case mix calculations in direct care until minimum data set 3.0 is fully implemented.

(2) The department is authorized to adjust upward the weights for resource utilization groups BA1-BB2 related to cognitive or behavioral health to ensure adequate access to appropriate levels of care.

(3) A default case mix group shall be established for cases in which the resident dies or is discharged for any purpose prior to completion of the resident's initial assessment. The default case mix group and case mix weight for these cases shall be designated by the department.

(4) A default case mix group may also be established for cases in which there is an untimely assessment for the resident. The default case mix group and case mix weight for these cases shall be designated by the department. [2017 c 286 § 1; 2011 1st sp.s. c 7 § 4; 2010 1st sp.s. c 34 § 9; 2009 c 570 § 2; 1998 c 322 § 22.]

Purpose—Findings—Intent—Severability—Effective date—2011 1st sp.s. c 7: See RCW 74.48.005, 74.48.900, and 74.48.901.

Analysis—2011 1st sp.s. c 7: "(1) For fiscal years 2012 and 2013 and subject to appropriation, the department of social and health services shall do a comparative analysis of the facility-based payment rates calculated on July 1, 2011, using the payment methodology defined in chapter 74.46 RCW as modified by RCW 74.46.431, 74.46.435, 74.46.437, 74.46.485, 74.46.496, 74.46.501, 74.46.506, 74.46.515, and 74.46.521, to the facility-based payment rates in effect June 30, 2010. If the facility-based payment rate calculated on July 1, 2011, is smaller than the facility-based payment rate on June 30, 2011, the difference shall be provided to the individual nursing facilities as an add-on payment per medicaid resident day.

(2) During the comparative analysis performed in subsection (1) of this section, if it is found that the direct care rate for any facility calculated under RCW 74.46.431, 74.46.435, 74.46.437, 74.46.485, 74.46.496, 74.46.501, 74.46.506, 74.46.515, and 74.46.521 is greater than the direct care rate in effect on June 30, 2010, then the facility shall receive a ten percent direct care rate add-on to compensate that facility for taking on more acute clients than they have in the past.

(3) The rate add-ons provided in subsection (2) of this section are subject to the reconciliation and settlement process provided in RCW 74.46.022(6)." [2011 1st sp.s. c 7 § 11.]

Effective date—2010 1st sp.s. c 34: See note following RCW 74.46.010.

Effective date—2009 c 570: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 2009]." [2009 c 570 § 3.]

74.46.561 Nursing home payment rates—System components—Quality incentive—Reimbursement of safety net assessment—Rate reductions or increases lim-

ited. (1) The legislature adopts a new system for establishing nursing home payment rates beginning July 1, 2016. Any payments to nursing homes for services provided after June 30, 2016, must be based on the new system. The new system must be designed in such a manner as to decrease administrative complexity associated with the payment methodology, reward nursing homes providing care for high acuity residents, incentivize quality care for residents of nursing homes, and establish minimum staffing standards for direct care.

(2) The new system must be based primarily on industry-wide costs, and have three main components: Direct care, indirect care, and capital.

(3) The direct care component must include the direct care and therapy care components of the previous system, along with food, laundry, and dietary services. Direct care must be paid at a fixed rate, based on one hundred percent or greater of statewide case mix neutral median costs, but shall be set so that a nursing home provider's direct care rate does not exceed one hundred eighteen percent of its base year's direct care allowable costs except if the provider is below the minimum staffing standard established in RCW 74.42.360(2). Direct care must be performance-adjusted for acuity every six months, using case mix principles. Direct care must be regionally adjusted using county wide wage index information available through the United States department of labor's bureau of labor statistics. There is no minimum occupancy for direct care. The direct care component rate allocations calculated in accordance with this section must be adjusted to the extent necessary to comply with RCW 74.46.421.

(4) The indirect care component must include the elements of administrative expenses, maintenance costs, and housekeeping services from the previous system. A minimum occupancy assumption of ninety percent must be applied to indirect care. Indirect care must be paid at a fixed rate, based on ninety percent or greater of statewide median costs. The indirect care component rate allocations calculated in accordance with this section must be adjusted to the extent necessary to comply with RCW 74.46.421.

(5) The capital component must use a fair market rental system to set a price per bed. The capital component must be adjusted for the age of the facility, and must use a minimum occupancy assumption of ninety percent.

(a) Beginning July 1, 2016, the fair rental rate allocation for each facility must be determined by multiplying the allowable nursing home square footage in (c) of this subsection by the RS means rental rate in (d) of this subsection and by the number of licensed beds yielding the gross unadjusted building value. An equipment allowance of ten percent must be added to the unadjusted building value. The sum of the unadjusted building value and equipment allowance must then be reduced by the average age of the facility as determined by (e) of this subsection using a depreciation rate of one and one-half percent. The depreciated building and equipment plus land valued at ten percent of the gross unadjusted building value before depreciation must then be multiplied by the rental rate at seven and one-half percent to yield an allowable fair rental value for the land, building, and equipment.

(b) The fair rental value determined in (a) of this subsection must be divided by the greater of the actual total facility

census from the prior full calendar year or imputed census based on the number of licensed beds at ninety percent occupancy.

(c) For the rate year beginning July 1, 2016, all facilities must be reimbursed using four hundred square feet. For the rate year beginning July 1, 2017, allowable nursing facility square footage must be determined using the total nursing facility square footage as reported on the medicaid cost reports submitted to the department in compliance with this chapter. The maximum allowable square feet per bed may not exceed four hundred fifty.

(d) Each facility must be paid at eighty-three percent or greater of the median nursing facility RS means construction index value per square foot for Washington state. The department may use updated RS means construction index information when more recent square footage data becomes available. The statewide value per square foot must be indexed based on facility zip code by multiplying the statewide value per square foot times the appropriate zip code based index. For the purpose of implementing this section, the value per square foot effective July 1, 2016, must be set so that the weighted average FRV [fair rental value] rate is not less than ten dollars and eighty cents ppd [per patient day]. The capital component rate allocations calculated in accordance with this section must be adjusted to the extent necessary to comply with RCW 74.46.421.

(e) The average age is the actual facility age reduced for significant renovations. Significant renovations are defined as those renovations that exceed two thousand dollars per bed in a calendar year as reported on the annual cost report submitted in accordance with this chapter. For the rate beginning July 1, 2016, the department shall use renovation data back to 1994 as submitted on facility cost reports. Beginning July 1, 2016, facility ages must be reduced in future years if the value of the renovation completed in any year exceeds two thousand dollars times the number of licensed beds. The cost of the renovation must be divided by the accumulated depreciation per bed in the year of the renovation to determine the equivalent number of new replacement beds. The new age for the facility is a weighted average with the replacement bed equivalents reflecting an age of zero and the existing licensed beds, minus the new bed equivalents, reflecting their age in the year of the renovation. At no time may the depreciated age be less than zero or greater than forty-four years.

(f) A nursing facility's capital component rate allocation must be rebased annually, effective July 1, 2016, in accordance with this section and this chapter.

(6) A quality incentive must be offered as a rate enhancement beginning July 1, 2016.

(a) An enhancement no larger than five percent and no less than one percent of the statewide average daily rate must be paid to facilities that meet or exceed the standard established for the quality incentive. All providers must have the opportunity to earn the full quality incentive payment.

(b) The quality incentive component must be determined by calculating an overall facility quality score composed of four to six quality measures. For fiscal year 2017 there shall be four quality measures, and for fiscal year 2018 there shall be six quality measures. Initially, the quality incentive component must be based on minimum data set quality measures for the percentage of long-stay residents who self-report

moderate to severe pain, the percentage of high-risk long-stay residents with pressure ulcers, the percentage of long-stay residents experiencing one or more falls with major injury, and the percentage of long-stay residents with a urinary tract infection. Quality measures must be reviewed on an annual basis by a stakeholder work group established by the department. Upon review, quality measures may be added or changed. The department may risk adjust individual quality measures as it deems appropriate.

(c) The facility quality score must be point based, using at a minimum the facility's most recent available three-quarter average CMS [centers for medicare and medicaid services] quality data. Point thresholds for each quality measure must be established using the corresponding statistical values for the quality measure (QM) point determinants of eighty QM points, sixty QM points, forty QM points, and twenty QM points, identified in the most recent available five-star quality rating system technical user's guide published by the center for medicare and medicaid services.

(d) Facilities meeting or exceeding the highest performance threshold (top level) for a quality measure receive twenty-five points. Facilities meeting the second highest performance threshold receive twenty points. Facilities meeting the third level of performance threshold receive fifteen points. Facilities in the bottom performance threshold level receive no points. Points from all quality measures must then be summed into a single aggregate quality score for each facility.

(e) Facilities receiving an aggregate quality score of eighty percent of the overall available total score or higher must be placed in the highest tier (tier V), facilities receiving an aggregate score of between seventy and seventy-nine percent of the overall available total score must be placed in the second highest tier (tier IV), facilities receiving an aggregate score of between sixty and sixty-nine percent of the overall available total score must be placed in the third highest tier (tier III), facilities receiving an aggregate score of between fifty and fifty-nine percent of the overall available total score must be placed in the fourth highest tier (tier II), and facilities receiving less than fifty percent of the overall available total score must be placed in the lowest tier (tier I).

(f) The tier system must be used to determine the amount of each facility's per patient day quality incentive component. The per patient day quality incentive component for tier IV is seventy-five percent of the per patient day quality incentive component for tier V, the per patient day quality incentive component for tier III is fifty percent of the per patient day quality incentive component for tier V, and the per patient day quality incentive component for tier II is twenty-five percent of the per patient day quality incentive component for tier V. Facilities in tier I receive no quality incentive component.

(g) Tier system payments must be set in a manner that ensures that the entire biennial appropriation for the quality incentive program is allocated.

(h) Facilities with insufficient three-quarter average CMS [centers for medicare and medicaid services] quality data must be assigned to the tier corresponding to their five-star quality rating. Facilities with a five-star quality rating must be assigned to the highest tier (tier V) and facilities with a one-star quality rating must be assigned to the lowest tier

(tier I). The use of a facility's five-star quality rating shall only occur in the case of insufficient CMS [centers for medicare and medicaid services] minimum data set information.

(i) The quality incentive rates must be adjusted semiannually on July 1 and January 1 of each year using, at a minimum, the most recent available three-quarter average CMS [centers for medicare and medicaid services] quality data.

(j) Beginning July 1, 2017, the percentage of short-stay residents who newly received an antipsychotic medication must be added as a quality measure. The department must determine the quality incentive thresholds for this quality measure in a manner consistent with those outlined in (b) through (h) of this subsection using the centers for medicare and medicaid services quality data.

(k) Beginning July 1, 2017, the percentage of direct care staff turnover must be added as a quality measure using the centers for medicare and medicaid services' payroll-based journal and nursing home facility payroll data. Turnover is defined as an employee departure. The department must determine the quality incentive thresholds for this quality measure using data from the centers for medicare and medicaid services' payroll-based journal, unless such data is not available, in which case the department shall use direct care staffing turnover data from the most recent medicaid cost report.

(7) Reimbursement of the safety net assessment imposed by chapter 74.48 RCW and paid in relation to medicaid residents must be continued.

(8) The direct care and indirect care components must be rebased in even-numbered years, beginning with rates paid on July 1, 2016. Rates paid on July 1, 2016, must be based on the 2014 calendar year cost report. On a percentage basis, after rebasing, the department must confirm that the statewide average daily rate has increased at least as much as the average rate of inflation, as determined by the skilled nursing facility market basket index published by the centers for medicare and medicaid services, or a comparable index. If after rebasing, the percentage increase to the statewide average daily rate is less than the average rate of inflation for the same time period, the department is authorized to increase rates by the difference between the percentage increase after rebasing and the average rate of inflation.

(9) The direct care component provided in subsection (3) of this section is subject to the reconciliation and settlement process provided in RCW 74.46.022(6). Beginning July 1, 2016, pursuant to rules established by the department, funds that are received through the reconciliation and settlement process provided in RCW 74.46.022(6) must be used for technical assistance, specialized training, or an increase to the quality enhancement established in subsection (6) of this section. The legislature intends to review the utility of maintaining the reconciliation and settlement process under a price-based payment methodology, and may discontinue the reconciliation and settlement process after the 2017-2019 fiscal biennium.

(10) Compared to the rate in effect June 30, 2016, including all cost components and rate add-ons, no facility may receive a rate reduction of more than one percent on July 1, 2016, more than two percent on July 1, 2017, or more than five percent on July 1, 2018. To ensure that the appropriation for nursing homes remains cost neutral, the department is

authorized to cap the rate increase for facilities in fiscal years 2017, 2018, and 2019. [2017 c 286 § 2; 2016 c 131 § 1; 2015 2nd sp.s. c 2 § 4.]

Effective date—2015 2nd sp.s. c 2: See note following RCW 74.46.501.

Chapter 74.60 RCW HOSPITAL SAFETY NET ASSESSMENT

Sections

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74.60.901	Expiration date—2010 1st sp.s. c 30.
74.60.902	Expiration of chapter—2010 1st sp.s. c 30.

74.60.005 Purpose—Findings—Intent. (*Expires July 1, 2021.*) (1) The purpose of this chapter is to provide for a safety net assessment on certain Washington hospitals, which will be used solely to augment funding from all other sources and thereby support additional payments to hospitals for medicaid services as specified in this chapter.

(2) The legislature finds that federal health care reform will result in an expansion of medicaid enrollment in this state and an increase in federal financial participation.

(3) In adopting this chapter, it is the intent of the legislature:

(a) To impose a hospital safety net assessment to be used solely for the purposes specified in this chapter;

(b) To generate approximately one billion dollars per state fiscal biennium in new state and federal funds by disbursing all of that amount to pay for medicaid hospital services and grants to certified public expenditure and critical access hospitals, except costs of administration as specified in this chapter, in the form of additional payments to hospitals and managed care plans, which may not be a substitute for payments from other sources, but which include quality improvement incentive payments under RCW 74.09.611;

(c) To generate two hundred ninety-two million dollars per biennium during the 2017-2019 and 2019-2021 biennia in new funds to be used in lieu of state general fund payments for medicaid hospital services;

(d) That the total amount assessed not exceed the amount needed, in combination with all other available funds, to support the payments authorized by this chapter;

(e) To condition the assessment on receiving federal approval for receipt of additional federal financial participation and on continuation of other funding sufficient to maintain aggregate payment levels to hospitals for inpatient and outpatient services covered by medicaid, including fee-for-service and managed care, at least at the rates the state paid

for those services on July 1, 2015, as adjusted for current enrollment and utilization; and

(f) For each of the two biennia starting with fiscal year 2018 to generate:

(i) Four million dollars for new integrated evidence-based psychiatry residency program slots that did not receive state funding prior to 2016 at the integrated psychiatry residency program at the University of Washington; and

(ii) Eight million two hundred thousand dollars for new family medicine residency program slots that did not receive state funding prior to 2016, as directed through the family medicine residency network at the University of Washington, for slots where residents are employed by hospitals. [2017 c 228 § 1; 2015 2nd sp.s. c 5 § 1; 2013 2nd sp.s. c 17 § 1; 2010 1st sp.s. c 30 § 1.]

Effective date—2017 c 228: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2017." [2017 c 228 § 15.]

Effective date—2015 2nd sp.s. c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 30, 2015]." [2015 2nd sp.s. c 5 § 12.]

Effective date—2013 2nd sp.s. c 17: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 30, 2013]." [2013 2nd sp.s. c 17 § 20.]

74.60.010 Definitions. (*Expires July 1, 2021.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority" means the health care authority.

(2) "Base year" for medicaid payments for state fiscal year 2017 is state fiscal year 2014. For each following year's calculations, the base year must be updated to the next following year.

(3) "Bordering city hospital" means a hospital as defined in WAC 182-550-1050 and bordering cities as described in WAC 182-501-0175, or successor rules.

(4) "Certified public expenditure hospital" means a hospital participating in or that at any point from June 30, 2013, to July 1, 2019, has participated in the authority's certified public expenditure payment program as described in WAC 182-550-4650 or successor rule. For purposes of this chapter any such hospital shall continue to be treated as a certified public expenditure hospital for assessment and payment purposes through the date specified in RCW 74.60.901. The eligibility of such hospitals to receive grants under RCW 74.60.090 solely from funds generated under this chapter must not be affected by any modification or termination of the federal certified public expenditure program, or reduced by the amount of any federal funds no longer available for that purpose.

(5) "Critical access hospital" means a hospital as described in RCW 74.09.5225.

(6) "Director" means the director of the health care authority.

(7) "Eligible new prospective payment hospital" means a prospective payment hospital opened after January 1, 2009, for which a full year of cost report data as described in RCW 74.60.030(2) and a full year of medicaid base year data

required for the calculations in RCW 74.60.120(3) are available.

(8) "Fund" means the hospital safety net assessment fund established under RCW 74.60.020.

(9) "Hospital" means a facility licensed under chapter 70.41 RCW.

(10) "Long-term acute care hospital" means a hospital which has an average inpatient length of stay of greater than twenty-five days as determined by the department of health.

(11) "Managed care organization" means an organization having a certificate of authority or certificate of registration from the office of the insurance commissioner that contracts with the authority under a comprehensive risk contract to provide prepaid health care services to eligible clients under the authority's medicaid managed care programs, including the healthy options program.

(12) "Medicaid" means the medical assistance program as established in Title XIX of the social security act and as administered in the state of Washington by the authority.

(13) "Medicare cost report" means the medicare cost report, form 2552, or successor document.

(14) "Nonmedicare hospital inpatient day" means total hospital inpatient days less medicare inpatient days, including medicare days reported for medicare managed care plans, as reported on the medicare cost report, form 2552, or successor forms, excluding all skilled and nonskilled nursing facility days, skilled and nonskilled swing bed days, nursing days, observation bed days, hospice days, home health agency days, and other days not typically associated with an acute care inpatient hospital stay.

(15) "Outpatient" means services provided classified as ambulatory payment classification services or successor payment methodologies as defined in *WAC 182-550-7050 or successor rule and applies to fee-for-service payments and managed care encounter data.

(16) "Prospective payment system hospital" means a hospital reimbursed for inpatient and outpatient services provided to medicaid beneficiaries under the inpatient prospective payment system and the outpatient prospective payment system as defined in WAC 182-550-1050 or successor rule. For purposes of this chapter, prospective payment system hospital does not include a hospital participating in the certified public expenditure program or a bordering city hospital located outside of the state of Washington and in one of the bordering cities listed in WAC 182-501-0175 or successor rule.

(17) "Psychiatric hospital" means a hospital facility licensed as a psychiatric hospital under chapter 71.12 RCW.

(18) "Rehabilitation hospital" means a medicare-certified freestanding inpatient rehabilitation facility.

(19) "Small rural disproportionate share hospital payment" means a payment made in accordance with WAC 182-550-5200 or successor rule.

(20) "Upper payment limit" means the aggregate federal upper payment limit on the amount of the medicaid payment for which federal financial participation is available for a class of service and a class of health care providers, as specified in 42 C.F.R. Part 47, as separately determined for inpatient and outpatient hospital services. [2017 c 228 § 2; 2013 2nd sp.s. c 17 § 2; 2010 1st sp.s. c 30 § 2.]

*Reviser's note: WAC 182-550-7050 was repealed by WSR 14-12-047.

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.020 Hospital safety net assessment fund. (Expires July 1, 2021.) (1) A dedicated fund is hereby established within the state treasury to be known as the hospital safety net assessment fund. The purpose and use of the fund shall be to receive and disburse funds, together with accrued interest, in accordance with this chapter. Moneys in the fund, including interest earned, shall not be used or disbursed for any purposes other than those specified in this chapter. Any amounts expended from the fund that are later recouped by the authority on audit or otherwise shall be returned to the fund.

(a) Any unexpended balance in the fund at the end of a fiscal year shall carry over into the following fiscal year or that fiscal year and the following fiscal year and shall be applied to reduce the amount of the assessment under RCW 74.60.050(1)(c).

(b) Any amounts remaining in the fund after July 1, 2021, shall be refunded to hospitals, pro rata according to the amount paid by the hospital since July 1, 2013, subject to the limitations of federal law.

(2) All assessments, interest, and penalties collected by the authority under RCW 74.60.030 and 74.60.050 shall be deposited into the fund.

(3) Disbursements from the fund are conditioned upon appropriation and the continued availability of other funds sufficient to maintain aggregate payment levels to hospitals for inpatient and outpatient services covered by medicaid, including fee-for-service and managed care, at least at the levels the state paid for those services on July 1, 2015, as adjusted for current enrollment and utilization.

(4) Disbursements from the fund may be made only:

(a) To make payments to hospitals and managed care plans as specified in this chapter;

(b) To refund erroneous or excessive payments made by hospitals pursuant to this chapter;

(c) For one million dollars per biennium for payment of administrative expenses incurred by the authority in performing the activities authorized by this chapter;

(d) For two hundred ninety-two million dollars per biennium, to be used in lieu of state general fund payments for medicaid hospital services, provided that if the full amount of the payments required under RCW 74.60.120 and 74.60.130 cannot be distributed in a given fiscal year, this amount must be reduced proportionately;

(e) To repay the federal government for any excess payments made to hospitals from the fund if the assessments or payment increases set forth in this chapter are deemed out of compliance with federal statutes and regulations in a final determination by a court of competent jurisdiction with all appeals exhausted. In such a case, the authority may require hospitals receiving excess payments to refund the payments in question to the fund. The state in turn shall return funds to the federal government in the same proportion as the original financing. If a hospital is unable to refund payments, the state

shall develop either a payment plan, or deduct moneys from future medicaid payments, or both;

(f) To pay an amount sufficient, when combined with the maximum available amount of federal funds necessary to provide a one percent increase in medicaid hospital inpatient rates to hospitals eligible for quality improvement incentives under RCW 74.09.611. By May 16, 2018[,] and by each May 16 thereafter, the authority, in cooperation with the department of health, must verify that each hospital eligible to receive quality improvement incentives under the terms of this chapter is in substantial compliance with the reporting requirements in RCW 43.70.052 and 70.01.040 for the prior period. For the purposes of this subsection, "substantial compliance" means, in the prior period, the hospital has submitted at least nine of the twelve monthly reports by the due date. The authority must distribute quality improvement incentives to hospitals that have met these requirements beginning July 1 of 2018 and each July 1 thereafter; and

(g) For each state fiscal year 2018 through 2021 to generate:

(i) Two million dollars for new integrated evidence-based psychiatry residency program slots that did not receive state funding prior to 2016 at the integrated psychiatry residency program at the University of Washington; and

(ii) Four million one hundred thousand dollars for new family medicine residency program slots that did not receive state funding prior to 2016, as directed through the family medicine residency network at the University of Washington, for slots where residents are employed by hospitals. [2017 c 228 § 3; 2015 2nd sp.s. c 5 § 2; 2013 2nd sp.s. c 17 § 3; 2011 1st sp.s. c 35 § 1; 2010 1st sp.s. c 30 § 3.]

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

Expiration date—2011 1st sp.s. c 35: "Sections 1 and 2 of this act expire July 1, 2013." [2011 1st sp.s. c 35 § 3.]

Effective date—2011 1st sp.s. c 35: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 35 § 4.]

74.60.030 Assessments. (Expires July 1, 2021.) (1)(a) Upon satisfaction of the conditions in RCW 74.60.150(1), and so long as the conditions in RCW 74.60.150(2) have not occurred, an assessment is imposed as set forth in this subsection. Assessment notices must be sent on or about thirty days prior to the end of each quarter and payment is due thirty days thereafter.

(b) Effective July 1, 2015, and except as provided in RCW 74.60.050:

(i) Each prospective payment system hospital, except psychiatric and rehabilitation hospitals, shall pay a quarterly assessment. Each quarterly assessment shall be no more than one quarter of three hundred eighty dollars for each annual nonmedicare hospital inpatient day, up to a maximum of fifty-four thousand days per year. For each nonmedicare hospital inpatient day in excess of fifty-four thousand days, each prospective payment system hospital shall pay a quarterly assessment of one quarter of seven dollars for each such day,

unless such assessment amount or threshold needs to be modified to comply with applicable federal regulations;

(ii) Each critical access hospital shall pay a quarterly assessment of one quarter of ten dollars for each annual non-medicare hospital inpatient day;

(iii) Each psychiatric hospital shall pay a quarterly assessment of no more than one quarter of seventy-four dollars for each annual nonmedicare hospital inpatient day; and

(iv) Each rehabilitation hospital shall pay a quarterly assessment of no more than one quarter of seventy-four dollars for each annual nonmedicare hospital inpatient day.

(2) The authority shall determine each hospital's annual nonmedicare hospital inpatient days by summing the total reported nonmedicare hospital inpatient days for each hospital that is not exempt from the assessment under RCW 74.60.040. The authority shall obtain inpatient data from the hospital's 2552 cost report data file or successor data file available through the centers for medicare and medicaid services, as of a date to be determined by the authority. For state fiscal year 2017, the authority shall use cost report data for hospitals' fiscal years ending in 2013. For subsequent years, the hospitals' next succeeding fiscal year cost report data must be used.

(a) With the exception of a prospective payment system hospital commencing operations after January 1, 2009, for any hospital without a cost report for the relevant fiscal year, the authority shall work with the affected hospital to identify appropriate supplemental information that may be used to determine annual nonmedicare hospital inpatient days.

(b) A prospective payment system hospital commencing operations after January 1, 2009, must be assessed in accordance with this section after becoming an eligible new prospective payment system hospital as defined in RCW 74.60.010. [2017 c 228 § 4; 2015 2nd sp.s. c 5 § 3; 2014 c 143 § 1; 2013 2nd sp.s. c 17 § 4; 2010 1st sp.s. c 30 § 4.]

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2014 c 143: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2014]." [2014 c 143 § 4.]

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.050 Notices of assessment—Administration and collection. (Expires July 1, 2021.) (1) The authority, in cooperation with the office of financial management, shall develop rules for determining the amount to be assessed to individual hospitals, notifying individual hospitals of the assessed amount, and collecting the amounts due. Such rule making shall specifically include provision for:

(a) Transmittal of notices of assessment by the authority to each hospital informing the hospital of its nonmedicare hospital inpatient days and the assessment amount due and payable;

(b) Interest on delinquent assessments at the rate specified in RCW 82.32.050; and

(c) Adjustment of the assessment amounts in accordance with subsection (2) of this section.

(2) For each state fiscal year, the assessment amounts established under RCW 74.60.030 must be adjusted as follows:

(a) If sufficient other funds, including federal funds, are available to make the payments required under this chapter and fund the state portion of the quality incentive payments under RCW 74.09.611 and 74.60.020(4)(f) without utilizing the full assessment under RCW 74.60.030, the authority shall reduce the amount of the assessment to the minimum levels necessary to support those payments;

(b) If the total amount of inpatient and outpatient supplemental payments under RCW 74.60.120 is in excess of the upper payment limits and the entire excess amount cannot be disbursed by additional payments to managed care organizations under RCW 74.60.130, the authority shall proportionately reduce future assessments on prospective payment hospitals to the level necessary to generate additional payments to hospitals that are consistent with the upper payment limit plus the maximum permissible amount of additional payments to managed care organizations under RCW 74.60.130;

(c) If the amount of payments to managed care organizations under RCW 74.60.130 cannot be distributed because of failure to meet federal actuarial soundness or utilization requirements or other federal requirements, the authority shall apply the amount that cannot be distributed to reduce future assessments to the level necessary to generate additional payments to managed care organizations that are consistent with federal actuarial soundness or utilization requirements or other federal requirements;

(d) If required in order to obtain federal matching funds, the maximum number of nonmedicare inpatient days at the higher rate provided under RCW 74.60.030(1)(b)(i) may be adjusted in order to comply with federal requirements;

(e) If the number of nonmedicare inpatient days applied to the rates provided in RCW 74.60.030 will not produce sufficient funds to support the payments required under this chapter and the state portion of the quality incentive payments under RCW 74.09.611 and 74.60.020(4)(f), the assessment rates provided in RCW 74.60.030 may be increased proportionately by category of hospital to amounts no greater than necessary in order to produce the required level of funds needed to make the payments specified in this chapter and the state portion of the quality incentive payments under RCW 74.09.611 and 74.60.020(4)(f); and

(f) Any actual or estimated surplus remaining in the fund at the end of the fiscal year must be applied to reduce the assessment amount for the subsequent fiscal year or that fiscal year and the following fiscal years prior to and including fiscal year 2021.

(3)(a) Any adjustment to the assessment amounts pursuant to this section, and the data supporting such adjustment, including, but not limited to, relevant data listed in (b) of this subsection, must be submitted to the Washington state hospital association for review and comment at least sixty calendar days prior to implementation of such adjusted assessment amounts. Any review and comment provided by the Washington state hospital association does not limit the ability of the Washington state hospital association or its members to challenge an adjustment or other action by the authority that is not made in accordance with this chapter.

(b) The authority shall provide the following data to the Washington state hospital association sixty days before implementing any revised assessment levels, detailed by fiscal year, beginning with fiscal year 2011 and extending to the most recent fiscal year, except in connection with the initial assessment under this chapter:

(i) The fund balance;

(ii) The amount of assessment paid by each hospital;

(iii) The state share, federal share, and total annual medicaid fee-for-service payments for inpatient hospital services made to each hospital under RCW 74.60.120, and the data used to calculate the payments to individual hospitals under that section;

(iv) The state share, federal share, and total annual medicaid fee-for-service payments for outpatient hospital services made to each hospital under RCW 74.60.120, and the data used to calculate annual payments to individual hospitals under that section;

(v) The annual state share, federal share, and total payments made to each hospital under each of the following programs: Grants to certified public expenditure hospitals under RCW 74.60.090, for critical access hospital payments under RCW 74.60.100; and disproportionate share programs under RCW 74.60.110;

(vi) The data used to calculate annual payments to individual hospitals under (b)(v) of this subsection; and

(vii) The amount of payments made to managed care plans under RCW 74.60.130, including the amount representing additional premium tax, and the data used to calculate those payments.

(c) On a monthly basis, the authority shall provide the Washington state hospital association the amount of payments made to managed care plans under RCW 74.60.130, including the amount representing additional premium tax, and the data used to calculate those payments. [2017 c 228 § 5; 2015 2nd sp.s. c 5 § 4; 2013 2nd sp.s. c 17 § 5; 2010 1st sp.s. c 30 § 6.]

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.090 Grants to certified public expenditure hospitals. (Expires July 1, 2021.) (1) In each fiscal year commencing upon satisfaction of the applicable conditions in RCW 74.60.150(1), funds must be disbursed from the fund and the authority shall make grants to certified public expenditure hospitals, which shall not be considered payments for hospital services, as follows:

(a) University of Washington medical center: Ten million five hundred fifty-five thousand dollars in each state fiscal year 2018 through 2021 paid as follows, except if the full amount of the payments required under RCW 74.60.120 and 74.60.130 cannot be distributed in a given fiscal year, the amounts in this subsection must be reduced proportionately:

(i) Four million four hundred fifty-five thousand dollars;

(ii) Two million dollars to new integrated, evidence-based psychiatry residency program slots that did not receive state funding prior to 2016, at the integrated psychiatry residency program at the University of Washington; and

(iii) Four million one hundred thousand dollars to new family medicine residency program slots that did not receive state funding prior to 2016, as directed through the family medicine residency network at the University of Washington, for slots where residents are employed by hospitals;

(b) Harborview medical center: Ten million two hundred sixty thousand dollars in each state fiscal year 2018 through 2021, except if the full amount of the payments required under RCW 74.60.120 and 74.60.130 cannot be distributed in a given fiscal year, the amounts in this subsection must be reduced proportionately;

(c) All other certified public expenditure hospitals: Six million three hundred forty-five thousand dollars in each state fiscal year 2018 through 2021, except if the full amount of the payments required under RCW 74.60.120 and 74.60.130 cannot be distributed in a given fiscal year, the amounts in this subsection must be reduced proportionately. The amount of payments to individual hospitals under this subsection must be determined using a methodology that provides each hospital with a proportional allocation of the group's total amount of medicaid and state children's health insurance program payments determined from claims and encounter data using the same general methodology set forth in RCW 74.60.120 (3) and (4).

(2) Payments must be made quarterly, before the end of each quarter, taking the total disbursement amount and dividing by four to calculate the quarterly amount. The authority shall provide a quarterly report of such payments to the Washington state hospital association. [2017 c 228 § 6; 2015 2nd sp.s. c 5 § 5; 2013 2nd sp.s. c 17 § 8; 2011 1st sp.s. c 35 § 2; 2010 1st sp.s. c 30 § 10.]

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

Expiration date—Effective date—2011 1st sp.s. c 35: See notes following RCW 74.60.020.

74.60.100 Critical access hospital payments. (Expires July 1, 2021.) In each fiscal year commencing upon satisfaction of the conditions in RCW 74.60.150(1), the authority shall make access payments to critical access hospitals that do not qualify for or receive a small rural disproportionate share hospital payment in a given fiscal year in the total amount of two million thirty-eight thousand dollars from the fund. The amount of payments to individual hospitals under this section must be determined using a methodology that provides each hospital with a proportional allocation of the group's total amount of medicaid and state children's health insurance program payments determined from claims and encounter data using the same general methodology set forth in RCW 74.60.120 (3) and (4). Payments must be made after the authority determines a hospital's payments under RCW 74.60.110. These payments shall be in addition to any other amount payable with respect to services provided by critical access hospitals and shall not reduce any other payments to critical access hospitals. The authority shall provide a report of such payments to the Washington state hospital association within thirty days after payments are made. [2017 c 228

§ 7; 2015 2nd sp.s. c 5 § 6; 2013 2nd sp.s. c 17 § 9; 2010 1st sp.s. c 30 § 11.]

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.120 Direct supplemental payments to hospitals. (Expires July 1, 2021.) (1) In each state fiscal year, commencing upon satisfaction of the applicable conditions in RCW 74.60.150(1), the authority shall make supplemental payments directly to Washington hospitals, separately for inpatient and outpatient fee-for-service medicaid services, as follows unless there are federal restrictions on doing so. If there are federal restrictions, to the extent allowed, funds that cannot be paid under (a) of this subsection, should be paid under (b) of this subsection, and funds that cannot be paid under (b) of this subsection, shall be paid under (a) of this subsection:

(a) For inpatient fee-for-service payments for prospective payment hospitals other than psychiatric or rehabilitation hospitals, twenty-nine million one hundred sixty-two thousand five hundred dollars per state fiscal year plus federal matching funds;

(b) For outpatient fee-for-service payments for prospective payment hospitals other than psychiatric or rehabilitation hospitals, thirty million dollars per state fiscal year plus federal matching funds;

(c) For inpatient fee-for-service payments for psychiatric hospitals, eight hundred seventy-five thousand dollars per state fiscal year plus federal matching funds;

(d) For inpatient fee-for-service payments for rehabilitation hospitals, two hundred twenty-five thousand dollars per state fiscal year plus federal matching funds;

(e) For inpatient fee-for-service payments for border hospitals, two hundred fifty thousand dollars per state fiscal year plus federal matching funds; and

(f) For outpatient fee-for-service payments for border hospitals, two hundred fifty thousand dollars per state fiscal year plus federal matching funds.

(2) If the amount of inpatient or outpatient payments under subsection (1) of this section, when combined with federal matching funds, exceeds the upper payment limit, payments to each category of hospital must be reduced proportionately to a level where the total payment amount is consistent with the upper payment limit. Funds under this chapter unable to be paid to hospitals under this section because of the upper payment limit must be paid to managed care organizations under RCW 74.60.130, subject to the limitations in this chapter.

(3) The amount of such fee-for-service inpatient payments to individual hospitals within each of the categories identified in subsection (1)(a), (c), (d), and (e) of this section must be determined by:

(a) Totaling the inpatient fee-for-service claims payments and inpatient managed care encounter rate payments for each hospital during the base year;

(b) Totaling the inpatient fee-for-service claims payments and inpatient managed care encounter rate payments for all hospitals during the base year; and

(c) Using the amounts calculated under (a) and (b) of this subsection to determine an individual hospital's percentage of the total amount to be distributed to each category of hospital.

(4) The amount of such fee-for-service outpatient payments to individual hospitals within each of the categories identified in subsection (1)(b) and (f) of this section must be determined by:

(a) Totaling the outpatient fee-for-service claims payments and outpatient managed care encounter rate payments for each hospital during the base year;

(b) Totaling the outpatient fee-for-service claims payments and outpatient managed care encounter rate payments for all hospitals during the base year; and

(c) Using the amounts calculated under (a) and (b) of this subsection to determine an individual hospital's percentage of the total amount to be distributed to each category of hospital.

(5) Sixty days before the first payment in each subsequent fiscal year, the authority shall provide each hospital and the Washington state hospital association with an explanation of how the amounts due to each hospital under this section were calculated.

(6) Payments must be made in quarterly installments on or about the last day of every quarter.

(7) A prospective payment system hospital commencing operations after January 1, 2009, is eligible to receive payments in accordance with this section after becoming an eligible new prospective payment system hospital as defined in RCW 74.60.010.

(8) Payments under this section are supplemental to all other payments and do not reduce any other payments to hospitals. [2017 c 228 § 8; 2015 2nd sp.s. c 5 § 7; 2014 c 143 § 2; 2013 2nd sp.s. c 17 § 11; 2010 1st sp.s. c 30 § 13.]

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2014 c 143: See note following RCW 74.60.030.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.130 Managed care capitation payments. (Expires July 1, 2021.) (1) For state fiscal year 2016 and for each subsequent fiscal year, commencing within thirty days after satisfaction of the conditions in RCW 74.60.150(1) and subsection (5) of this section, the authority shall increase capitation payments in a manner consistent with federal contracting requirements to managed care organizations by an amount at least equal to the amount available from the fund after deducting disbursements authorized by RCW 74.60.020(4) (c) through (f) and payments required by RCW 74.60.080 through 74.60.120. When combined with applicable federal matching funds, the capitation payment under this subsection must be at least three hundred sixty million dollars per year. The initial payment following satisfaction of the conditions in RCW 74.60.150(1) must include all amounts due from July 1, 2015, to the end of the calendar month during which the conditions in RCW 74.60.150(1) are satisfied. Subsequent payments shall be made monthly.

(2) Payments to individual managed care organizations shall be determined by the authority based on each organization's or network's enrollment relative to the anticipated total enrollment in each program for the fiscal year in question, the

anticipated utilization of hospital services by an organization's or network's medicaid enrollees, and such other factors as are reasonable and appropriate to ensure that purposes of this chapter are met.

(3) If the federal government determines that total payments to managed care organizations under this section exceed what is permitted under applicable medicaid laws and regulations, payments must be reduced to levels that meet such requirements, and the balance remaining must be applied as provided in RCW 74.60.050. Further, in the event a managed care organization is legally obligated to repay amounts distributed to hospitals under this section to the state or federal government, a managed care organization may recoup the amount it is obligated to repay under the medicaid program from individual hospitals by not more than the amount of overpayment each hospital received from that managed care organization.

(4) Payments under this section do not reduce the amounts that otherwise would be paid to managed care organizations: PROVIDED, That such payments are consistent with actuarial soundness certification and enrollment.

(5) Before making such payments, the authority shall require medicaid managed care organizations to comply with the following requirements:

(a) All payments to managed care organizations under this chapter must be expended for hospital services provided by Washington hospitals, which for purposes of this section includes psychiatric and rehabilitation hospitals, in a manner consistent with the purposes and provisions of this chapter, and must be equal to all increased capitation payments under this section received by the organization or network, consistent with actuarial certification and enrollment, less an allowance for any estimated premium taxes the organization is required to pay under Title 48 RCW associated with the payments under this chapter;

(b) Managed care organizations shall expend the increased capitation payments under this section in a manner consistent with the purposes of this chapter, with the initial expenditures to hospitals to be made within thirty days of receipt of payment from the authority. Subsequent expenditures by the managed care plans are to be made before the end of the quarter in which funds are received from the authority;

(c) Providing that any delegation or attempted delegation of an organization's or network's obligations under agreements with the authority do not relieve the organization or network of its obligations under this section and related contract provisions.

(6) No hospital or managed care organizations may use the payments under this section to gain advantage in negotiations.

(7) No hospital has a claim or cause of action against a managed care organization for monetary compensation based on the amount of payments under subsection (5) of this section.

(8) If funds cannot be used to pay for services in accordance with this chapter the managed care organization or network must return the funds to the authority which shall return them to the hospital safety net assessment fund. [2017 c 228 § 9; 2015 2nd sp.s. c 5 § 8; 2014 c 143 § 3; 2013 2nd sp.s. c 17 § 12; 2010 1st sp.s. c 30 § 14.]

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2014 c 143: See note following RCW 74.60.030.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.150 Conditions. (Expires July 1, 2021.) (1) The assessment, collection, and disbursement of funds under this chapter shall be conditional upon:

(a) Final approval by the centers for medicare and medicaid services of any state plan amendments or waiver requests that are necessary in order to implement the applicable sections of this chapter including, if necessary, waiver of the broad-based or uniformity requirements as specified under section 1903(w)(3)(E) of the federal social security act and 42 C.F.R. 433.68(e);

(b) To the extent necessary, amendment of contracts between the authority and managed care organizations in order to implement this chapter; and

(c) Certification by the office of financial management that appropriations have been adopted that fully support the rates established in this chapter for the upcoming fiscal year.

(2) This chapter does not take effect or ceases to be imposed, and any moneys remaining in the fund shall be refunded to hospitals in proportion to the amounts paid by such hospitals, if and to the extent that any of the following conditions occur:

(a) The federal department of health and human services and a court of competent jurisdiction makes a final determination, with all appeals exhausted, that any element of this chapter, other than RCW 74.60.100, cannot be validly implemented;

(b) Funds generated by the assessment for payments to prospective payment hospitals or managed care organizations are determined to be not eligible for federal matching funds in addition to those federal funds that would be received without the assessment, or the federal government replaces medicaid matching funds with a block grant or grants;

(c) Other funding sufficient to maintain aggregate payment levels to hospitals for inpatient and outpatient services covered by medicaid, including fee-for-service and managed care, at least at the rates the state paid for those services on July 1, 2015, as adjusted for current enrollment and utilization is not appropriated or available;

(d) Payments required by this chapter are reduced, except as specifically authorized in this chapter, or payments are not made in substantial compliance with the time frames set forth in this chapter; or

(e) The fund is used as a substitute for or to supplant other funds, except as authorized by RCW 74.60.020. [2017 c 228 § 10; 2015 2nd sp.s. c 5 § 9; 2013 2nd sp.s. c 17 § 15; 2010 1st sp.s. c 30 § 17.]

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.160 Contracting with health care authority. (Expires July 1, 2021.) (1) The legislature intends to provide the hospitals with an opportunity to contract with the author-

ity each fiscal biennium to protect the hospitals from future legislative action during the biennium that could result in hospitals receiving less from supplemental payments, increased managed care payments, disproportionate share hospital payments, or access payments than the hospitals expected to receive in return for the assessment based on the biennial appropriations and assessment legislation.

(2) Each odd-numbered year after enactment of the biennial omnibus operating appropriations act, the authority shall extend the existing contract for the period of the fiscal biennium beginning July 1st with a hospital that is required to pay the assessment under this chapter or shall offer to enter into a contract with any hospital subject to this chapter that has not previously been a party to a contract or whose contract has expired. The contract must include the following terms:

(a) The authority must agree not to do any of the following:

(i) Increase the assessment from the level set by the authority pursuant to this chapter on the first day of the contract period for reasons other than those allowed under RCW 74.60.050(2)(e);

(ii) Reduce aggregate payment levels to hospitals for inpatient and outpatient services covered by medicaid, including fee-for-service and managed care, adjusting for changes in enrollment and utilization, from the levels the state paid for those services on the first day of the contract period;

(iii) For critical access hospitals only, reduce the levels of disproportionate share hospital payments under RCW 74.60.110 or access payments under RCW 74.60.100 for all critical access hospitals below the levels specified in those sections on the first day of the contract period;

(iv) For prospective payment system, psychiatric, and rehabilitation hospitals only, reduce the levels of supplemental payments under RCW 74.60.120 for all prospective payment system hospitals below the levels specified in that section on the first day of the contract period unless the supplemental payments are reduced under RCW 74.60.120(2);

(v) For prospective payment system, psychiatric, and rehabilitation hospitals only, reduce the increased capitation payments to managed care organizations under RCW 74.60.130 below the levels specified in that section on the first day of the contract period unless the managed care payments are reduced under RCW 74.60.130(3); or

(vi) Except as specified in this chapter, use assessment revenues for any other purpose than to secure federal medicaid matching funds to support payments to hospitals for medicaid services; and

(b) As long as payment levels are maintained as required under this chapter, the hospital must agree not to challenge the authority's reduction of hospital reimbursement rates to July 1, 2009, levels, which results from the elimination of assessment supported rate restorations and increases, under 42 U.S.C. Sec. 1396a(a)(30)(a) either through administrative appeals or in court during the period of the contract.

(3) If a court finds that the authority has breached an agreement with a hospital under subsection (2)(a) of this section, the authority:

(a) Must immediately refund any assessment payments made subsequent to the breach by that hospital upon receipt; and

(b) May discontinue supplemental payments, increased managed care payments, disproportionate share hospital payments, and access payments made subsequent to the breach for the hospital that are required under this chapter.

(4) The remedies provided in this section are not exclusive of any other remedies and rights that may be available to the hospital whether provided in this chapter or otherwise in law, equity, or statute. [2017 c 228 § 11; 2015 2nd sp.s. c 5 § 10; 2013 2nd sp.s. c 17 § 17.]

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

74.60.170 Estimated hospital net financial benefit determined by the authority—Formula—Modification. (Expires July 1, 2021.) (1) The estimated hospital net financial benefit under this chapter shall be determined by the authority by summing the following anticipated hospital payments, including all applicable federal matching funds, specified in RCW 74.60.090 for grants to certified public expenditure hospitals, RCW 74.60.100 for payments to critical access hospitals, RCW 74.60.110 for payments to small rural disproportionate share hospitals, RCW 74.60.120 for direct supplemental payments to hospitals, RCW 74.60.130 for managed care capitation payments, RCW 74.60.020(4)(f) for quality improvement incentives, minus the total assessments paid by all hospitals under RCW 74.60.030 for hospital assessments, and minus any taxes paid on RCW 74.60.130 for managed care payments.

(2) If, for any reason including reduction or elimination of federal matching funds, the estimated hospital net financial benefit falls below one hundred thirty million dollars in any state fiscal year, the office of financial management shall direct the authority to modify the assessment rates provided for in RCW 74.60.030, and the office of financial management is authorized to direct the authority to adjust the amounts disbursed from the fund, including disbursements for payments under RCW 74.60.020(4)(f) and payments to hospitals under RCW 74.60.090 through 74.60.130 and 74.60.020(4)(g), such that the estimated hospital net financial benefit is equal to the amount disbursed from the fund for use in lieu of state general fund payments. Each category of adjusted payments to hospitals under RCW 74.60.090 through 74.60.130 and payments under RCW 74.60.020(4)(g) must bear the same relationship to the total of such adjusted payments as originally provided in this chapter. [2017 c 228 § 14.]

Effective date—2017 c 228: See note following RCW 74.60.005.

74.60.901 Expiration date—2010 1st sp.s. c 30. This chapter expires July 1, 2021. [2017 c 228 § 12; 2015 2nd sp.s. c 5 § 11; 2013 2nd sp.s. c 17 § 19; 2010 1st sp.s. c 30 § 21.]

Effective date—2017 c 228: See note following RCW 74.60.005.

Effective date—2015 2nd sp.s. c 5: See note following RCW 74.60.005.

Effective date—2013 2nd sp.s. c 17: See note following RCW 74.60.005.

[2017 RCW Supp—page 878]

74.60.902 Expiration of chapter—2010 1st sp.s. c 30. Upon expiration of chapter 74.60 RCW, inpatient and outpatient hospital reimbursement rates shall return to a funding level as if the four percent medicaid inpatient and outpatient rate reductions did not occur on July 1, 2009, using the rate structure in effect July 1, 2015, or as otherwise specified in the 2019-2021 biennial operating appropriations act. [2017 c 228 § 13; 2010 1st sp.s. c 30 § 22.]

Effective date—2017 c 228: See note following RCW 74.60.005.

Title 76

FORESTS AND FOREST PRODUCTS

Chapters

- 76.01** General provisions.
- 76.04** Forest protection.
- 76.06** Forest insect and disease control.
- 76.09** Forest practices.
- 76.13** Stewardship of nonindustrial forests and woodlands.

Chapter 76.01 RCW GENERAL PROVISIONS

Sections

- 76.01.080 Repealed.
- 76.01.090 Repealed.

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

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

Chapter 76.04 RCW FOREST PROTECTION

Sections

- 76.04.135 Cooperative agreements—Public agencies—Transfer of ownership of department-owned firefighting vehicle, procedure.
- 76.04.181 Maximizing the utilization of local fire suppression assets—Department's duty.

76.04.135 Cooperative agreements—Public agencies—Transfer of ownership of department-owned firefighting vehicle, procedure. (1) For the purpose of promoting and facilitating cooperation among fire protection agencies, including the department, and between the department and other agencies that manage lands owned by the state, and to more adequately protect life, property, and the natural resources of the state, the department may enter into a contract or agreement with a municipality, county, state, or federal agency to provide fire detection, prevention, presuppression, or suppression services on property which they are responsible to protect or manage.

(2) Contracts or agreements under subsection (1) of this section may contain provisions for the exchange of services on a cooperative basis or services in return for cash payment or other compensation.

(3) No charges may be made when the department determines that under a cooperative contract or agreement the assistance received from a municipality, county, or federal

agency on state protected lands equals that provided by the state on municipal, county, or federal lands.

(4) The department may transfer ownership of depreciated firefighting vehicles and related equipment upon terms subject to mutual agreement to local fire districts in wildfire prone areas in all areas of the state, as determined by the department, and where the median household income is below the state average. These vehicle and equipment transfers are exempt from the requirements in RCW 43.19.1919(1). The department must notify the chairs and ranking members of the legislative committees with jurisdiction regarding these transfers at least ten days prior to transfer of the equipment. [2017 c 280 § 2; 2012 c 38 § 2; 1986 c 100 § 14.]

Effective date—2017 c 280: See note following RCW 43.30.575.

76.04.181 Maximizing the utilization of local fire suppression assets—Department's duty. (1) To maximize the effective utilization of local fire suppression assets, the department is required to:

(a) Actively engage in ongoing prefire season outreach and recruitment of qualified wildland fire suppression contractors and equipment owners who have valid incident qualifications for the type of contracted work to be performed and compile and annually update a master list of the qualified contractors. In order to be included on a master list of qualified wildland fire suppression contractors:

(i) Contractors providing fire engines, tenders, crews, or similar resources must have training and qualifications sufficient for federal wildland fire contractor eligibility, including possessing a valid incident qualification card, commonly called a red card; and

(ii) Contractors other than those identified in (a)(i) of this subsection must have training and qualifications evidenced by possession of a valid department qualification and safety document, commonly called a blue card, issued to people cooperating with the department pursuant to an agreement;

(b) Provide timely advance notification of the dates and locations of department blue card training to all potential wildland fire suppression contractors known to the department and make the training available in several locations that are reasonably convenient for contractors;

(c) Organize the lists of qualified wildland fire suppression contractors to identify the counties where the contractors are located and make the lists, and the availability status of the contractors on the list, available to emergency dispatchers, county legislative authorities, emergency management departments, and local fire districts;

(d) Cooperate with federal wildland firefighting agencies to prioritize, based on predicted need, the efficient use of local resources in close proximity to wildland fire incidents, including local private wildland suppression contractors;

(e) Enter into preemptive agreements with landowners and other contractors in possession of firefighting capability that may be utilized in wildland fire suppression efforts, including the use of bulldozers, fallers, fuel tenders, potable water tenders, water sprayers, wash trailers, refrigeration units, and buses; and

(f) Conduct outreach to provide basic incident command system and wildland fire safety training to landowners in possession of firefighting capability to help ensure that any wild-

land fire suppression actions taken by private landowners on their own land are accomplished safely and in coordination with any related incident command structure.

(2) The local wildland fire liaison may play an active role in the outreach and recruitment of wildland fire suppression contractors under subsection (1) of this section. This effort may include, but is not limited to, reaching out to local fire districts and collecting their knowledge to identify potential fire suppression contractors.

(3) Nothing in subsection (1) of this section prohibits the department from:

(a) Engaging, as needed, local private wildland fire suppression contractors not included on the master list or subject to a preemptive agreement; or

(b) Conducting safety training on the site of a wildland fire in order to utilize available contractors not included on a master list of qualified wildland fire suppression contractors.

(4) When entering into preemptive agreements with landowners and other contractors under this section, the department must:

(a) Ensure that all equipment and personnel satisfy department standards, including any applicable safety training certifications required by the department of labor and industries;

(b) Ensure that all contractors are, when engaged in fire suppression activities, under the supervision of recognized wildland fire personnel;

(c) Verify that the agreements have been finalized with an agreed upon standard operating rate identified before being included on the master list of qualified contractors; and

(d) Inspect, or verify the inspection of, any equipment included in the agreement to ensure that all safety and dependability standards are satisfied.

(5) The department may authorize operational field personnel to carry additional personal protection equipment in order to loan the equipment to private fire suppression contractors as needed.

(6) No civil liability may be imposed by any court on the state or its officers and employees for any adverse impacts resulting from training or personal protection equipment provided by the department or preemptive agreements entered into by the department under the provisions of this section except upon proof of gross negligence or willful or wanton misconduct.

(5) [(7)] All requirements in this section are subject to the availability of amounts appropriated for the specific purposes described. [2017 c 104 § 1; 2015 c 182 § 6.]

Effective date—2017 c 104: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2017." [2017 c 104 § 4.]

Chapter 76.06 RCW

FOREST INSECT AND DISEASE CONTROL

Sections

76.06.200 Forest health assessment and treatment framework.

76.06.200 Forest health assessment and treatment framework. (1) The department must establish a forest health assessment and treatment framework designed to pro-

actively and systematically address the forest health issues facing the state. Specifically, the framework must endeavor to achieve an initial goal of assessing and treating one million acres of land by 2033.

(2) The department must utilize the framework to assess and treat acreage in an incremental fashion each biennium. The framework consists of three elements: Assessment; treatment; and progress review and reporting.

(a) Assessment. Each biennium, the department must identify and assess two hundred thousand acres of fire prone lands and communities that are in need of forest health treatment, including the use of prescribed fire or mechanical treatment, such as thinning.

(i) The scope of the assessment must include lands protected by the department as well as lands outside of the department's fire protection responsibilities that could pose a high risk to department protected lands during a fire.

(ii) The assessment must identify areas in need of treatment, the type or types of treatment recommended, data and planning needs to carry out recommended treatment, and the estimated cost of recommended treatment.

(b) Treatment. Each biennium, the department must review previously completed assessments and prioritize and conduct as many identified treatments as possible using appropriations provided for that specific purpose.

(c) Progress review and reporting. By December 1st of each even-numbered year, the department must provide the appropriate committees of the legislature and the office of financial management with:

(i) A request for appropriations designed to implement the framework in the following biennium, including assessment work and conducting treatments identified in previously completed assessments;

(ii) A prioritized list and brief summary of treatments planned to be conducted under the framework with the requested appropriations, including relevant information from the assessment; and

(iii) A list and brief summary of treatments carried out under the framework in the preceding biennium, including total funding available, costs for completed treatment, and treatment outcomes. The summary must include any barriers to framework implementation and legislative or administrative recommendations to address those barriers.

(3) In developing and implementing the framework, the department must:

(a) Utilize and build on the forest health strategic planning initiated under section 308(11), chapter 36, Laws of 2016 sp. sess., to the maximum extent practicable, to promote the efficient use of resources; and

(b) Establish a forest health advisory committee to assist in developing and implementing the framework. The committee may: (i) Include representation from large and small forest landowners, wildland fire response organizations, milling and log transportation industries, forest collaboratives that may exist in the affected areas, highly affected communities and community preparedness organizations, conservation groups, and other interested parties deemed appropriate by the commissioner; and (ii) consult with relevant local, state, and federal agencies, and tribes.

(4) The department must establish and implement the forest health assessment and treatment framework within the

appropriations specifically provided for this purpose. [2017 c 95 § 1.]

Chapter 76.09 RCW FOREST PRACTICES

Sections

76.09.380 Repealed.

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

Chapter 76.13 RCW STEWARDSHIP OF NONINDUSTRIAL FORESTS AND WOODLANDS

Sections

76.13.120 Findings—Definitions—Forestry riparian easement program.

76.13.120 Findings—Definitions—Forestry riparian easement program. (1) The legislature finds that the state should acquire easements primarily along riparian and other sensitive aquatic areas from qualifying small forest landowners willing to sell or donate easements to the state provided that the state will not be required to acquire the easements if they are subject to unacceptable liabilities. Therefore the legislature establishes a forestry riparian easement program.

(2) The definitions in this subsection apply throughout this section and RCW 76.13.100, 76.13.110, 76.13.140, and 76.13.160 unless the context clearly requires otherwise.

(a) "Forestry riparian easement" means an easement covering qualifying timber granted voluntarily to the state by a qualifying small forest landowner.

(b) "Qualifying small forest landowner" means a landowner meeting all of the following characteristics as of the date the department offers compensation for a forestry riparian easement:

(i) Is a small forest landowner as defined in (d) of this subsection; and

(ii) Is an individual, partnership, corporation, or other nongovernmental for-profit legal entity.

(c) "Qualifying timber" means those forest trees for which the small forest landowner is willing to grant the state a forestry riparian easement and meets all of the following:

(i) The forest trees are covered by a forest practices application that the small forest landowner is required to leave unharvested under the rules adopted under RCW 76.09.040, 76.09.055, and 76.09.370 or that is made uneconomical to harvest by those rules;

(ii) The forest trees are within or bordering a commercially reasonable harvest unit as determined under rules adopted by the forest practices board, or for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules;

(iii) The forest trees are located within, or affected by forest practices rules pertaining to any one, or all, of the following:

(A) Riparian or other sensitive aquatic areas;

(B) Channel migration zones; or

(C) Areas of potentially unstable slopes or landforms, verified by the department, and must meet all of the following:

- (I) Are addressed in a forest practices application;
- (II) Are adjacent to a commercially reasonable harvest area; and
- (III) Have the potential to deliver sediment or debris to a public resource or threaten public safety.

(d) "Small forest landowner" means a landowner meeting all of the following characteristics:

(i) A forest landowner as defined in RCW 76.09.020 whose interest in the land and timber is in fee or who has rights to the timber to be included in the forestry riparian easement that extend at least fifty years from the date the completed forestry riparian easement application associated with the easement is submitted;

(ii) An entity that has harvested from its own lands in this state during the three years prior to the year of application an average timber volume that would qualify the owner as a small harvester under RCW 84.33.035; and

(iii) An entity that certifies at the time of application that it does not expect to harvest from its own lands more than the volume allowed by RCW 84.33.035 during the ten years following application. If a landowner's prior three-year average harvest exceeds the limit of RCW 84.33.035, or the landowner expects to exceed this limit during the ten years following application, and that landowner establishes to the department's reasonable satisfaction that the harvest limits were or will be exceeded to raise funds to pay estate taxes or equally compelling and unexpected obligations such as court-ordered judgments or extraordinary medical expenses, the landowner shall be deemed to be a small forest landowner. For purposes of determining whether a person qualifies as a small forest landowner, the small forest landowner office, created in RCW 76.13.110, shall evaluate the landowner under this definition, pursuant to RCW 76.13.160, as of the date that the forest practices application is submitted and the date that the department offers compensation for the forestry riparian easement. A small forest landowner can include an individual, partnership, corporation, or other nongovernmental legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still qualify as a small forest landowner under this section. If a landowner is unable to obtain an approved forest practices application for timber harvest for any of his or her land because of restrictions under the forest practices rules, the landowner may still qualify as a small forest landowner under this section.

(e) "Completion of harvest" means that the trees have been harvested from an area and that further entry into that area by mechanized logging or slash treating equipment is not expected.

(3) The department is authorized and directed to accept and hold in the name of the state of Washington forestry riparian easements granted by qualifying small forest landowners covering qualifying timber and to pay compensation to the landowners in accordance with this section. The department may not transfer the easements to any entity other than another state agency.

(4) Forestry riparian easements shall be effective for fifty years from the date of the completed forestry riparian easement application, unless the easement is voluntarily termi-

nated earlier by the department, based on a determination that termination is in the best interest of the state, or under the terms of a termination clause in the easement.

(5) Forestry riparian easements shall be restrictive only, and shall preserve all lawful uses of the easement premises by the landowner that are consistent with the terms of the easement and the requirement to protect riparian functions during the term of the easement, subject to the restriction that the leave trees required by the rules to be left on the easement premises may not be cut during the term of the easement. No right of public access to or across, or any public use of the easement premises is created by this statute or by the easement. Forestry riparian easements shall not be deemed to trigger the compensating tax of or otherwise disqualify land from being taxed under chapter 84.33 or 84.34 RCW.

(6) The small forest landowner office shall determine what constitutes a completed application for a forestry riparian easement. An application shall, at a minimum, include documentation of the owner's status as a qualifying small forest landowner, identification of location and the types of qualifying timber, and notification of completion of harvest, if applicable.

(7) Upon receipt of the qualifying small forest landowner's forestry riparian easement application, and subject to the availability of amounts appropriated for this specific purpose, the following must occur:

(a) The small forest landowner office must determine the compensation to be offered to the qualifying small forest landowner for qualifying timber after the department accepts the completed forestry riparian easement application and the landowner has completed marking the boundary of the area containing the qualifying timber. The legislature recognizes that there is not readily available market transaction evidence of value for easements of the nature required by this section, and thus establishes the methodology provided in this subsection to ascertain the value for forestry riparian easements. Values so determined may not be considered competent evidence of value for any other purpose.

(b) The small forest landowner office, subject to the availability of amounts appropriated for this specific purpose, is responsible for assessing the volume of qualifying timber. However, no more than fifty percent of the total amounts appropriated for the forestry riparian easement program may be applied to determine the volume of qualifying timber for completed forestry riparian easement applications. Based on the volume established by the small forest landowner office and using data obtained or maintained by the department of revenue under RCW 84.33.074 and 84.33.091, the small forest landowner office shall attempt to determine the fair market value of the qualifying timber as of the date the complete forestry riparian easement application is received. Removal of any qualifying timber before the expiration of the easement must be in accordance with the forest practices rules and the terms of the easement. There shall be no reduction in compensation for reentry.

(8)(a) Except as provided in subsection (9) of this section and subject to the availability of amounts appropriated for this specific purpose, the small forest landowner office shall offer compensation for qualifying timber to the qualifying small forest landowner in the amount of fifty percent of the value determined by the small forest landowner office, plus

the compliance and reimbursement costs as determined in accordance with RCW 76.13.140. However, compensation for any qualifying small forest landowner for qualifying timber located on potentially unstable slopes or landforms may not exceed a total of fifty thousand dollars during any biennial funding period.

(b) If the landowner accepts the offer for qualifying timber, the department shall pay the compensation promptly upon:

(i) Completion of harvest in the area within a commercially reasonable harvest unit with which the forestry riparian easement is associated under an approved forest practices application, unless an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules;

(ii) Verification that the landowner has no outstanding violations under chapter 76.09 RCW or any associated rules; and

(iii) Execution and delivery of the easement to the department.

(c) Upon donation or payment of compensation, the department may record the easement.

(9) For approved forest practices applications for which the regulatory impact is greater than the average percentage impact for all small forest landowners as determined by an analysis by the department under the regulatory fairness act, chapter 19.85 RCW, the compensation offered will be increased to one hundred percent for that portion of the regulatory impact that is in excess of the average. Regulatory impact includes all trees identified as qualifying timber. A separate average or high impact regulatory threshold shall be established for western and eastern Washington. Criteria for these measurements and payments shall be established by the small forest landowner office.

(10) The forest practices board shall adopt rules under the administrative procedure act, chapter 34.05 RCW, to implement the forestry riparian easement program, including the following:

(a) A standard version of a forestry riparian easement application as well as all additional documents necessary or advisable to create the forestry riparian easements as provided for in this section;

(b) Standards for descriptions of the easement premises with a degree of precision that is reasonable in relation to the values involved;

(c) Methods and standards for cruises and valuation of forestry riparian easements for purposes of establishing the compensation. The department shall perform the timber cruises of forestry riparian easements required under this chapter and chapter 76.09 RCW. Timber cruises are subject to amounts appropriated for this purpose. However, no more than fifty percent of the total appropriated funding for the forestry riparian easement program may be applied to determine the volume of qualifying timber for completed forestry riparian easement applications. Any rules concerning the methods and standards for valuations of forestry riparian easements shall apply only to the department, qualifying small forest landowners, and the small forest landowner office;

(d) A method to determine that a forest practices application involves a commercially reasonable harvest, and adopt criteria for entering into a forestry riparian easement where a

commercially reasonable harvest is not possible or a forest practices application that has been submitted cannot be approved because of restrictions under the forest practices rules;

(e) A method to address blowdown of qualified timber falling outside the easement premises;

(f) A formula for sharing of proceeds in relation to the acquisition of qualified timber covered by an easement through the exercise or threats of eminent domain by a federal or state agency with eminent domain authority, based on the present value of the department's and the landowner's relative interests in the qualified timber;

(g) High impact regulatory thresholds;

(h) A method to determine timber that is qualifying timber because it is rendered uneconomic to harvest by the rules adopted under RCW 76.09.055 and 76.09.370;

(i) A method for internal department review of small forest landowner office compensation decisions under this section; and

(j) Consistent with RCW 76.13.180, a method to collect reimbursement from landowners who received compensation for a forestry riparian easement and who, within the first ten years after receipt of compensation for a forestry riparian easement, sells the land on which an easement is located to a nonqualifying landowner.

(11) The legislature finds that the overall societal benefits of economically viable working forests are multiple, and include the protection of clean, cold water, the provision of wildlife habitat, the sheltering of cultural resources from development, and the natural carbon storage potential of growing trees. As such, working forests and the forest riparian easement program may be part of the state's overall carbon sequestration strategy. If the state creates a climate strategy, the department must share information regarding the carbon sequestration benefits of the forest riparian easement program with other state programs using methods and protocols established in the state climate strategy that attempt to quantify carbon storage or account for carbon emissions. The department must promote the expansion of funding for the forest riparian easement program and the ecosystem services supported by the program based on the findings stated in RCW 76.13.100. Nothing in this subsection allows a landowner to be reimbursed by the state more than once for the same forest riparian easement application. [2017 c 140 § 1; 2011 c 218 § 1; 2004 c 102 § 1; 2002 c 120 § 2; 2001 c 280 § 2; 2000 c 11 § 13; 1999 sp.s. c 4 § 504.]

Additional notes found at www.leg.wa.gov

Title 77

FISH AND WILDLIFE

Chapters

77.08	General terms defined.
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Chapter 77.08 RCW

GENERAL TERMS DEFINED

Sections

77.08.010 Definitions. *(Effective January 1, 2018.)*

77.08.010 Definitions. *(Effective January 1, 2018.)*

The definitions in this section apply throughout this title or rules adopted under this title unless the context clearly requires otherwise.

(1) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a handheld line operated without rod or reel.

(2) "Bag limit" means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.

(3) "Building" means a private domicile, garage, barn, or public or commercial building.

(4) "Closed area" means a place where the hunting of some or all species of wild animals or wild birds is prohibited.

(5) "Closed season" means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season. "Closed season" also means all hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission as an open season.

(6) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing or harvesting is prohibited.

(7) "Commercial" means related to or connected with buying, selling, or bartering.

(8) "Commission" means the state fish and wildlife commission.

(9) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(10) "Contraband" means any property that is unlawful to produce or possess.

(11) "Covered animal species" means any species of elephant, rhinoceros, tiger, lion, leopard, cheetah, pangolin, marine turtle, shark, or ray either: (a) Listed in appendix I or appendix II of the convention on international trade in endangered species of wild flora and fauna; or (b) listed as critically endangered, endangered, or vulnerable on the international union for conservation of nature and natural resources red list of threatened species.

(12) "Covered animal species part or product" means any item that contains, or is wholly or partially made from, any covered animal species.

(13) "Deleterious exotic wildlife" means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state.

(14) "Department" means the department of fish and wildlife.

(15) "Director" means the director of fish and wildlife.

(16) "Distribute" or "distribution" means either a change in possession for consideration or a change in legal ownership.

(17) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(18) "Ex officio fish and wildlife officer" means:

(a) A commissioned officer of a municipal, county, or state agency having as its primary function the enforcement of criminal laws in general, while the officer is acting in the respective jurisdiction of that agency;

(b) An officer or special agent commissioned by one of the following: The national marine fisheries service; the Washington state parks and recreation commission; the United States fish and wildlife service; the Washington state department of natural resources; the United States forest service; or the United States parks service, if the agent or officer is in the respective jurisdiction of the primary commissioning agency and is acting under a mutual law enforcement assistance agreement between the department and the primary commissioning agency;

(c) A commissioned fish and wildlife peace officer from another state who meets the training standards set by the Washington state criminal justice training commission pursuant to RCW 10.93.090, 43.101.080, and 43.101.200, and who is acting under a mutual law enforcement assistance agreement between the department and the primary commissioning agency; or

(d) A Washington state tribal police officer who successfully completes the requirements set forth under RCW 43.101.157, is employed by a tribal nation that has complied with RCW 10.92.020(2) (a) and (b), and is acting under a mutual law enforcement assistance agreement between the department and the tribal government.

(19) "Fish" includes all species classified as game fish or food fish by statute or rule, as well as all fin fish not currently classified as food fish or game fish if such species exist in state waters. The term "fish" includes all stages of development and the bodily parts of fish species.

(20) "To fish" and its derivatives means an effort to kill, injure, harass, harvest, or capture a fish or shellfish.

(21) "Fish and wildlife officer" means a person appointed and commissioned by the director, with authority to enforce this title and rules adopted pursuant to this title, and other statutes as prescribed by the legislature. Fish and wildlife officer includes a person commissioned before June 11, 1998, as a wildlife agent or a fisheries patrol officer.

(22) "Fish broker" means a person who facilitates the sale or purchase of raw or frozen fish or shellfish on a fee or commission basis, without assuming title to the fish or shellfish.

(23) "Fish dealer" means a person who engages in any activity that triggers the need to obtain a fish dealer license under RCW 77.65.280.

(24) "Fishery" means the taking of one or more particular species of fish or shellfish with particular gear in a particular geographical area.

(25) "Food, food waste, or other substance" includes human and pet food or other waste or garbage that could attract large wild carnivores.

(26) "Freshwater" means all waters not defined as saltwater including, but not limited to, rivers upstream of the river mouth, lakes, ponds, and reservoirs.

(27) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(28) "Fur dealer" means a person who purchases, receives, or resells raw furs for commercial purposes.

(29) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(30) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(31) "Game farm" means property on which wildlife is held, confined, propagated, hatched, fed, or otherwise raised for commercial purposes, trade, or gift. The term "game farm" does not include publicly owned facilities.

(32) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

(33) "To hunt" and its derivatives means an effort to kill, injure, harass, harvest, or capture a wild animal or wild bird.

(34) "Illegal items" means those items unlawful to be possessed.

(35)(a) "Intentionally feed, attempt to feed, or attract" means to purposefully or knowingly provide, leave, or place in, on, or about any land or building any food, food waste, or other substance that attracts or could attract large wild carnivores to that land or building.

(b) "Intentionally feed, attempt to feed, or attract" does not include keeping food, food waste, or other substance in an enclosed garbage receptacle or other enclosed container unless specifically directed by a fish and wildlife officer or animal control authority to secure the receptacle or container in another manner.

(36) "Large wild carnivore" includes wild bear, cougar, and wolf.

(37) "License year" means the period of time for which a recreational license is valid. The license year begins April 1st, and ends March 31st.

(38) "Limited-entry license" means a license subject to a license limitation program established in chapter 77.70 RCW.

(39) "Limited fish seller" means a licensed commercial fisher who sells his or her fish or shellfish to anyone other than a wholesale fish buyer thereby triggering the need to obtain a limited fish seller endorsement under RCW 77.65.510.

(40) "Money" means all currency, script, personal checks, money orders, or other negotiable instruments.

(41) "Natural person" means a human being.

(42)(a) "Negligently feed, attempt to feed, or attract" means to provide, leave, or place in, on, or about any land or building any food, food waste, or other substance that attracts or could attract large wild carnivores to that land or building,

without the awareness that a reasonable person in the same situation would have with regard to the likelihood that the food, food waste, or other substance could attract large wild carnivores to the land or building.

(b) "Negligently feed, attempt to feed, or attract" does not include keeping food, food waste, or other substance in an enclosed garbage receptacle or other enclosed container unless specifically directed by a fish and wildlife officer or animal control authority to secure the receptacle or container in another manner.

(43) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(44) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(45) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that conform to the special restrictions or physical descriptions established by rule of the commission or that have otherwise been deemed legal to hunt, fish, take, or possess by rule of the commission. "Open season" includes the first and last days of the established time.

(46) "Owner" means the person in whom is vested the ownership dominion, or title of the property.

(47) "Person" means and includes an individual; a corporation; a public or private entity or organization; a local, state, or federal agency; all business organizations, including corporations and partnerships; or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.

(48) "Personal property" or "property" includes both corporeal and incorporeal personal property and includes, among other property, contraband and money.

(49) "Personal use" means for the private use of the individual taking the fish or shellfish and not for sale or barter.

(50) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(51) "To process" and its derivatives mean preparing or preserving fish, wildlife, or shellfish.

(52) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

(53) "Raffle" means an activity in which tickets bearing an individual number are sold for not more than twenty-five dollars each and in which a permit or permits are awarded to hunt or for access to hunt big game animals or wild turkeys on the basis of a drawing from the tickets by the person or persons conducting the raffle.

(54) "Resident" has the same meaning as defined in RCW 77.08.075.

(55) "Saltwater" means those marine waters seaward of river mouths.

(56) "Seaweed" means marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form, and includes but is not limited to marine aquatic plants in the classes Chlorophyta, Phaeophyta, and Rhodophyta.

(57) "Senior" means a person seventy years old or older.

(58) "Shark fin" means a raw, dried, or otherwise processed detached fin or tail of a shark.

(59)(a) "Shark fin derivative product" means any product intended for use by humans or animals that is derived in whole or in part from shark fins or shark fin cartilage.

(b) "Shark fin derivative product" does not include a drug approved by the United States food and drug administration and available by prescription only or medical device or vaccine approved by the United States food and drug administration.

(60) "Shellfish" means those species of marine and freshwater invertebrates that have been classified and that shall not be taken or possessed except as authorized by rule of the commission. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(61) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(62) "To take" and its derivatives means to kill, injure, harvest, or capture a fish, shellfish, wild animal, bird, or seaweed.

(63) "Taxidermist" means a person who, for commercial purposes, creates lifelike representations of fish and wildlife using fish and wildlife parts and various supporting structures.

(64) "Trafficking" means offering, attempting to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife, or deleterious exotic wildlife.

(65) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.

(66) "Unclaimed" means that no owner of the property has been identified or has requested, in writing, the release of the property to themselves nor has the owner of the property designated an individual to receive the property or paid the required postage to effect delivery of the property.

(67) "Unclassified wildlife" means wildlife existing in Washington in a wild state that have not been classified as big game, game animals, game birds, predatory birds, protected wildlife, endangered wildlife, or deleterious exotic wildlife.

(68) "To waste" or "to be wasted" means to allow any edible portion of any game bird, food fish, game fish, shellfish, or big game animal other than cougar to be rendered unfit for human consumption, or to fail to retrieve edible portions of such a game bird, food fish, game fish, shellfish, or big game animal other than cougar from the field. For purposes of this chapter, edible portions of game birds must include, at a minimum, the breast meat of those birds. Entrails, including the heart and liver, of any wildlife species are not considered edible.

(69) "Wholesale fish buyer" means a person who engages in any fish buying or selling activity that triggers the need to obtain a wholesale fish buyer endorsement under RCW 77.65.340.

(70) "Wild animals" means those species of the class Mammalia whose members exist in Washington in a wild state. The term "wild animal" does not include feral domestic mammals or old world rats and mice of the family Muridae of the order Rodentia.

(71) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

(72) "Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles,

amphibians, fish, and invertebrates. The term "wildlife" does not include feral domestic mammals, old world rats and mice of the family Muridae of the order Rodentia, or those fish, shellfish, and marine invertebrates classified as food fish or shellfish by the director. The term "wildlife" includes all stages of development and the bodily parts of wildlife members.

(73) "Wildlife meat cutter" means a person who packs, cuts, processes, or stores wildlife for consumption for another for commercial purposes.

(74) "Youth" means a person fifteen years old for fishing and under sixteen years old for hunting. [2017 3rd sp.s. c 8 § 2. Prior: 2016 c 2 § 2 (Initiative Measure No. 1401, approved November 3, 2015); prior: 2014 c 202 § 301; 2014 c 48 § 1; prior: 2012 c 176 § 4; prior: 2011 c 324 § 3; 2009 c 333 § 12; 2008 c 277 § 2; prior: 2007 c 350 § 2; 2007 c 254 § 1; 2005 c 104 § 1; 2003 c 387 § 1; 2002 c 281 § 2; 2001 c 253 § 10; 2000 c 107 § 207; 1998 c 190 § 111; 1996 c 207 § 2; 1993 sp.s. c 2 § 66; 1989 c 297 § 7; 1987 c 506 § 11; 1980 c 78 § 9; 1955 c 36 § 77.08.010; prior: 1947 c 275 § 9; Rem. Supp. 1947 § 5992-19.]

Alphabetization—2017 3rd sp.s. c 8 § 2: "The code reviser's office is directed to move the definitions of "to fish," "to hunt," "to process," "to take," "to trap," and "to waste" or "to be wasted," by reordering them within RCW 77.08.010 in alphabetical order by the spelling of the main verb word." [2017 3rd sp.s. c 8 § 57.]

Finding—Intent—2017 3rd sp.s. c 8: "(1) The legislature finds that the commercial fishing industry is a benefit to the state as a whole, but particularly to coastal communities where it creates and sustains opportunities for employment. Maintaining a stable and economically viable commercial fishing industry requires:

(a) Preserving fishing opportunities by providing a fee structure for all commercial fishing permits that is not overly burdensome on the fishing industry; and

(b) Avoiding a strain on fish resources beyond sustainable spawning needs.

(2) The legislature intends to balance those needs by making certain adjustments to commercial fishing fees." [2017 3rd sp.s. c 8 § 1.]

Effective date—2017 3rd sp.s. c 8: "This act takes effect January 1, 2018." [2017 3rd sp.s. c 8 § 59.]

Finding—2016 c 2 (Initiative Measure No. 1401): See note following RCW 77.15.135.

Findings—2014 c 202: See note following RCW 77.135.010.

Findings—2011 c 324: See note following RCW 77.15.770.

Alphabetization—2008 c 277: "The code reviser is directed to put the defined terms in RCW 77.08.010 in alphabetical order." [2008 c 277 § 1.]

Purpose—2002 c 281: "The legislature recognizes the potential economic and environmental damage that can occur from the introduction of invasive aquatic species. The purpose of this act is to increase public awareness of invasive aquatic species and enhance the department of fish and wildlife's regulatory capability to address threats posed by these species." [2002 c 281 § 1.]

Intent—1996 c 207: "It is the intent of the legislature to clarify hunting and fishing laws in light of the decision in *State v. Bailey*, 77 Wn. App. 732 (1995). The fish and wildlife commission has the authority to establish hunting and fishing seasons. These seasons are defined by limiting the times, manners of taking, and places or waters for lawful hunting, fishing, or possession of game animals, game birds, or game fish, as well as by limiting the physical characteristics of the game animals, game birds, or game fish which may be lawfully taken at those times, in those manners, and at those places or waters." [1996 c 207 § 1.]

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

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Additional notes found at www.leg.wa.gov

**Chapter 77.12 RCW
POWERS AND DUTIES**

Sections

77.12.047	Scope of commission's authority to adopt rules—Application to private tideland owners or lessees of the state.
77.12.170	State wildlife account—Deposits. (<i>Effective January 1, 2018.</i>)
77.12.177	Disposition of moneys collected—Proceeds from sale of commercial licenses and fish, shellfish, or wildlife. (<i>Effective January 1, 2018.</i>)
77.12.201	Counties may elect to receive an amount in lieu of taxes—County to record collections for violations of law or rules—Deposit.
77.12.203	In lieu payments authorized—Procedure—Game lands defined.
77.12.272	Elk hoof disease—Program to monitor and assess causes of and potential solutions for—Washington State University college of veterinary medicine designated as state lead.
77.12.605	Repealed.
77.12.710	Repealed.
77.12.712	Columbia river recreational salmon and steelhead endorsement program. (<i>Expires June 30, 2019.</i>)
77.12.879	Repealed.
77.12.885	Reported predatory wildlife interactions—Web site posting. (<i>Effective until June 30, 2022.</i>)
77.12.885	Reported predatory wildlife interactions—Web site posting. (<i>Effective June 30, 2022.</i>)

77.12.047 Scope of commission's authority to adopt rules—Application to private tideland owners or lessees of the state. (1) The commission may adopt, amend, or repeal rules as follows:

(a) Specifying the times when the taking of wildlife, fish, or shellfish is lawful or unlawful.

(b) Specifying the areas and waters in which the taking and possession of wildlife, fish, or shellfish is lawful or unlawful.

(c) Specifying and defining the gear, appliances, or other equipment and methods that may be used to take wildlife, fish, or shellfish, and specifying the times, places, and manner in which the equipment may be used or possessed.

(d) Regulating the importation, transportation, possession, disposal, landing, and sale of wildlife, fish, shellfish, or seaweed within the state, whether acquired within or without the state. However, the rules of the department must prohibit any person, including department staff, from translocating a live elk from an area with elk affected by hoof disease to any other location except:

(i) Consistent with a process developed by the department with input from the affected federally recognized tribes for translocation for monitoring or hoof disease management purposes; or

(ii) Within an elk herd management plan area affected by hoof disease.

(e) Regulating the prevention and suppression of diseases and pests affecting wildlife, fish, or shellfish.

(f) Regulating the size, sex, species, and quantities of wildlife, fish, or shellfish that may be taken, possessed, sold, or disposed of.

(g) Specifying the statistical and biological reports required from fishers, dealers, boathouses, or processors of wildlife, fish, or shellfish.

(h) Classifying species of marine and freshwater life as food fish or shellfish.

(i) Classifying the species of wildlife, fish, and shellfish that may be used for purposes other than human consumption.

(j) Regulating the taking, sale, possession, and distribution of wildlife, fish, shellfish, or deleterious exotic wildlife.

(k) Establishing game reserves and closed areas where hunting for wild animals or wild birds may be prohibited.

(l) Regulating the harvesting of fish, shellfish, and wildlife in the federal exclusive economic zone by vessels or individuals registered or licensed under the laws of this state.

(m) Authorizing issuance of permits to release, plant, or place fish or shellfish in state waters.

(n) Governing the possession of fish, shellfish, or wildlife so that the size, species, or sex can be determined visually in the field or while being transported.

(o) Other rules necessary to carry out this title and the purposes and duties of the department.

(2)(a) Subsections (1)(a), (b), (c), (d), and (f) of this section do not apply to private tideland owners and lessees and the immediate family members of the owners or lessees of state tidelands, when they take or possess oysters, clams, cockles, borers, or mussels, excluding razor clams, produced on their own private tidelands or their leased state tidelands for personal use.

(b) "Immediate family member" for the purposes of this section means a spouse, brother, sister, grandparent, parent, child, or grandchild.

(3) Except for subsection (1)(g) of this section, this section does not apply to private sector cultured aquatic products as defined in RCW 15.85.020. Subsection (1)(g) of this section does apply to such products. [2017 c 159 § 2; 2001 c 253 § 14; 2000 c 107 § 7; 1995 1st sp.s. c 2 § 11 (Referendum Bill No. 45, approved November 7, 1995); 1993 c 117 § 1; 1985 c 457 § 17; 1983 1st ex.s. c 46 § 15; 1980 c 55 § 1; 1955 c 12 § 75.08.080. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780-205, part. Formerly RCW 75.08.080.]

Finding—2017 c 159: "The legislature finds that elk hoof disease poses a significant threat to the state, including elk populations and livestock. While the legislature recognizes the efforts of the department of fish and wildlife thus far, more aggressive steps are necessary to achieve a better understanding of the hoof disease epidemic facing the state's elk populations and to ensure proactive management and treatment actions are pursued." [2017 c 159 § 1.]

Required rule making—2017 c 159: "The department of fish and wildlife must immediately adopt or amend any rule as necessary to implement, and ensure rules are consistent with, this act." [2017 c 159 § 4.]

Additional notes found at www.leg.wa.gov

77.12.170 State wildlife account—Deposits. (*Effective January 1, 2018.*) (1) There is established in the state treasury the state wildlife account which consists of moneys received from:

(a) Rentals or concessions of the department;

(b) The sale of real or personal property held for department purposes, unless the property is seized or recovered through a fish, shellfish, or wildlife enforcement action;

(c) The assessment of administrative penalties;

(d) The sale of licenses, permits, tags, and stamps required by chapters 77.32, 77.65, and 77.70 RCW and application fees;

(e) Fees for informational materials published by the department;

(f) Fees for personalized vehicle, Wild on Washington, and Endangered Wildlife license plates, Washington's Wild-

life license plate collection, and Washington's fish license plate collection as provided in chapter 46.17 RCW;

(g) Articles or wildlife sold by the director under this title;

(h) Compensation for damage to department property or wildlife losses or contributions, gifts, or grants received under RCW 77.12.320. However, this excludes fish and shellfish overages, and court-ordered restitution or donations associated with any fish, shellfish, or wildlife enforcement action, as such moneys must be deposited pursuant to RCW 77.15.425;

(i) Excise tax on anadromous game fish collected under chapter 82.27 RCW;

(j) The department's share of revenues from auctions and raffles authorized by the commission;

(k) The sale of watchable wildlife decals under RCW 77.32.560;

(l) Moneys received from the recreation access pass account created in RCW 79A.80.090 must be dedicated to stewardship, operations, and maintenance of department lands used for public recreation purposes; and

(m) Donations received by the director under RCW 77.12.039.

(2) State and county officers receiving any moneys listed in subsection (1) of this section shall deposit them in the state treasury to be credited to the state wildlife account. [2017 3rd sp.s. c 8 § 3; 2016 c 30 § 5. Prior: 2011 c 339 § 3; 2011 c 320 § 23; 2011 c 171 § 112; 2009 c 333 § 13; prior: 2005 c 418 § 3; 2005 c 225 § 4; 2005 c 224 § 4; 2005 c 42 § 4; 2004 c 248 § 4; 2003 c 317 § 3; 2001 c 253 § 15; 2000 c 107 § 216; prior: 1998 c 191 § 38; 1998 c 87 § 2; 1996 c 101 § 7; 1989 c 314 § 4; 1987 c 506 § 25; 1984 c 258 § 334; prior: 1983 1st ex.s. c 8 § 2; 1983 c 284 § 1; 1981 c 310 § 2; 1980 c 78 § 30; 1979 c 56 § 1; 1973 1st ex.s. c 200 § 12 (Referendum Bill No. 33); 1969 ex.s. c 199 § 33; 1955 c 36 § 77.12.170; prior: 1947 c 275 § 27; Rem. Supp. 1947 § 5992-37.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2016 c 30: See note following RCW 46.18.200.

Effective date—2011 c 339: See note following RCW 43.84.092.

Effective date—2011 c 320: See note following RCW 79A.80.005.

Findings—Intent—2011 c 320: See RCW 79A.80.005.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Findings—2003 c 317: See note following RCW 77.32.560.

Findings—1996 c 101: See note following RCW 77.32.530.

Finding—1989 c 314: See note following RCW 77.15.098.

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

Intent—1984 c 258: See note following RCW 3.34.130.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Legislative intent—1981 c 310: "The legislature finds that abundant deer and elk populations are in the best interest of the state, and for many reasons the state's deer and elk populations have apparently declined. The legislature further finds that antlerless deer and elk seasons have been an issue of great controversy throughout the state, and that antlerless deer and elk seasons may contribute to a further decline in the state's deer and elk populations." [1981 c 310 § 1.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Personalized license plates—Legislative declaration: "It is declared to be the public policy of the state of Washington to direct financial resources

of this state toward the support and aid of the wildlife resources existing within the state of Washington in order that the general welfare of these inhabitants of the state be served. For the purposes of *this chapter, wildlife resources are understood to be those species of wildlife other than that managed by the department of fisheries under their existing jurisdiction as well as all unclassified marine fish, shellfish, and marine invertebrates which shall remain under the jurisdiction of the director of fisheries. The legislature further finds that the preservation, protection, perpetuation, and enhancement of such wildlife resources of the state is of major concern to it, and that aid for a satisfactory environment and ecological balance in this state for such wildlife resources serves a public interest, purpose, and desire.

It is further declared that such preservation, protection, perpetuation, and enhancement can be fostered through financial support derived on a voluntary basis from those citizens of the state of Washington who wish to assist in such objectives; that a desirable manner of accomplishing this is through offering personalized license plates for certain vehicles and campers the fees for which are to be directed to the state treasury to the credit of the **state game fund for the furtherance of the programs, policies, and activities of the state **game department in preservation, protection, perpetuation, and enhancement of the wildlife resources that abound within the geographical limits of the state of Washington.

In particular, the legislature recognizes the benefit of this program to be specifically directed toward those species of wildlife including but not limited to song birds, protected wildlife, rare and endangered wildlife, aquatic life, and specialized-habitat types, both terrestrial and aquatic, as well as all unclassified marine fish, shellfish, and marine invertebrates which shall remain under the jurisdiction of the director of fisheries that exist within the limits of the state of Washington." [1975 c 59 § 7; 1973 1st ex.s. c 200 § 1. Formerly RCW 77.12.175.]

Reviser's note: *(1) The term "this chapter" refers to chapter 77.12 RCW, where this section was originally codified, pursuant to legislative directive, as RCW 77.12.175. It was subsequently decodified by 1980 c 78 § 32.

** (2) References to the "state game fund" and "game department" mean the "state wildlife fund" and "department of wildlife." See note following RCW 77.04.020. The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

Additional notes found at www.leg.wa.gov

77.12.177 Disposition of moneys collected—Proceeds from sale of commercial licenses and fish, shellfish, or wildlife. (Effective January 1, 2018.) (1) Except as provided in this title, state and county officers receiving the following moneys shall deposit them in the state wildlife account:

(a) The sale of commercial licenses required under this title; and

(b) Moneys received for damages to fish, shellfish, or wildlife.

(2) Beginning with fiscal year 2018, and each fiscal year thereafter, the director must determine both the total amount of fees deposited in the state wildlife account for the sale of commercial licenses required under this title, and the portion of those fees that is attributable to the fee increases enacted in chapter 8, Laws of 2017 3rd sp. sess. The director must certify these amounts to the state treasurer, who must transfer the difference between these two amounts to the state general fund within one month of the close of the fiscal year. The portion of those fees that is attributable to the fee increases enacted in chapter 8, Laws of 2017 3rd sp. sess. is retained in the state wildlife account.

(3) All fines and forfeitures collected or assessed by a district court for a violation of this title or rule of the department shall be remitted as provided in chapter 3.62 RCW.

(4) Proceeds from the sale of fish or shellfish taken in test fishing conducted by the department, to the extent that these proceeds exceed the estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270 to reimburse the department for unan-

anticipated costs for test fishing operations in excess of the allowance in the budget approved by the legislature.

(5) Proceeds from the sale of salmon carcasses and salmon eggs from state general funded hatcheries by the department shall be deposited in the regional fisheries enhancement group account established in RCW 77.95.090.

(6) Proceeds from the sale of herring spawn on kelp fishery licenses by the department, to the extent those proceeds exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for herring management, enhancement, and enforcement. [2017 3rd sp.s. c 8 § 4; 2015 c 225 § 114; 2011 c 339 § 4; 2001 c 253 § 16; 2000 c 107 § 10; 1996 c 267 § 3; 1995 c 367 § 11; 1993 c 340 § 48; 1989 c 176 § 4; 1987 c 202 § 230; 1984 c 258 § 332; 1983 1st ex.s. c 46 § 23; 1979 c 151 § 175; 1977 ex.s. c 327 § 33; 1975 1st ex.s. c 223 § 1; 1969 ex.s. c 199 § 31; 1969 ex.s. c 16 § 1; 1965 ex.s. c 72 § 2; 1955 c 12 § 75.08.230. Prior: 1951 c 271 § 2; 1949 c 112 § 25; Rem. Supp. 1949 § 5780-223. Formerly RCW 75.08.230.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Intent—1996 c 267: "It is the intent of this legislation to begin to make the statutory changes required by the fish and wildlife commission in order to successfully implement Referendum Bill No. 45." [1996 c 267 § 1.]

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

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

Intent—1984 c 258: See note following RCW 3.34.130.

Additional notes found at www.leg.wa.gov

77.12.201 Counties may elect to receive an amount in lieu of taxes—County to record collections for violations of law or rules—Deposit. The legislative authority of a county may elect, by giving written notice to the director and the treasurer prior to January 1st of any year, to obtain for the following year an amount in lieu of real property taxes on game lands as provided in RCW 77.12.203. Upon the election, the county shall keep a record of all fines, forfeitures, reimbursements, and costs assessed and collected, in whole or in part, under this title for violations of law or rules adopted pursuant to this title, with the exception of the 2015-2017 and 2017-2019 fiscal biennia, and shall monthly remit an amount equal to the amount collected to the state treasurer for deposit in the state general fund. The election shall continue until the department is notified differently prior to January 1st of any year. [2017 3rd sp.s. c 1 § 983; 2016 sp.s. c 36 § 947; 2013 2nd sp.s. c 4 § 998; 2012 2nd sp.s. c 7 § 923; 2009 c 479 § 63; 1987 c 506 § 29. Prior: 1984 c 258 § 335; 1984 c 214 § 1; 1980 c 78 § 36; 1977 ex.s. c 59 § 1; 1965 ex.s. c 97 § 2.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Effective date—2009 c 479: See note following RCW 2.56.030.

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

Intent—1984 c 258: See note following RCW 3.34.130.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Additional notes found at www.leg.wa.gov

77.12.203 In lieu payments authorized—Procedure—Game lands defined. (1) Except as provided in subsection (5) of this section and notwithstanding RCW 84.36.010 or other statutes to the contrary, the director must pay by April 30th of each year on game lands, regardless of acreage, in each county, if requested by an election under RCW 77.12.201, an amount in lieu of real property taxes equal to that amount paid on similar parcels of open space land taxable under chapter 84.34 RCW or the greater of seventy cents per acre per year or the amount paid in 1984 plus an additional amount for control of noxious weeds equal to that which would be paid if such lands were privately owned. This amount may not be assessed or paid on department buildings, structures, facilities, game farms, fish hatcheries, water access sites, tidelands, or public fishing areas.

(2) "Game lands," as used in this section and RCW 77.12.201, means those tracts, regardless of acreage, owned in fee by the department and used for wildlife habitat and public recreational purposes. All lands purchased for wildlife habitat, public access, or recreation purposes with federal funds in the Snake River drainage basin are considered game lands regardless of acreage.

(3) This section does not apply to lands transferred after April 23, 1990, to the department from other state agencies.

(4) The county must distribute the amount received under this section in lieu of real property taxes to all property taxing districts except the state in appropriate tax code areas the same way it would distribute local property taxes from private property. The county must distribute the amount received under this section for weed control to the appropriate weed district.

(5) For the 2013-2015 and 2015-2017 fiscal biennia, the director must pay by April 30th of each year on game lands in each county, if requested by an election under RCW 77.12.201, an amount in lieu of real property taxes and must be distributed as follows:

County

Adams	1,909
Asotin	36,123
Chelan	24,757
Columbia	7,795
Ferry	6,781
Garfield	4,840
Grant	37,443
Kittitas	143,974
Klickitat	21,906
Lincoln	13,535
Okanogan	151,402
Pend Oreille	3,309
Yakima	126,225

These amounts may not be assessed or paid on department buildings, structures, facilities, game farms, fish hatcheries, water access sites, tidelands, or public fishing areas.

(6) For the 2017-2019 fiscal biennium, the director must pay by April 30th of each year on game lands in each county, if requested by an election under RCW 77.12.201, an amount in lieu of real property taxes and must be distributed as follows:

County

Adams	1,235
Asotin	26,425
Chelan	39,858
Columbia	20,713
Ferry	22,798
Garfield	12,744
Grant	71,930
Kittitas	382,638
Klickitat	51,019
Lincoln	13,000
Okanogan	264,036
Pend Oreille	5,546
Yakima	186,056

These amounts may not be assessed or paid on department buildings, structures, facilities, game farms, fish hatcheries, water access sites, tidelands, or public fishing areas. [2017 3rd sp.s. c 1 § 984; 2015 3rd sp.s. c 4 § 971; 2014 c 55 § 1; 2013 2nd sp.s. c 4 § 999; 2012 2nd sp.s. c 7 § 924; 2005 c 303 § 14; 1990 1st ex.s. c 15 § 11; 1984 c 214 § 2; 1980 c 78 § 37; 1965 ex.s. c 97 § 3.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective date—2014 c 55: "This act takes effect July 1, 2015." [2014 c 55 § 2.]

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Additional notes found at www.leg.wa.gov

77.12.272 Elk hoof disease—Program to monitor and assess causes of and potential solutions for—Washington State University college of veterinary medicine designated as state lead. Subject to the availability of amounts appropriated for this specific purpose, the legislature designates Washington State University college of veterinary medicine as the state lead in developing a program to monitor and assess causes of and potential solutions for elk hoof disease. The college must establish an elk monitoring system in southwest Washington in order to carry out this mission. In conducting this work, the college must work collaboratively with entities including the department, the state veterinarian, and any tribes with interest in participating. The college must provide regular updates, at minimum on an annual basis, to the appropriate committees of the legislature and the com-

mission on its findings, program needs, and any recommendations. [2017 c 159 § 3.]

Finding—Required rule making—2017 c 159: See notes following RCW 77.12.047.

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

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

77.12.712 Columbia river recreational salmon and steelhead endorsement program. (Expires June 30, 2019.)

The department shall create and administer a Columbia river recreational salmon and steelhead endorsement program. The program must facilitate continued and, to the maximum extent possible, improved recreational salmon and steelhead selective fishing opportunities on the Columbia river and its tributaries by supplementing the resources available to the department to carry out the scientific monitoring and evaluation, data collection, permitting, reporting, enforcement, and other activities necessary to provide such opportunities. Program funds may not be used to acquire land. [2017 3rd sp.s. c 3 § 4; 2016 c 223 § 1; 2009 c 420 § 2.]

Effective date—2017 3rd sp.s. c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 30, 2017]." [2017 3rd sp.s. c 3 § 5.]

Expiration date—2017 3rd sp.s. c 3; 2016 c 223: "Sections 1 through 5 of this act expire June 30, 2019." [2017 3rd sp.s. c 3 § 3; 2016 c 223 § 9.]

Effective date—2009 c 420 § 2: "Section 2 of this act takes effect January 1, 2010." [2009 c 420 § 10.]

Expiration date—2017 3rd sp.s. c 3; 2009 c 420 §§ 2-6: "Sections 2 through 6 of this act expire June 30, 2019." [2017 3rd sp.s. c 3 § 1; 2016 c 223 § 7; 2009 c 420 § 7.]

Intent—2009 c 420: "It is the intent of the legislature to establish the *Columbia river recreational salmon and steelhead pilot stamp program to continue and, to the maximum extent possible, increase recreational selective fishing opportunities on the Columbia river and its tributaries." [2009 c 420 § 1.]

***Reviser's note:** The "Columbia river recreational salmon and steelhead pilot stamp program" was renamed the "Columbia river recreational salmon and steelhead endorsement program" by 2016 c 232 § 1.

Scope of authority—2009 c 420: "Nothing in this act changes the allocation of salmon or steelhead fisheries in the Columbia river and its tributaries or the authorities or processes by which such allocations are determined." [2009 c 420 § 9.]

Not subject to transaction fee—2009 c 420: See note following RCW 77.32.580.

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

77.12.885 Reported predatory wildlife interactions—Web site posting. (Effective until June 30, 2022.)

Except for the personal information on reported depredations by wolves that is exempted from disclosure as provided in RCW 42.56.430, the department shall post on its internet web site all reported predatory wildlife interactions, including reported human safety confrontations or sightings as well as the known details of reported depredations by predatory wildlife on humans, pets, or livestock, within ten days of receiving the report. The posted material must include, but is not limited to, the location and time, the known details, and a

running summary of such reported interactions by identified specie and interaction type within each affected county. For the purposes of this section and RCW 42.56.430, "predatory wildlife" means grizzly bears, wolves, and cougars. [2017 c 246 § 2; 2007 c 293 § 2.]

Expiration date—2017 c 246: See note following RCW 42.56.430.

77.12.885 Reported predatory wildlife interactions—Web site posting. (Effective June 30, 2022.) The department shall post on its internet web site all reported predatory wildlife interactions, including reported human safety confrontations or sightings as well as the known details of reported depredations by predatory wildlife on humans, pets, or livestock, within ten days of receiving the report. The posted material must include, but is not limited to, the location and time, the known details, and a running summary of such reported interactions by identified specie and interaction type within each affected county. For the purposes of this section and RCW 42.56.430, "predatory wildlife" means grizzly bears, wolves, and cougars. [2007 c 293 § 2.]

Chapter 77.15 RCW

FISH AND WILDLIFE ENFORCEMENT CODE

Sections

77.15.096	Inspection without warrant—Commercial fish and wildlife entities—Limitations. (Effective January 1, 2018.)
77.15.110	Acting for commercial purposes—When—Proof. (Effective January 1, 2018.)
77.15.160	Infractions. (Effective until January 1, 2018.)
77.15.160	Infractions. (Effective January 1, 2018.)
77.15.170	Waste of fish and wildlife—Penalty. (Effective January 1, 2018.)
77.15.500	Commercial fishing without a license—Penalty. (Effective January 1, 2018.)
77.15.565	Wholesale fish buyer a limited fish seller—Accounting of commercial harvest—Penalties. (Effective January 1, 2018.)
77.15.568	Secondary commercial fish receiver's failure to account for commercial harvest—Penalty.
77.15.620	Engaging in fish dealing activity without a license—Penalty. (Effective January 1, 2018.)
77.15.630	Unlawful fish and shellfish catch accounting—Penalty. (Effective January 1, 2018.)
77.15.640	Unlawful wholesale fish buying and dealing—Penalty. (Effective January 1, 2018.)
77.15.902	Decodified.

77.15.096 Inspection without warrant—Commercial fish and wildlife entities—Limitations. (Effective January 1, 2018.) (1) Fish and wildlife officers may inspect without warrant at reasonable times and in a reasonable manner:

(a) The premises, containers, fishing equipment, fish, seaweed, shellfish, and wildlife of any commercial fisher or wholesale dealer or fish dealer; and

(b) Records required by the department of any commercial fisher or wholesale fish buyer or fish dealer.

(2) Fish and wildlife officers and ex officio fish and wildlife officers may inspect without warrant at reasonable times and in a reasonable manner:

(a) The premises, containers, fishing equipment, fish, shellfish, wildlife, or covered animal species of any person trafficking or otherwise distributing or receiving fish, shellfish, wildlife, or covered animal species;

(b) Records required by the department of any person trafficking or otherwise distributing or receiving fish, shellfish, wildlife, or covered animal species;

(c) Any cold storage plant that a fish and wildlife officer has probable cause to believe contains fish, shellfish, or wildlife;

(d) The premises, containers, fish, shellfish, wildlife, or covered animal species of any taxidermist or fur buyer; or

(e) The records required by the department of any taxidermist or fur buyer.

(3) Fish and wildlife officers may inspect without warrant, at reasonable times and in a reasonable manner, the records required by the department of any retail outlet selling fish, shellfish, or wildlife, and, if the officers have probable cause to believe a violation of this title or rules of the commission has occurred, they may inspect without warrant the premises, containers, and fish, shellfish, and wildlife of any retail outlet selling fish, shellfish, or wildlife.

(4) Authority granted under this section does not extend to quarters in a boat, building, or other property used exclusively as a private domicile, does not extend to transitory residences in which a person has a reasonable expectation of privacy, and does not allow search and seizure without a warrant if the thing or place is protected from search without warrant within the meaning of Article I, section 7 of the state Constitution. [2017 3rd sp.s. c 8 § 5; 2002 c 128 § 5; 2001 c 253 § 26; 1998 c 190 § 116; 1982 c 152 § 1; 1980 c 78 § 22. Formerly RCW 77.12.095.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.15.110 Acting for commercial purposes—When—Proof. (Effective January 1, 2018.) (1) For purposes of this chapter, a person acts for commercial purposes if the person engages in conduct that relates to commerce in fish, seaweed, shellfish, or wildlife or any parts thereof. Commercial conduct may include taking, delivering, selling, buying, brokering, or trading fish, seaweed, shellfish, or wildlife where there is present or future exchange of money, goods, or any valuable consideration. Evidence that a person acts for commercial purposes includes, but is not limited to, the following conduct:

(a) Using gear typical of that used in commercial fisheries;

(b) Exceeding the bag or possession limits for personal use by taking or possessing more than three times the amount of fish, seaweed, shellfish, or wildlife allowed;

(c) Delivering or attempting to deliver fish, seaweed, shellfish, or wildlife to a person who sells or resells it;

(d) Taking fish or shellfish using a vessel designated on a commercial fishery license or using gear not authorized in a personal use fishery;

(e) Using a commercial fishery license;

(f) Selling or dealing in raw furs for a fee or in exchange for goods or services;

(g) Performing taxidermy service on fish, shellfish, or wildlife belonging to another person for a fee or receipt of goods or services; or

(h) Packs, cuts, processes, or stores the meat of wildlife for consumption, for a fee or in exchange for goods or services.

(2) For purposes of this chapter, the value of any fish, seaweed, shellfish, or wildlife may be proved based on evidence of legal or illegal sales involving the person charged or any other person, of offers to sell or solicitation of offers to sell by the person charged or by any other person, or of any market price for the fish, seaweed, shellfish, or wildlife including market price for farm-raised game animals. The value assigned to specific fish, seaweed, shellfish, or wildlife by RCW 77.15.420 may be presumed to be the value of such fish, seaweed, shellfish, or wildlife. It is not relevant to proof of value that the person charged misrepresented that the fish, seaweed, shellfish, or wildlife was taken in compliance with law if the fish, seaweed, shellfish, or wildlife was unlawfully taken and had no lawful market value. [2017 3rd sp.s. c 8 § 8; 2012 c 176 § 13; 2002 c 127 § 2; 2001 c 253 § 27; 1998 c 190 § 8.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Intent—2002 c 127: "The legislature intends to clarify that when a crime under chapter 77.15 RCW requires proof that a person acted for commercial purposes, that element refers to engaging in particular conduct that is commercial in nature and the element does not imply that a particular state of mind must exist. This act revises the existing definition of that element to confirm that the element is fulfilled by engaging in commercial conduct and to eliminate any implication that a particular mental state of mind must be shown. Examples are given of the type of conduct that may be considered as evidence that a person acts for a commercial purpose; however, these examples do not create a conclusive presumption that a person acts for a commercial purpose." [2002 c 127 § 1.]

77.15.160 Infractions. (Effective until January 1, 2018.) The following acts are infractions and must be cited and punished as provided under chapter 7.84 RCW:

(1) Fishing and shellfishing infractions:

(a) Barbed hooks: Fishing for personal use with barbed hooks in violation of any department rule.

(b) Catch recording: Failing to immediately record a catch of fish or shellfish on a catch record card as required by RCW 77.32.430 or department rule.

(c) Catch reporting: Failing to return a catch record card to the department for other than Puget Sound Dungeness crab, as required by department rule.

(d) Recreational fishing: Fishing for fish or shellfish, without yet possessing fish or shellfish, the person:

(i) Owns, but fails to have in the person's possession, the license or the catch record card required by chapter 77.32 RCW for such an activity; or

(ii) Violates any department rule regarding seasons, closed areas, closed times, or any other rule addressing the manner or method of fishing for fish or shellfish. This subsection does not apply to use of a net to take fish under RCW 77.15.580 or the unlawful use of shellfish gear for personal use under RCW 77.15.382.

(e) Seaweed: Taking or possessing less than two times the daily possession limit of seaweed:

(i) While owning, but not having in the person's possession, the license required by chapter 77.32 RCW; or

(ii) In violation of any rule of the department or the department of natural resources regarding seasons, closed areas, closed times, or any other rule addressing the manner or method of taking or possessing seaweed.

(f) Unclassified fish or shellfish: Fishing for or taking unclassified fish or shellfish in violation of this title or department rule.

(g) Wasting fish or shellfish: Taking or possessing food fish, game fish, or shellfish having a value of less than two hundred fifty dollars and recklessly allowing the fish or shellfish to be wasted.

(2) Hunting infractions:

(a) Eggs or nests: Maliciously, and without permit authorization, destroying, taking, or harming the eggs or active nests of a wild bird or wild animal not classified as endangered or protected. For purposes of this subsection, "active nests" means nests that are attended by an adult or contain eggs or young.

(b) Unclassified wildlife: Hunting for, harassing, or taking unclassified wildlife in violation of this title or department rule.

(c) Wasting wildlife: Taking or possessing wildlife classified as game birds and having a value of less than two hundred fifty dollars, and recklessly allowing the game birds to be wasted.

(d) Wild animals: Hunting for wild animals not classified as big game or threatened or endangered and, without yet possessing the wild animals, the person owns, but fails to have in the person's possession, all licenses, tags, or permits required by this title.

(e) Wild birds: Hunting for and, without yet possessing a wild bird or birds, the person:

(i) Owns, but fails to have in the person's possession, all licenses, tags, stamps, and permits required under this title; or

(ii) Violates any department rule regarding seasons, closed areas, closed times, or any other rule addressing the manner or method of hunting wild birds.

(3) Trapping, taxidermy, fur dealing, wildlife meat cutting, and wildlife rehabilitator infractions:

(a) Recordkeeping and reporting: If a person is a taxidermist, fur dealer, or wildlife meat cutter who is processing, holding, or storing wildlife for commercial purposes, failing to:

(i) Maintain records as required by department rule; or

(ii) Report information from these records as required by department rule.

(b) Trapper's report: Failing to report trapping activity as required by department rule.

(c) Wildlife rehabilitator's recordkeeping and reporting: If a person is a primary permittee or a subpermittee on a wildlife rehabilitation permit issued by the department, failing to:

(i) Maintain records as required by department rule; or

(ii) Report information from these records as required by department rule.

(4)(a) Invasive species management infractions:

(i) Out-of-state certification: Entering Washington in possession of an aquatic conveyance that does not meet certificate of inspection requirements as provided under RCW 77.135.100;

(ii) Clean and drain requirements: Possessing an aquatic conveyance that does not meet clean and drain requirements under RCW 77.135.110;

(iii) Clean and drain orders: Possessing an aquatic conveyance and failing to obey a clean and drain order under RCW 77.135.110 or 77.135.120; and

(iv) Aquatic invasive species prevention permit requirements: Failing to possess a valid aquatic invasive species prevention permit as required under RCW 77.135.210, 77.135.220, or 77.135.230.

(b) Unless the context clearly requires otherwise, the definitions in both RCW 77.08.010 and 77.135.010 apply throughout this subsection (4).

(5) Other infractions:

(a) Contests: Unlawfully conducting, holding, or sponsoring a hunting contest, a fishing contest involving game fish, or a competitive field trial using live wildlife.

(b) Other rules: Violating any other department rule that is designated by rule as an infraction.

(c) Posting signs: Posting signs preventing hunting or fishing on any land not owned or leased by the person doing the posting, or without the permission of the person who owns, leases, or controls the land posted.

(d) Scientific permits: Using a scientific permit issued by the director for fish, shellfish, or wildlife, but not including big game or big game parts, and the person:

(i) Violates any terms or conditions of the scientific permit; or

(ii) Violates any department rule applicable to the issuance or use of scientific permits. [2017 3rd sp.s. c 17 § 303. Prior: 2014 c 202 § 204; 2014 c 48 § 7; 2013 c 307 § 2; 2012 c 176 § 15; 2000 c 107 § 237; 1998 c 190 § 17.]

Findings—2014 c 202: See note following RCW 77.135.010.

77.15.160 Infractions. (Effective January 1, 2018.)

The following acts are infractions and must be cited and punished as provided under chapter 7.84 RCW:

(1) Fishing and shellfishing infractions:

(a) Barbed hooks: Fishing for personal use with barbed hooks in violation of any department rule.

(b) Catch recording: Failing to immediately record a catch of fish or shellfish on a catch record card as required by RCW 77.32.430 or department rule.

(c) Catch reporting: Failing to return a catch record card to the department for other than Puget Sound Dungeness crab, as required by department rule.

(d) Recreational fishing: Fishing for fish or shellfish and, without yet possessing fish or shellfish, the person:

(i) Owns, but fails to have in the person's possession the license or the catch record card required by chapter 77.32 RCW for such an activity; or

(ii) Violates any department rule regarding seasons, closed areas, closed times, or any other rule addressing the manner or method of fishing for fish or shellfish. This subsection does not apply to use of a net to take fish under RCW 77.15.580 or the unlawful use of shellfish gear for personal use under RCW 77.15.382.

(e) Seaweed: Taking, possessing, or harvesting less than two times the daily possession limit of seaweed:

(i) While owning, but not having in the person's possession, the license required by chapter 77.32 RCW; or

(ii) In violation of any rule of the department or the department of natural resources regarding seasons, closed areas, closed times, or any other rule addressing the manner or method of taking, possessing, or harvesting of seaweed.

(f) Unclassified fish or shellfish: Taking unclassified fish or shellfish in violation of any department rule by killing,

fishing, taking, holding, possessing, or maliciously injuring or harming fish or shellfish that is not classified as game fish, food fish, shellfish, protected fish, or endangered fish.

(g) Wasting fish or shellfish: Killing, taking, or possessing fish or shellfish having a value of less than two hundred fifty dollars and allowing the fish or shellfish to be wasted.

(2) Hunting infractions:

(a) Eggs or nests: Maliciously, and without permit authorization, destroying, taking, or harming the eggs or active nests of a wild bird not classified as endangered or protected. For purposes of this subsection, "active nests" means nests that contain eggs or fledglings.

(b) Unclassified wildlife: Taking unclassified wildlife in violation of any department rule by killing, hunting, taking, holding, possessing, or maliciously injuring or harming wildlife that is not classified as big game, game animals, game birds, protected wildlife, or endangered wildlife.

(c) Wasting wildlife: Killing, taking, or possessing wildlife that is not classified as big game and has a value of less than two hundred fifty dollars, and allowing the wildlife to be wasted.

(d) Wild animals: Hunting for wild animals not classified as big game and, without yet possessing the wild animals, the person owns, but fails to have in the person's possession, all licenses, tags, or permits required by this title.

(e) Wild birds: Hunting for and, without yet possessing a wild bird or birds, the person:

(i) Owns, but fails to have in the person's possession, all licenses, tags, stamps, and permits required under this title; or

(ii) Violates any department rule regarding seasons, closed areas, closed times, or any other rule addressing the manner or method of hunting wild birds.

(3) Trapping, taxidermy, fur dealing, and wildlife meat cutting infractions:

(a) Recordkeeping and reporting: If a person is a taxidermist, fur dealer, or wildlife meat cutter who is processing, holding, or storing wildlife for commercial purposes, failing to:

(i) Maintain records as required by department rule; or

(ii) Report information from these records as required by department rule.

(b) Trapper's report: Failing to report trapping activity as required by department rule.

(4) Limited fish seller infraction: Failure of a holder of a limited fish seller endorsement to satisfy the food safety requirements to consumers under RCW 77.65.510(2).

(5)(a) Invasive species management infractions:

(i) Out-of-state certification: Entering Washington in possession of an aquatic conveyance that does not meet certificate of inspection requirements as provided under RCW 77.135.100;

(ii) Clean and drain requirements: Possessing an aquatic conveyance that does not meet clean and drain requirements under RCW 77.135.110;

(iii) Clean and drain orders: Possessing an aquatic conveyance and failing to obey a clean and drain order under RCW 77.135.110 or 77.135.120; and

(iv) Aquatic invasive species prevention permit requirements: Failing to possess a valid aquatic invasive species prevention permit as required under RCW 77.135.210, 77.135.220, or 77.135.230.

(b) Unless the context clearly requires otherwise, the definitions in both RCW 77.08.010 and 77.135.010 apply throughout this subsection (5).

(6) Other infractions:

(a) Contests: Conducting, holding, or sponsoring a hunting contest, a fishing contest involving game fish, or a competitive field trial using live wildlife.

(b) Other rules: Violating any other department rule that is designated by rule as an infraction.

(c) Posting signs: Posting signs preventing hunting or fishing on any land not owned or leased by the person doing the posting, or without the permission of the person who owns, leases, or controls the land posted.

(d) Scientific permits: Using a scientific permit issued by the director for fish, shellfish, or wildlife, but not including big game or big game parts, and the person:

(i) Violates any terms or conditions of the scientific permit; or

(ii) Violates any department rule applicable to the issuance or use of scientific permits. [2017 3rd sp.s. c 17 § 303; 2017 3rd sp.s. c 8 § 42. Prior: 2014 c 202 § 204; 2014 c 48 § 7; 2013 c 307 § 2; 2012 c 176 § 15; 2000 c 107 § 237; 1998 c 190 § 17.]

Reviser's note: This section was amended by 2017 3rd sp.s. c 8 § 42 and by 2017 3rd sp.s. c 17 § 303, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Findings—2014 c 202: See note following RCW 77.135.010.

77.15.170 Waste of fish and wildlife—Penalty. (Effective January 1, 2018.) (1) A person is guilty of waste of fish and wildlife if the person:

(a) Takes or possesses wildlife classified as food fish, game fish, shellfish, or game birds having a value of two hundred fifty dollars or more, or wildlife classified as big game; and

(b) Recklessly allows such fish, shellfish, or wildlife to be wasted.

(2) Waste of fish and wildlife is a gross misdemeanor. Upon conviction, the department shall revoke any license or tag used in the crime and shall order suspension of the person's privileges to engage in the activity in which the person committed waste of fish and wildlife for a period of one year.

(3) It is prima facie evidence of waste if:

(a) A fish dealer purchases or engages a quantity of food fish, shellfish, or game fish that cannot be processed within sixty hours after the food fish, game fish, or shellfish are taken from the water, unless the food fish, game fish, or shellfish are preserved in good marketable condition; or

(b) A person brings a big game animal to a wildlife meat cutter and then abandons the animal. For purposes of this subsection (3)(b), a big game animal is deemed to be abandoned when its carcass is placed in the custody of a wildlife meat cutter for butchering and processing and:

(i) Having been placed in such custody for an unspecified period of time, the meat is not removed within thirty days after the wildlife meat cutter gives notice to the person who brought in the carcass or, having been so notified, the person who brought in the carcass refuses or fails to pay the agreed

upon or reasonable charges for the butchering or processing of the carcass; or

(ii) Having been placed in such custody for a specified period of time, the meat is not removed at the end of the specified period or the person who brought in the carcass refuses to pay the agreed upon or reasonable charges for the butchering or processing of the carcass. [2017 3rd sp.s. c 8 § 9; 2014 c 48 § 8; 2012 c 176 § 16; 1999 c 258 § 5; 1998 c 190 § 21.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

77.15.500 Commercial fishing without a license—Penalty. (Effective January 1, 2018.) (1) A person is guilty of commercial fishing without a license in the second degree if the person fishes for, takes, or delivers fish or shellfish while acting for commercial purposes and:

(a) The person does not hold a fishery license or delivery license under chapter 77.65 RCW for the fish or shellfish;

(b) The person is not a licensed operator designated as an alternate operator on a fishery or delivery license under chapter 77.65 RCW for the fish or shellfish; or

(c) The person does not hold a crewmember license when required under RCW 77.65.610.

(2) A person is guilty of commercial fishing without a license in the first degree if the person commits the act described by subsection (1) of this section and:

(a) The violation involves taking, delivery, or possession of fish or shellfish with a value of two hundred fifty dollars or more; or

(b) The violation involves taking, delivery, or possession of fish or shellfish from an area that was closed to the taking of the fish or shellfish by any statute or rule.

(3)(a) Commercial fishing without a license in the second degree is a gross misdemeanor.

(b) Commercial fishing without a license in the first degree is a class C felony. [2017 3rd sp.s. c 8 § 10; 2000 c 107 § 248; 1998 c 190 § 35.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

77.15.565 Wholesale fish buyer a limited fish seller—Accounting of commercial harvest—Penalties. (Effective January 1, 2018.) Since violation of the rules of the department relating to the accounting of the commercial harvest of fish and shellfish results in damage to the resources of the state, liability for damage to fish and shellfish resources is imposed on a wholesale fish buyer or a limited fish seller for violation of a provision in chapters 77.65 and 77.70 RCW or a rule of the department related to the accounting of the commercial harvest of fish and shellfish and shall be for the actual damages or for damages imposed as follows:

(1) For violation of rules requiring the timely presentation to the department of documents relating to the accounting of commercial harvest, fifty dollars for each of the first fifteen documents in a series and ten dollars for each subsequent document in the same series. If documents relating to the accounting of commercial harvest of fish and shellfish are lost or destroyed and the wholesale fish buyer or limited fish seller notifies the department in writing within seven days of the loss or destruction, the director shall waive the requirement for timely presentation of the documents.

(2) For violation of rules requiring accurate and legible information relating to species, value, harvest area, or amount of harvest, twenty-five dollars for each of the first five violations of this subsection per calendar year, and fifty dollars for each violation after the first five violations.

(3) For violations of rules requiring certain signatures, fifty dollars for each of the first two violations and one hundred dollars for each subsequent violation. For the purposes of this subsection, each signature is a separate requirement.

(4) For other violations of rules relating to the accounting of the commercial harvest, fifty dollars for each separate violation. [2017 3rd sp.s. c 8 § 11; 2002 c 301 § 6; 2000 c 107 § 12; 1996 c 267 § 14; 1985 c 248 § 5. Formerly RCW 75.10.150.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

Intent—Effective date—1996 c 267: See notes following RCW 77.12.177.

Wholesale fish buyers and limited fish sellers—Documentation of commercial harvest: RCW 77.65.310.

77.15.568 Secondary commercial fish receiver's failure to account for commercial harvest—Penalty. (1) A person is guilty of a secondary commercial fish receiver's failure to account for commercial harvest if:

(a) The person sells fish or shellfish at retail, stores, holds, or processes fish or shellfish in exchange for valuable consideration, or brokers or ships fish or shellfish in exchange for valuable consideration;

(b)(i) The fish or shellfish were required to be entered on a Washington fish-receiving ticket or a Washington aquatic farm production annual report; or

(ii) The fish or shellfish are classified as fish or shellfish by the department; and

(c) The person fails to maintain records of each receipt of fish or shellfish, as required under subsections (3) through (5) of this section, at:

(i) The location where the fish or shellfish are being sold or at the location where the fish or shellfish are being stored or held; or

(ii) The principal place of business of the shipper or broker if the fish or shellfish are not in possession.

(2) Wholesale fish buyers, limited fish sellers, and registered aquatic farmers are not required to comply with this section for fish or shellfish documented on fish tickets or aquatic farm production reports.

(3) Records of the receipt of fish or shellfish required to be kept under this section must be in the English language and be maintained for three years from the date fish or shellfish are received, shipped, or brokered.

(4) Records maintained by persons that retail or broker fish or shellfish, or that store, hold, or ship fish or shellfish for others must include the following:

(a) The name, address, and phone number of the person from whom the fish or shellfish were purchased or received;

(b) The date of purchase or receipt;

(c) The state or country of origin if received from interstate or foreign commerce; and

(d) The amount and species of fish or shellfish purchased or received.

(5) A secondary commercial fish receiver's failure to account for commercial harvest is a misdemeanor. [2017 c 89 § 1; 2016 sp.s. c 21 § 1; 2009 c 333 § 19; 2007 c 337 § 4; 2003 c 336 § 1.]

Intent—Finding—2007 c 337: See note following RCW 77.12.071.

77.15.620 Engaging in fish dealing activity without a license—Penalty. (Effective January 1, 2018.) (1) A person is guilty of engaging in fish dealing activity without a license in the second degree if the activity involves fish or shellfish worth less than two hundred fifty dollars and the person:

(a) Engages in any fish dealing activity requiring a fish dealer license under RCW 77.65.280 without first obtaining the license;

(b) Engages in any fish buying or selling activity requiring a wholesale fish buyer endorsement under RCW 77.65.340 without first obtaining the endorsement; or

(c) Engages in any fish selling activity as a fisher that requires a limited fish seller endorsement under RCW 77.65.510 without first obtaining the endorsement.

(2) A person is guilty of engaging in fish dealing activity without a license in the first degree if the person commits the act described by subsection (1) of this section and the violation involves fish or shellfish worth two hundred fifty dollars or more.

(3)(a) Engaging in fish dealing activity without a license in the second degree is a gross misdemeanor.

(b) Engaging in fish dealing activity without a license in the first degree is a class C felony. [2017 3rd sp.s. c 8 § 12; 2012 c 176 § 30; 2009 c 333 § 20; 2002 c 301 § 7; 2000 c 107 § 253; 1998 c 190 § 43.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

77.15.630 Unlawful fish and shellfish catch accounting—Penalty. (Effective January 1, 2018.) (1) A person licensed as a commercial fisher, wholesale fish buyer, or limited fish seller, or a person not so licensed but acting in such a capacity, is guilty of unlawful fish and shellfish catch accounting in the second degree if he or she receives or delivers for commercial purposes fish or shellfish worth less than two hundred fifty dollars; and

(a) Fails to document such fish or shellfish with a fish-receiving ticket or other documentation required by statute or department rule;

(b) Fails to sign the fish-receiving ticket or other required documentation, fails to provide all of the information required by statute or department rule on the fish-receiving ticket or other documentation, or both; or

(c) Fails to submit the fish-receiving ticket to the department as required by statute or department rule.

(2) A person is guilty of unlawful fish and shellfish catch accounting in the first degree if the person commits an act described by subsection (1) of this section and:

(a) The violation involves fish or shellfish worth two hundred fifty dollars or more;

(b) The person acted with knowledge that the fish or shellfish were taken from a closed area, at a closed time, or by a person not licensed to take such fish or shellfish for commercial purposes; or

(c) The person acted with knowledge that the fish or shellfish were taken in violation of any tribal law.

(3)(a) Unlawful fish and shellfish catch accounting in the second degree is a gross misdemeanor.

(b) Unlawful fish and shellfish catch accounting in the first degree is a class C felony. Upon conviction, the department shall suspend all privileges to engage in wholesale fish buying or dealing for two years.

(4) For the purposes of this section:

(a) A person "receives" fish or shellfish when title or control of the fish or shellfish is transferred or conveyed to the person.

(b) A person "delivers" fish or shellfish when title or control of the fish or shellfish is transferred or conveyed from the person. [2017 3rd sp.s. c 8 § 13; 2014 c 48 § 21; 2012 c 176 § 31; 2000 c 107 § 254; 1998 c 190 § 44.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

77.15.640 Unlawful wholesale fish buying and dealing—Penalty. (Effective January 1, 2018.) (1) A person who holds a fish dealer license required by RCW 77.65.280, a wholesale fish buyer endorsement required by RCW 77.65.340, or a limited fish seller endorsement under RCW 77.65.510 is guilty of unlawful wholesale fish buying and dealing if the person:

(a) Fails to possess or display his or her license when engaged in any act requiring the license; or

(b) Fails to display or uses the license in violation of any department rule.

(2) Unlawful wholesale fish buying and dealing is a gross misdemeanor. [2017 3rd sp.s. c 8 § 14; 2012 c 176 § 32; 2002 c 301 § 8; 2000 c 107 § 255; 1998 c 190 § 45.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

77.15.902 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 77.32 RCW LICENSES

Sections

77.32.155	Hunter education training program—Certificate—Deferral—Adoption of rules—Fee.
77.32.580	Columbia river salmon and steelhead endorsement—Cost. (Expires June 30, 2019.)
77.32.585	Release of wild beavers.

77.32.155 Hunter education training program—Certificate—Deferral—Adoption of rules—Fee. (1)(a) When purchasing any hunting license, persons under the age of eighteen shall present certification of completion of a course of instruction of at least ten hours in the safe handling of firearms, safety, conservation, and sporting/hunting behavior.

All persons purchasing any hunting license for the first time, if born after January 1, 1972, shall present such certification.

(b)(i) The director may establish a program for training persons in the safe handling of firearms, conservation, and sporting/hunting behavior and shall prescribe the type of instruction and the qualifications of the instructors. The director shall, as part of establishing the training program, exempt the following individuals from the firearms skills portion of any instruction course completed over the internet:

(A) Members of the United States military;

(B) Current or retired general authority Washington peace officers as defined in RCW 10.93.020;

(C) Current or retired limited authority Washington peace officers as defined in RCW 10.93.020, if the officer is or was duly authorized by his or her employer to carry a concealed pistol;

(D) Current or retired specially commissioned Washington peace officers as defined in RCW 10.93.020, if the officer is or was duly authorized by his or her commissioning agency to carry a concealed pistol; and

(E) Current or retired Washington peace officers as defined in RCW 43.101.010 who have met the requirements of RCW 43.101.095 or 43.101.157 and whose certification is in good standing or has not been revoked.

(ii) The director may cooperate with the national rifle association, organized sports/outdoor enthusiasts' groups, or other public or private organizations when establishing the training program.

(c) Upon the successful completion of a course established under this section, the trainee shall receive a hunter education certificate signed by an authorized instructor. The certificate is evidence of compliance with this section.

(d) The director may accept certificates from other states that persons have successfully completed firearm safety, hunter education, or similar courses as evidence of compliance with this section.

(2)(a) The director may authorize a once in a lifetime, one license year deferral of hunter education training for individuals who are accompanied by a nondeferred Washington-licensed hunter who has held a Washington hunting license for the prior three years and is over eighteen years of age. The commission shall adopt rules for the administration of this subsection to avoid potential fraud and abuse.

(b) The director is authorized to collect an application fee, not to exceed twenty dollars, for obtaining the once in a lifetime, one license year deferral of hunter education training from the department. This fee must be deposited into the fish and wildlife enforcement reward account and must be used exclusively to administer the deferral program created in this subsection.

(c) For the purposes of this subsection, "accompanied" means to go along with another person while staying within a range of the other person that permits continual unaided visual and auditory communication.

(3) To encourage the participation of an adequate number of instructors for the training program, the commission shall develop nonmonetary incentives available to individuals who commit to serving as an instructor. The incentives may include additional hunting opportunities for instructors. [2017 c 255 § 1; 2013 c 23 § 243; 2009 c 269 § 1; 2007 c 163 § 1; 2006 c 23 § 1; 1998 c 191 § 17; 1993 c 85 § 1; 1987 c 506

§ 81; 1981 c 310 § 21; 1980 c 78 § 104; 1957 c 17 § 1. Formerly RCW 77.32.015.]

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

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Additional notes found at www.leg.wa.gov

77.32.580 Columbia river salmon and steelhead endorsement—Cost. (Expires June 30, 2019.) (1) In addition to a recreational license required under this chapter, a Columbia river salmon and steelhead endorsement is required in order for any person fifteen years of age or older to fish recreationally for salmon or steelhead in the Columbia river and its tributaries where these fisheries have been authorized by the department. The cost for each endorsement is seven dollars and fifty cents for residents and nonresidents and six dollars for youth and seniors. The department shall deposit all receipts from endorsement purchases into the Columbia river recreational salmon and steelhead endorsement program account created in RCW 77.12.714.

(2) For the purposes of this section and RCW 77.12.712 and 77.12.714 through 77.12.718, the term "Columbia river" means the Columbia river from a line across the Columbia river between Rocky Point in Washington and Tongue Point in Oregon to the Chief Joseph dam. [2016 c 223 § 5; 2011 c 339 § 14; 2009 c 420 § 3.]

Expiration date—2017 3rd sp.s. c 3; 2011 c 339 § 14: "Section 14 of this act expires June 30, 2019." [2017 3rd sp.s. c 3 § 2; 2016 c 223 § 8; 2011 c 339 § 40.]

Expiration date—2017 3rd sp.s. c 3; 2016 c 223: See note following RCW 77.12.712.

Effective date—2011 c 339: See note following RCW 43.84.092.

Not subject to transaction fee—2009 c 420: "A Columbia river salmon and steelhead stamp or endorsement is not subject to the additional ten percent transaction fee on recreational licenses, permits, tags, stamps, or raffle tickets to be charged during the 2009-2011 biennium under chapter 333, Laws of 2009 if it or a subsequent version thereof becomes law." [2009 c 420 § 11.]

Expiration date—2017 3rd sp.s. c 3; 2009 c 420 §§ 2-6: See note following RCW 77.12.712.

Intent—Scope of authority—2009 c 420: See notes following RCW 77.12.712.

77.32.585 Release of wild beavers. (1) The department shall permit the release of wild beavers on public and private lands with agreement from the property owner.

(2) The department may limit the release of wild beavers to areas of the state where:

(a) There is a low probability of released beavers becoming a nuisance or causing damage;

(b) Conditions exist for released beavers to improve, maintain, or manage stream or riparian ecosystem functions; and

(c) There is evidence of historic endemic beaver populations.

(3) The department may condition the release of beaver to maximize the relocation's success and minimize risk. Factors that the department may condition include:

(a) Stream gradient;

(b) Sufficiency of the water supply;

(c) Stream geomorphology;

(d) Adequacy of a food source;

(e) Proper site elevation and valley width;

(f) Age of the beavers relocated;

(g) Times of year for capture and relocation;

(h) Requirements for the capture, handling, and transport of the live beavers;

(i) Minimum and maximum numbers of beavers that can be relocated in one area; and

(j) Requirements for the permit holder to initially provide supplemental food and lodge building materials.

(4) The department may require:

(a) Specific training for those involved with capture, handling, and release of beavers; and

(b) The notification of any potentially affected adjacent landowners before permitting the release of wild beavers.

(5) Nothing in this section creates any liability against the state or those releasing beavers nor authorizes any private right of action for any damages subsequently caused by beavers released pursuant to this section.

(6) For the purposes of this section, "beaver" means the American beaver (*Castor canadensis*).

(7) For the purposes of this section, beavers may only be released to carry out relocation: (a) Between two areas east of the crest of the Cascade mountains; or (b) between two areas west of the crest of the Cascade mountains. [2017 c 82 § 1; 2012 c 167 § 2.]

Finding—2012 c 167: "The legislature finds that beavers have historically played a significant role in maintaining the health of watersheds in the Pacific Northwest and act as key agents in riparian ecology. The live trapping and relocating of beavers has long been recognized as a beneficial wildlife management practice, and has been successfully utilized to restore and maintain stream ecosystems for over fifty years. The benefits of active beaver populations include reduced stream sedimentation, stream temperature moderation, higher dissolved oxygen levels, overall improved water quality, increased natural water storage capabilities within watersheds, and reduced stream velocities. These benefits improve and create habitat for many other species, including endangered salmon, river otters, sandhill cranes, trumpeter swans, and other riparian and aquatic species. Relocating beavers into their historic habitat provides a natural mechanism for improving the environmental conditions in Washington's riparian ecosystems without having to resort to governmental regulation or expensive publicly funded engineering projects." [2012 c 167 § 1.]

Chapter 77.36 RCW WILDLIFE DAMAGE

Sections

77.36.190 Elk management pilot project—Report to the legislature. (Expires July 1, 2021.)

77.36.190 Elk management pilot project—Report to the legislature. (Expires July 1, 2021.) (1) Subject to the availability of amounts appropriated for this specific purpose, the department must conduct an elk management pilot project to explore the viability of various wildlife management actions to reduce elk highway collisions and elk damage to private crop lands. The pilot project must initially focus on achieving a reduction in highway collisions on interstate highways, and crop damage on properties, within the range of the Colockum herd. The department must invite the Yakama Nation to participate in all aspects of the project.

(2) The department must work with the department of transportation to explore the viability of various wildlife

management actions to reduce elk highway collisions, initially focusing on reducing traffic collisions along interstate highways within the range of the herd.

(3) Direct wildlife management efforts must be employed in the pilot project implemented under this section, including:

(a) Increased use of special depredation hunts and general hunting opportunity within the Colockum herd. Total hunting depredations under the pilot project must be limited to three hundred elk per calendar year and these efforts must be designed and implemented in a manner that does not conflict with the primary goals of the current elk herd management plan for the Colockum herd;

(b) Feeding elk within the pilot project area by persons other than the department is prohibited, although in no event may this prohibition affect a person who sets out feed with the intent to feed domestic animals or livestock, even though such feed may be inadvertently consumed by elk or other wildlife; and

(c) The use of managed livestock grazing to attract elk away from roads and private property.

(4) Consistent with RCW 43.01.036, the department and the department of transportation must report the results of the pilot project to the appropriate committees of the legislature by October 31, 2020. Along with results, the departments must report on how the information gleaned from the pilot project will be used to manage the Colockum elk herd and other similarly situated elk herds in the state.

(5) This section expires July 1, 2021. [2017 c 244 § 2.]

Findings—2017 c 244: "(1) The legislature finds that the Colockum elk herd in central Washington is the fifth largest elk herd in the state and is currently managed for the state by the department of fish and wildlife.

(2) The legislature further finds that the Colockum elk herd has been the subject of a great deal of planning by the department of fish and wildlife. The herd is subject to an existing herd management plan that attempts to ensure a healthy, productive population, manage the herd for a variety of purposes, and allow for a sustainable yield within the population. Proper management of the Colockum elk herd is important, since the herd is a resource that provides significant recreational, aesthetic, cultural, and economic benefits to recreationalists, local communities, and native Americans.

(3) The legislature further finds that the department of fish and wildlife has studied the Colockum elk herd as recently as 2012. This study led to a greater understanding of the challenges facing the herd and resulted in recommendations as to management approaches to address those challenges.

(4) The legislature further finds that despite the active management and research by the department of fish and wildlife, there are still undesirable consequences of the Colockum elk herd's size, location, and behaviors. These consequences manifest as significant agricultural crop damage within the herd's range and unacceptably threatens to degrade highway safety levels on Interstate 90 and other roadways within the range of the herd due to collisions between herd members and vehicles.

(5) The legislature further finds that the unwanted consequences of the current Colockum elk herd management protocol are not isolated to the range of the Colockum herd. Other elk herds in the state are also the subject of similar management outcomes.

(6) The legislature further finds that the department of fish and wildlife should use the Colockum elk herd as the subject of a pilot project that explores the benefits of more active management. The department must work with the Yakama Nation to obtain input from the tribe on the tribe's recommendations. The pilot project should be limited in time and geography to ensure that overall herd health is not disrupted; however, it should be robust enough to offer scientifically rigorous results." [2017 c 244 § 1.]

Chapter 77.50 RCW

LIMITATIONS ON CERTAIN COMMERCIAL FISHERIES

Sections

77.50.900 Decodified.

77.50.900 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 77.55 RCW

CONSTRUCTION PROJECTS IN STATE WATERS

Sections

77.55.181 Fish habitat enhancement project—Permit review and approval process—Limitation of liability.

77.55.181 Fish habitat enhancement project—Permit review and approval process—Limitation of liability.

(1)(a) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under this section and must be a project to accomplish one or more of the following tasks:

(i) Elimination of human-made or caused fish passage barriers, including:

(A) Culvert repair and replacement; and

(B) Fish passage barrier removal projects that comply with the forest practices rules, as the term "forest practices rules" is defined in RCW 76.09.020;

(ii) Restoration of an eroded or unstable stream bank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(iii) Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

(b) The department shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety.

(c) A fish habitat enhancement project must be approved in one of the following ways in order to receive the permit review and approval process created in this section:

(i) By the department pursuant to chapter 77.95 or 77.100 RCW;

(ii) By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;

(iii) By the department as a department-sponsored fish habitat enhancement or restoration project;

(iv) Through the review and approval process for the jobs for the environment program;

(v) Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States fish and wildlife service and the natural resource conservation service;

(vi) Through a formal grant program established by the legislature or the department for fish habitat enhancement or restoration;

(vii) Through the department of transportation's environmental retrofit program as a stand-alone fish passage barrier correction project;

(viii) Through a local, state, or federally approved fish barrier removal grant program designed to assist local governments in implementing stand-alone fish passage barrier corrections;

(ix) By a city or county for a stand-alone fish passage barrier correction project funded by the city or county;

(x) Through the approval process established for forest practices hydraulic projects in chapter 76.09 RCW; or

(xi) Through other formal review and approval processes established by the legislature.

(2) Fish habitat enhancement projects meeting the criteria of subsection (1) of this section are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of subsection (1) of this section and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030(2)(c).

(3)(a) A permit is required for projects that meet the criteria of subsection (1) of this section and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the office of regulatory assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the department and to each appropriate local government. Applicants for a forest practices hydraulic project that are not otherwise required to submit a joint aquatic resource permit application must submit a copy of their forest practices application to the appropriate local government on the same day that they submit the forest practices application to the department of natural resources.

(b) Local governments shall accept the application identified in this section as notice of the proposed project. A local government shall be provided with a fifteen-day comment period during which it may transmit comments regarding environmental impacts to the department or, for forest practices hydraulic projects, to the department of natural resources.

(c) Except for forest practices hydraulic projects, the department shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project within forty-five days. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. Permitting decisions over forest practices hydraulic approvals must be made consistent with chapter 76.09 RCW.

(d) If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(e) Any person aggrieved by the approval, denial, conditioning, or modification of a permit other than a forest practices hydraulic project under this section may appeal the decision as provided in RCW 77.55.021(8). Appeals of a forest practices hydraulic project may be made as provided in chapter 76.09 RCW.

(4) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of subsection (1) of this section and that are reviewed and approved according to the provisions of this section.

(5) No civil liability may be imposed by any court on the state or its officers and employees for any adverse impacts resulting from a fish enhancement project permitted by the department or the department of natural resources under the criteria of this section except upon proof of gross negligence or willful or wanton misconduct. [2017 c 241 § 1; 2014 c 120 § 1; 2010 c 210 § 29; 2005 c 146 § 505; 2001 c 253 § 55; 1998 c 249 § 3. Formerly RCW 77.55.290, 75.20.350.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Findings—Purpose—1998 c 249: "The legislature finds that fish habitat enhancement projects play a key role in the state's salmon and steelhead recovery efforts. The legislature finds that there are over two thousand barriers to fish passage at road crossings throughout the state, blocking fish access to as much as three thousand miles of freshwater spawning and rearing habitat. The legislature further finds that removal of these barriers and completion of other fish habitat enhancement projects should be done in a cost-effective manner, which includes providing technical assistance and training to people who will undertake projects such as removal of barriers to salmon passage and minimizing the expense and delays of various permitting processes. The purpose of this act is to take immediate action to facilitate the review and approval of fish habitat enhancement projects, to encourage efforts that will continue to improve the process in the future, to address known fish passage barriers immediately, and to develop over time a comprehensive system to inventory and prioritize barriers on a statewide basis." [1998 c 249 § 1.]

Finding—Report—1998 c 249: "The legislature finds that, while the process created in this act can improve the speed with which fish habitat enhancement projects are put into place, additional efforts can improve the review and approval process for the future. The legislature directs the department of fish and wildlife, the conservation commission, local governments, fish habitat enhancement project applicants, and other interested parties to work together to continue to improve the permitting review and approval process. Specific efforts shall include the following:

(1) Development of common acceptable design standards, best management practices, and standardized hydraulic project approval conditions for each type of fish habitat enhancement project;

(2) An evaluation of the potential for using technical evaluation teams in evaluating specific project proposals or stream reaches;

(3) An evaluation of techniques appropriate for restoration and enhancement of pasture and crop land adjacent to riparian areas;

(4) A review of local government shoreline master plans to identify and correct instances where the local plan does not acknowledge potentially beneficial instream work;

(5) An evaluation of the potential for local governments to incorporate fish habitat enhancement projects into their comprehensive planning process; and

(6) Continued work with the federal government agencies on federal permitting for fish habitat enhancement projects.

The department of fish and wildlife shall coordinate this joint effort and shall report back to the legislature on the group's progress by December 1, 1998." [1998 c 249 § 15.]

Additional notes found at www.leg.wa.gov

Chapter 77.65 RCW

FOOD FISH AND SHELLFISH—COMMERCIAL
LICENSES

Sections

77.65.010	Required licenses—Exemption. <i>(Effective January 1, 2018.)</i>
77.65.020	Transfer of licenses—Restrictions—Fees—Inheritability. <i>(Effective January 1, 2018.)</i>
77.65.090	Vessel substitution—Fees. <i>(Effective January 1, 2018.)</i>
77.65.110	Alternate operator designation—Fees. <i>(Effective January 1, 2018.)</i>
77.65.120	Sale or delivery of fish or shellfish by fishery license holder and alternate operators—Conditions—License with a limited fish seller endorsement. <i>(Effective January 1, 2018.)</i>
77.65.150	Licenses and permits—Fees—"Charter boat" defined—Oregon charter boats—Salmon charter license renewal. <i>(Effective January 1, 2018.)</i>
77.65.160	Commercial salmon fishery licenses—Gear and geographic designations—Fees. <i>(Effective January 1, 2018.)</i>
77.65.170	Salmon delivery license—Fees—Restrictions—Revocation. <i>(Effective January 1, 2018.)</i>
77.65.190	Emergency salmon delivery license—Fees—Nontransferable, nonrenewable. <i>(Effective January 1, 2018.)</i>
77.65.200	Commercial fishery licenses for food fish fisheries—Fees—Rules for species, gear, and areas. <i>(Effective January 1, 2018.)</i>
77.65.210	Nonlimited entry delivery license—Exceptions—Fees. <i>(Effective January 1, 2018.)</i>
77.65.220	Commercial fishery licenses for shellfish fisheries—Fees—Rules for species, gear, and areas. <i>(Effective January 1, 2018.)</i>
77.65.240	Surcharge on Dungeness crab-coastal fishery license. <i>(Effective January 1, 2018.)</i>
77.65.280	Fish dealer license—Exemption—Fees. <i>(Effective January 1, 2018.)</i>
77.65.290	Repealed. <i>(Effective January 1, 2018.)</i>
77.65.300	Repealed. <i>(Effective January 1, 2018.)</i>
77.65.310	Wholesale fish buyers and limited fish sellers—Documentation of commercial harvest. <i>(Effective January 1, 2018.)</i>
77.65.320	Wholesale fish buyers/limited fish seller—Performance bond. <i>(Effective January 1, 2018.)</i>
77.65.330	Wholesale fish buyer/limited fish seller—Notification by director of a violation of rules relating to the accounting of commercial harvest—Payment of liability. <i>(Effective January 1, 2018.)</i>
77.65.340	Wholesale fish buyer endorsement—Fees. <i>(Effective January 1, 2018.)</i>
77.65.350	Salmon roe—Sale by crewmember on a boat designated on a salmon charter license—Requirements. <i>(Effective January 1, 2018.)</i>
77.65.360	Repealed. <i>(Effective January 1, 2018.)</i>
77.65.370	Food fish guide license—Game fish guide license. <i>(Effective January 1, 2018.)</i>
77.65.390	Ocean pink shrimp—Delivery license—Fees. <i>(Effective January 1, 2018.)</i>
77.65.440	Alternate operator—Geoduck diver—Food fish guide—Fees. <i>(Effective January 1, 2018.)</i>
77.65.480	Taxidermist, fur dealer, game fish guide, and game farm—Licenses—Fees—Game fish stocking permit—Fees—Fishing or field trial permit—Fees. <i>(Effective January 1, 2018.)</i>
77.65.490	Activities requiring license/permit. <i>(Effective January 1, 2018.)</i>
77.65.500	Reports required from persons with licenses or permits under RCW 77.65.480. <i>(Effective January 1, 2018.)</i>
77.65.510	Limited fish seller endorsement—Food safety requirements—Fees—Other provisions. <i>(Effective January 1, 2018.)</i>
77.65.515	Repealed. <i>(Effective January 1, 2018.)</i>
77.65.520	Repealed. <i>(Effective January 1, 2018.)</i>
77.65.580	Vessel registration number decal and identifying decal for food fish guides, game fish guides, and charter boat operators. <i>(Effective January 1, 2018.)</i>
77.65.590	Fish guide combination license—Rule making—Fee. <i>(Effective January 1, 2018.)</i>
77.65.610	Crewmember license—Requirements—Fee—Exemptions. <i>(Effective January 1, 2018.)</i>
77.65.900	Decodified.

77.65.010 Required licenses—Exemption. *(Effective January 1, 2018.)* (1) Except as otherwise provided by this title, a person must have a license issued by the director in order to engage in any of the following activities:

- (a) Commercially fish for or take food fish or shellfish;
- (b) Deliver from a commercial fishing vessel food fish or shellfish taken for commercial purposes in offshore waters. As used in this subsection, "deliver" means arrival at a place or port, and includes arrivals from offshore waters to waters within the state and arrivals from state or offshore waters;
- (c) Operate a charter boat or commercial fishing vessel engaged in a fishery;
- (d) Engage in wholesale buying, selling, dealing, processing, or brokering of raw or frozen fish or shellfish;
- (e) Sell his or her commercially harvested catch of fish or shellfish to anyone other than a licensed wholesale fish buyer within or outside the state; or
- (f) Act as a food fish guide or game fish guide for personal use, except that a charter boat license is required to operate a vessel from which a person may for a fee fish for food fish in state waters listed in RCW 77.65.150(4)(b).

(2) No person may engage in the activities described in subsection (1) of this section unless the licenses required by this title are in the person's possession, and the person is the named license holder or an alternate operator designated on the license and the person's license is not suspended.

(3) A valid Oregon license that is equivalent to a license under this title is valid in the concurrent waters of the Columbia river if the state of Oregon recognizes as valid the equivalent Washington license. The director may identify by rule what Oregon licenses are equivalent.

(4) No license is required for the production or harvesting of private sector cultured aquatic products as defined in RCW 15.85.020 or for the delivery, processing, or wholesaling of such aquatic products. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the exemption from licensing requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules. [2017 3rd sp.s. c 8 § 16; 2015 c 97 § 3; 2009 c 333 § 7; 2005 c 20 § 1; 1998 c 190 § 93; 1997 c 58 § 883; 1993 c 340 § 2; 1991 c 362 § 1; 1985 c 457 § 18; 1983 1st ex.s. c 46 § 101; 1959 c 309 § 2; 1955 c 12 § 75.28.010. Prior: 1949 c 112 § 73; Rem. Supp. 1949 § 5780-511. Formerly RCW 75.28.010.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Finding—Intent—1993 c 340: "The legislature finds that the laws governing commercial fishing licensing in this state are highly complex and increasingly difficult to administer and enforce. The current laws governing commercial fishing licenses have evolved slowly, one section at a time, over decades of contention and changing technology, without general consideration for how the totality fits together. The result has been confusion and litigation among commercial fishers. Much of the confusion has arisen because the license holder in most cases is a vessel, not a person. The legislature intends by this act to standardize licensing criteria, clarify licensing requirements, reduce complexity, and remove inequities in commercial fishing licensing. The legislature intends that the license fees stated in this act shall be equivalent to those in effect on January 1, 1993, as adjusted under section 19, chapter 316, Laws of 1989." [1993 c 340 § 1.]

Additional notes found at www.leg.wa.gov

77.65.020 Transfer of licenses—Restrictions—Fees—Inheritability. *(Effective January 1, 2018.)* (1) Unless otherwise provided in this title, a license issued under

this chapter is not transferable from the license holder to any other person.

(2) The following restrictions apply to transfers of commercial fishery licenses, salmon delivery licenses, and salmon charter licenses that are transferable between license holders:

(a) The license holder shall surrender the previously issued license to the department.

(b) The department shall complete no more than one transfer of the license in any seven-day period.

(c) The fee to transfer a license from one license holder to another is:

(i) The same as the license renewal fee if the license is not limited under chapter 77.70 RCW;

(ii) Three and one-half times the renewal fee if the license is not a commercial salmon license and the license is limited under chapter 77.70 RCW;

(iii) Fifty dollars if the license is a commercial salmon license and is limited under chapter 77.70 RCW; or

(iv) Five hundred dollars if the license is a Dungeness crab-coastal fishery license.

(d) In addition to the fees under (c) of this subsection, an application fee of one hundred five dollars applies to all commercial license transfers.

(3) A commercial license that is transferable under this title survives the death of the holder. Though such licenses are not personal property, they shall be treated as analogous to personal property for purposes of inheritance and intestacy. Such licenses are subject to state laws governing wills, trusts, estates, intestate succession, and community property, except that such licenses are exempt from claims of creditors of the estate and tax liens. The surviving spouse, estate, or beneficiary of the estate may apply for a renewal of the license. There is no fee for transfer of a license from a license holder to the license holder's surviving spouse or estate, or to a beneficiary of the estate. [2017 3rd sp.s. c 8 § 17; 2011 c 339 § 15; 2000 c 107 § 28; 1997 c 418 § 1; 1995 c 228 § 1; 1993 sp.s. c 17 § 34. Formerly RCW 75.28.011.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Additional notes found at www.leg.wa.gov

77.65.090 Vessel substitution—Fees. (Effective January 1, 2018.) This section applies to all commercial fishery licenses, delivery licenses, and charter licenses, except for emergency salmon delivery licenses.

(1) The holder of a license subject to this section may substitute the vessel designated on the license or designate a vessel if none has previously been designated if the license holder:

(a) Surrenders the previously issued license to the department;

(b) Submits to the department an application that identifies the currently designated vessel, the vessel proposed to be designated, and any other information required by the department; and

(c) Pays to the department a fee of thirty-five dollars and an application fee of one hundred five dollars.

(2) Unless the license holder owns all vessels identified on the application described in subsection (1)(b) of this section or unless the vessel is designated on a Dungeness crab-coastal fishery license, the following restrictions apply to changes in vessel designation:

(a) The department shall change the vessel designation on the license no more than four times per calendar year.

(b) The department shall change the vessel designation on the license no more than once in any seven-day period. [2017 3rd sp.s. c 8 § 18; 2011 c 339 § 16; 1994 c 260 § 11; 1993 sp.s. c 17 § 45. Formerly RCW 75.28.044.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Severability—1994 c 260: See notes following RCW 77.70.280.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Additional notes found at www.leg.wa.gov

77.65.110 Alternate operator designation—Fees. (Effective January 1, 2018.) This section applies to all commercial fishery licenses and delivery licenses.

(1) A person designated as an alternate operator must possess an alternate operator license issued under RCW 77.65.130, and be designated on the fishery license prior to engaging in the activities authorized by the license. The holder of the commercial fishery license or delivery license may designate up to two alternate operators for the license, except:

(a) Whiting—Puget Sound fishery licensees may not designate alternate operators;

(b) Emergency salmon delivery licensees may not designate alternate operators;

(c) Shrimp pot—Puget Sound fishery licensees may designate no more than one alternate operator at a time; and

(d) Shrimp trawl—Puget Sound fishery licensees may designate no more than one alternate operator at a time.

(2) The fee to change the alternate operator designation is twenty-two dollars in addition to the application fee of one hundred five dollars.

(3) An alternate operator license is not required for an individual to operate a vessel designated as a charter boat under a charter boat license. [2017 3rd sp.s. c 8 § 19; 2011 c 339 § 17; 2001 c 105 § 4; 2000 c 107 § 32; 1998 c 267 § 2; 1994 c 260 § 12; 1993 c 340 § 9. Formerly RCW 75.28.046.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Severability—1994 c 260: See notes following RCW 77.70.280.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

Additional notes found at www.leg.wa.gov

77.65.120 Sale or delivery of fish or shellfish by fishery license holder and alternate operators—Conditions—License with a limited fish seller endorsement. (Effective January 1, 2018.) (1) Only the fishery license holder and any alternate operators designated on the license may sell or deliver fish or shellfish under a commercial fishery license or

delivery license. A commercial fishery license or delivery license authorizes no taking or delivery of fish or shellfish unless the license holder or an alternate operator designated on the license is present or aboard the vessel.

(2) Only the fishery license holder and any alternate operator designated on a license with a limited fish seller endorsement under RCW 77.65.510 may sell the licensee's commercially harvested catch directly to consumers at retail. [2017 3rd sp.s. c 8 § 20; 2000 c 107 § 33; 1998 c 267 § 3; 1993 c 340 § 10. Formerly RCW 75.28.047.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

Additional notes found at www.leg.wa.gov

77.65.150 Licenses and permits—Fees—"Charter boat" defined—Oregon charter boats—Salmon charter license renewal. (Effective January 1, 2018.) (1) The licenses and permits and their annual license fees, application fees, and surcharges are:

License or Permit	Annual Fee (RCW 77.95.090 Surcharge) (RCW 77.12.702 Surcharge)		Application Fee	Governing Section
	Resident	Nonresident		
(a) Non-salmon charter	\$375 (plus \$35 for RCW 77.12.702 Surcharge)	\$450 (plus \$35 for RCW 77.12.702 Surcharge)	\$ 70	
(b) Salmon charter	\$460 (plus \$100) (plus \$35 for RCW 77.12.702 Surcharge)	\$535 (plus \$100) (plus \$35 for RCW 77.12.702 Surcharge)	\$105	RCW 77.70.050
(c) Salmon angler	\$ 0	\$ 0	\$ 0	RCW 77.70.060

(2) A salmon charter license designating a vessel is required to operate a charter boat from which persons may, for a fee, fish for salmon, other fish, and shellfish. The director may issue a salmon charter license only to a person who meets the qualifications of RCW 77.70.050.

(3) A nonsalmon charter license designating a vessel is required to operate a charter boat from which persons may, for a fee, fish for shellfish and fish other than salmon or albacore tuna.

(4)(a) "Charter boat" means a vessel from which persons may, for a fee, fish for food fish or shellfish for personal use in those state waters set forth in (b) of this subsection. "Charter boat" also means a vessel from which persons may, for a fee, fish for fish or shellfish for personal use in offshore waters or in the waters of other states. The director may specify by rule when a vessel is a "charter boat" within this definition.

(b) A person may not operate a vessel from which persons may, for a fee, fish for food fish or shellfish in Puget Sound, Grays Harbor, Willapa Bay, Pacific Ocean waters, Lake Washington, or the Columbia river below the bridge at Longview unless the vessel is designated on a charter boat license.

(5) A charter boat licensed in Oregon may fish without a Washington charter license under the same rules as Washing-

ton charter boat operators in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point, as long as the Oregon vessel does not take on or discharge passengers for any purpose from any Washington port, the Washington shore, or a dock, landing, or other point in Washington. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations.

(6) A salmon charter license under subsection (1)(b) of this section may be renewed if the license holder notifies the department by May 1st of that year that he or she will not participate in the fishery during that calendar year. The license holder must pay the one hundred dollar enhancement surcharge, a thirty-five dollar surcharge to be deposited in the rockfish research account created in RCW 77.12.702, plus a one hundred five dollar application fee, in order to be considered a valid renewal and eligible to renew the license the following year. [2017 3rd sp.s. c 8 § 21; 2011 c 339 § 18; 2007 c 442 § 3; 2006 c 186 § 1; 2000 c 107 § 36; 1998 c 190 § 95; 1997 c 76 § 2; 1995 c 104 § 1; 1993 sp.s. c 17 § 41. Prior: (1993 c 340 § 21 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 2; 1989 c 147 § 1; 1989 c 47 § 2; 1988 c 9 § 1; 1983 1st ex.s. c 46 § 112; 1979 c 60 § 1; 1977 ex.s. c 327 § 5; 1971 ex.s. c 283 § 15; 1969 c 90 § 1. Formerly RCW 75.28.095.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Findings—Intent—Effective date—2007 c 442: See notes following RCW 77.12.702.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Legislative intent—Funding of salmon enhancement facilities—Use of license fees—1977 ex.s. c 327: "The long range economic development goals for the state of Washington shall include the restoration of salmon runs to provide an increased supply of this valuable renewable resource for the benefit of commercial and recreational users and the economic well-being of the state. For the purpose of providing funds for the planning, acquisition, construction, improvement, and operation of salmon enhancement facilities within the state it is the intent of the legislature that the revenues received from fees from the issuance of vessel delivery permits, charter boat licenses, trolling gear licenses, gill net gear licenses, purse seine gear licenses, reef net gear licenses, anadromous salmon angling licenses and all moneys received from all privilege fees and fish sales taxes collected on fresh or frozen salmon or parts thereof be utilized to fund such costs.

The salmon enhancement program funded by commercial and recreational fishing fees and taxes shall be for the express benefit of all persons whose fishing activities fall under the management authority of the Washington department of fisheries and who actively participate in the funding of the enhancement costs through the fees and taxes set forth in chapters 75.28 and 82.27 RCW or through other adequate funding methods." [1980 c 98 § 8; 1977 ex.s. c 327 § 1. Formerly RCW 75.18.100.]

Limitation on issuance of salmon charter boat licenses: RCW 77.70.050.

Salmon charter boats—Angler permit, when required: RCW 77.70.060.

Additional notes found at www.leg.wa.gov

77.65.160 Commercial salmon fishery licenses—Gear and geographic designations—Fees. (Effective January 1, 2018.) (1) The following commercial salmon fishery licenses are required for the license holder to use the specified gear to fish for salmon in state waters. Only a person who meets the qualifications of RCW 77.70.090 may hold a license listed in this subsection. The licenses and their annual license fees, application fees, and surcharges under RCW 77.95.090 are:

	Fishery License	Resident Fee	Nonresident Fee	Surcharge	Application Fee
(a)	Salmon Gill Net—Grays Harbor-Columbia river	\$380	\$455	plus \$100	\$105
(b)	Salmon Gill Net—Puget Sound	\$380	\$455	plus \$100	\$105
(c)	Salmon Gill Net—Willapa Bay-Columbia river	\$380	\$455	plus \$100	\$105
(d)	Salmon purse seine	\$545	\$620	plus \$100	\$105
(e)	Salmon reef net	\$380	\$455	plus \$100	\$105
(f)	Salmon troll	\$380	\$455	plus \$100	\$105

(2) A license issued under this section authorizes no taking or delivery of salmon or other food fish unless a vessel is designated under RCW 77.65.100.

(3) Holders of commercial salmon fishery licenses may retain incidentally caught food fish other than salmon, subject to rules of the department.

(4) A salmon troll license includes a salmon delivery license.

(5) A salmon gill net license authorizes the taking of salmon only in the geographical area for which the license is issued. The geographical designations in subsection (1) of this section have the following meanings:

(a) "Puget Sound" includes waters of the Strait of Juan de Fuca, Georgia Strait, Puget Sound and all bays, inlets, canals, coves, sounds, and estuaries lying easterly and southerly of the international boundary line and a line at the entrance to the Strait of Juan de Fuca projected northerly from Cape Flattery to the lighthouse on Tatoosh Island and then to Bonilla Point on Vancouver Island.

(b) "Grays Harbor-Columbia river" includes waters of Grays Harbor and tributary estuaries lying easterly of a line projected northerly from Point Chehalis Light to Point Brown and those waters of the Columbia river and tributary sloughs and estuaries easterly of a line at the entrance to the Columbia river projected southerly from the most westerly point of the North jetty to the most westerly point of the South jetty.

(c) "Willapa Bay-Columbia river" includes waters of Willapa Bay and tributary estuaries and easterly of a line projected northerly from Leadbetter Point to the Cape Shoalwater tower and those waters of the Columbia river and tributary sloughs described in (b) of this subsection.

(6) A commercial salmon troll fishery license may be renewed under this section if the license holder notifies the department by May 1st of that year that he or she will not participate in the fishery during that calendar year. A commercial salmon gill net, reef net, or seine fishery license may be renewed under this section if the license holder notifies the department before the third Monday in September of that year that he or she will not participate in the fishery during that calendar year. The license holder must pay the one hundred dollar enhancement surcharge, plus a one hundred five dollar application fee before the third Monday in September,

in order to be considered a valid renewal and eligible to renew the license the following year.

(7) Notwithstanding the annual license fees and surcharges established in subsection (1) of this section, a person who holds a resident commercial salmon fishery license shall pay an annual license fee of one hundred dollars plus the surcharge and application fee if all of the following conditions are met:

(a) The license holder is at least seventy-five years of age;

(b) The license holder owns a fishing vessel and has fished with a resident commercial salmon fishery license for at least thirty years; and

(c) The commercial salmon fishery license is for a geographical area other than the Puget Sound.

An alternate operator may not be designated for a license renewed at the one hundred dollar annual fee under this subsection (7). [2017 3rd sp.s. c 8 § 22; 2011 c 339 § 19; 2001 c 244 § 1; 2000 c 107 § 37; 1997 c 76 § 1; 1996 c 267 § 28; 1993 sp.s. c 17 § 35; (1993 c 340 § 12 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 3; 1985 c 107 § 1; 1983 1st ex.s. c 46 § 113; 1965 ex.s. c 73 § 2; 1959 c 309 § 10; 1955 c 12 § 75.28.110. Prior: 1951 c 271 § 9; 1949 c 112 § 69(1); Rem. Supp. 1949 § 5780-507(1). Formerly RCW 75.28.110.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Intent—Effective date—1996 c 267: See notes following RCW 77.12.177.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Limitations on issuance of commercial salmon fishing licenses: RCW 77.70.090.

Additional notes found at www.leg.wa.gov

77.65.170 Salmon delivery license—Fees—Restrictions—Revocation. (Effective January 1, 2018.) (1) A salmon delivery license is required for a commercial fishing vessel to deliver salmon taken for commercial purposes in offshore waters to a place or port in the state. As used in this section, "deliver" and "delivery" mean arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters. The annual fee for a salmon delivery license is four hundred thirty dollars for residents and five hundred five dollars for nonresidents. The application fee for a salmon delivery license is one hundred five dollars. The annual surcharge under RCW 77.95.090 is one hundred dollars for each license. Holders of nonlimited entry delivery licenses issued under RCW 77.65.210 may apply the nonlimited entry delivery license fee against the salmon delivery license fee.

(2) Only a person who meets the qualifications established in RCW 77.70.090 may hold a salmon delivery license issued under this section.

(3) A salmon delivery license authorizes no taking of salmon or other fish or shellfish from the waters of the state.

(4) If the director determines that the operation of a vessel under a salmon delivery license results in the depletion or destruction of the state's salmon resource or the delivery into this state of salmon products prohibited by law, the director may revoke the license under the procedures of chapter 34.05

RCW. [2017 3rd sp.s. c 8 § 23; 2011 c 339 § 20; 2005 c 20 § 2; 2000 c 107 § 38; 1998 c 190 § 96; 1994 c 260 § 22; 1993 sp.s. c 17 § 36; (1993 c 340 § 13 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 4; 1983 1st ex.s. c 46 § 115; 1977 ex.s. c 327 § 3; 1971 ex.s. c 283 § 1; 1955 c 12 § 75.18.080. Prior: 1953 c 147 § 9. Formerly RCW 75.28.113, 75.18.080.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Severability—1994 c 260: See notes following RCW 77.70.280.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Legislative intent—Funding of salmon enhancement facilities—Use of license fees—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 77.65.150.

Limitations on issuance of salmon delivery licenses: RCW 77.70.090.

Additional notes found at www.leg.wa.gov

77.65.190 Emergency salmon delivery license—Fees—Nontransferable, nonrenewable. (Effective January 1, 2018.) A person who does not qualify for a license under RCW 77.70.090 shall obtain a nontransferable emergency salmon delivery license to make one delivery from a commercial fishing vessel of salmon taken for commercial purposes in offshore waters. As used in this section, "delivery" means arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters. The director shall not issue an emergency salmon delivery license unless, as determined by the director, a bona fide emergency exists. The license fee is two hundred seventy-five dollars for residents and three hundred fifty dollars for nonresidents. The application fee is one

hundred five dollars. An applicant for an emergency salmon delivery license shall designate no more than one vessel that will be used with the license. Alternate operator licenses are not required of persons delivering salmon under an emergency salmon delivery license. Emergency salmon delivery licenses are not renewable. [2017 3rd sp.s. c 8 § 24; 2011 c 339 § 21; 2005 c 20 § 3; 2000 c 107 § 40; 1993 sp.s. c 17 § 37; (1993 c 340 § 14 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 5; 1984 c 80 § 1. Prior: 1983 1st ex.s. c 46 § 116; 1983 c 297 § 1; 1977 ex.s. c 327 § 4; 1974 ex.s. c 184 § 3. Formerly RCW 75.28.116, 75.28.460.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Legislative intent—Funding of salmon enhancement facilities—Use of license fees—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 77.65.150.

Legislative intent—Severability—1974 ex.s. c 184: See notes following RCW 77.70.090.

Additional notes found at www.leg.wa.gov

77.65.200 Commercial fishery licenses for food fish fisheries—Fees—Rules for species, gear, and areas. (Effective January 1, 2018.) (1) This section establishes commercial fishery licenses required for food fish fisheries and the annual fees for those licenses. As used in this section, "food fish" does not include salmon. The director may issue a limited-entry commercial fishery license only to a person who meets the qualifications established in applicable governing sections of this title.

Fishery (Governing section(s))	Annual Fee		Application Fee	Vessel Required?	Limited Entry?
	Resident	Nonresident			
(a) Baitfish Lampara	\$335	\$410	\$ 70	Yes	No
(b) Baitfish purse seine	\$380	\$655	\$ 70	Yes	No
(c) Bottom fish jig	\$180	\$255	\$ 70	Yes	No
(d) Bottom fish pot	\$180	\$255	\$ 70	Yes	No
(e) Bottom fish troll	\$180	\$255	\$ 70	Yes	No
(f) Carp	\$180	\$255	\$ 70	No	No
(g) Columbia river smelt	\$430	\$505	\$ 70	No	No
(h) Emerging commercial fishery (RCW 77.70.160 and 77.65.400)	\$335	\$410	\$105	Determined by rule	Determined by rule
(i) Food fish drag seine	\$180	\$255	\$ 70	Yes	No
(j) Food fish set line	\$180	\$255	\$ 70	Yes	No
(k) Herring dip bag net (RCW 77.70.120)	\$325	\$400	\$ 70	Yes	Yes
(l) Herring drag seine (RCW 77.70.120)	\$325	\$400	\$ 70	Yes	Yes
(m) Herring gill net (RCW 77.70.120)	\$325	\$400	\$105	Yes	Yes
(n) Herring Lampara (RCW 77.70.120)	\$325	\$400	\$ 70	Yes	Yes
(o) Herring purse seine (RCW 77.70.120)	\$325	\$400	\$105	Yes	Yes
(p) Herring spawn-on-kelp (RCW 77.70.210)	N/A	N/A	N/A	Yes	Yes
(q) Sardine purse seine (RCW 77.70.480)	\$335	\$410	\$105	Yes	Yes

Fishery (Governing section(s))	Annual Fee	Application Fee	Vessel Required?	Limited Entry?	
(r) Sardine purse seine temporary (RCW 77.70.480)	\$335	\$410	\$105	Yes	No
(s) Smelt dip bag net	\$180	\$255	\$ 70	No	No
(t) Smelt gill net	\$430	\$505	\$ 70	Yes	No
(u) Whiting-Puget Sound (RCW 77.70.130)	\$345	\$420	\$105	Yes	Yes

(2) The director may by rule determine the species of food fish that may be taken with the commercial fishery licenses established in this section, the gear that may be used with the licenses, and the areas or waters in which the licenses may be used. Where a fishery license has been established for a particular species, gear, geographical area, or combination thereof, a more general fishery license may not be used to take food fish in that fishery. [2017 3rd sp.s. c 8 § 25; 2011 c 339 § 22; 2009 c 331 § 4; 2000 c 107 § 41; 1993 sp.s. c 17 § 38; (1993 c 340 § 15 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 6; 1983 1st ex.s. c 46 § 117; 1965 ex.s. c 73 § 3; 1959 c 309 § 11; 1955 c 12 § 75.28.120. Prior: 1951 c 271 § 10; 1949 c 112 § 69(2); Rem. Supp. 1949 § 5780-507(2). Formerly RCW 75.28.120.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Limitation on commercial herring fishing: RCW 77.70.120.

Additional notes found at www.leg.wa.gov

77.65.210 Nonlimited entry delivery license—Exceptions—Fees. (Effective January 1, 2018.) (1) Except as provided in subsection (2) of this section, a person may not use a commercial fishing vessel to deliver food fish or shellfish taken for commercial purposes in offshore waters to a port in the state without a nonlimited entry delivery license. As used in this section, "deliver" and "delivery" mean arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters. As used in this section, "food fish" does not include salmon. As used in this section, "shellfish" does not include ocean pink shrimp, coastal crab, coastal spot shrimp, or fish or shellfish taken under an emerging commercial fisheries license if taken from offshore waters. The annual license fee for a nonlimited entry delivery license is two hundred sixty dollars for residents and three hundred thirty-five dollars for nonresidents, and an additional thirty-five dollar surcharge for both residents and nonresidents to be deposited in the rockfish research account created in RCW 77.12.702. The application fee for a nonlimited entry delivery license is one hundred five dollars.

Fishery (Governing section(s))	Annual Fee		Application Fee	Vessel Required?	Limited Entry?
	Resident	Nonresident			
(a) Burrowing shrimp	\$235	\$310	\$105	Yes	No
(b) Crab ring net- Puget Sound	\$180	\$255	\$ 70	Yes	No
(c) Dungeness crab-coastal (RCW 77.70.280)	\$345	\$420	\$105	Yes	Yes
(d) Dungeness crab- Puget Sound	\$180	\$255	\$105	Yes	Yes

(2) Holders of the following licenses may deliver food fish or shellfish taken in offshore waters without a nonlimited entry delivery license: Salmon troll fishery licenses issued under RCW 77.65.160; salmon delivery licenses issued under RCW 77.65.170; crab pot fishery licenses issued under RCW 77.65.220; food fish trawl—Non-Puget Sound fishery licenses, and emerging commercial fishery licenses issued under RCW 77.65.200; Dungeness crab—coastal fishery licenses; ocean pink shrimp delivery licenses; Washington coastal spot shrimp pot fishery licenses issued under chapter 77.70 RCW; and emerging commercial fishery licenses issued under RCW 77.65.220.

(3) A nonlimited entry delivery license authorizes no taking of fish or shellfish from state waters. [2017 3rd sp.s. c 8 § 26. Prior: 2011 c 339 § 23; 2011 c 147 § 3; 2007 c 442 § 4; 2005 c 20 § 4; 2000 c 107 § 42; 1998 c 190 § 97; 1994 c 260 § 21; prior: 1993 sp.s. c 17 § 39; 1993 c 376 § 3; (1993 c 340 § 16 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 7; 1983 1st ex.s. c 46 § 119; 1971 ex.s. c 283 § 5; 1965 ex.s. c 73 § 1; 1959 c 309 § 5. Formerly RCW 75.28.125, 75.28.085.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Findings—Intent—Effective date—2007 c 442: See notes following RCW 77.12.702.

Finding—Severability—1994 c 260: See notes following RCW 77.70.280.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Findings—Effective date—1993 c 376: See notes following RCW 77.65.380.

Additional notes found at www.leg.wa.gov

77.65.220 Commercial fishery licenses for shellfish fisheries—Fees—Rules for species, gear, and areas. (Effective January 1, 2018.) (1) This section establishes commercial fishery licenses required for shellfish fisheries and the annual fees for those licenses. The director may issue a limited-entry commercial fishery license only to a person who meets the qualifications established in applicable governing sections of this title.

Fishery (Governing section(s)) (RCW 77.70.110)	Annual Fee	Application Fee	Vessel Required?	Limited Entry?
(e) Emerging commercial fishery (RCW 77.70.160 and 77.65.400)	\$335	\$410	Determined by rule	Determined by rule
(f) Geoduck (RCW 77.70.220)	\$ 0	\$ 0	Yes	Yes
(g) Hardshell clam mechanical harvester (RCW 77.65.250)	\$580	\$655	Yes	No
(h) Oyster reserve (RCW 77.65.260)	\$180	\$255	No	No
(i) Razor clam	\$180	\$255	No	No
(j) Sea cucumber dive (RCW 77.70.190)	\$280	\$355	Yes	Yes
(k) Sea urchin dive (RCW 77.70.150)	\$280	\$355	Yes	Yes
(l) Shellfish dive	\$180	\$255	Yes	No
(m) Shellfish pot	\$180	\$255	Yes	No
(n) Shrimp pot- Puget Sound (RCW 77.70.410)	\$335	\$410	Yes	Yes
(o) Shrimp trawl- Puget Sound (RCW 77.70.420)	\$335	\$410	Yes	Yes
(p) Spot shrimp-coastal	\$335	\$410	Yes	Yes
(q) Squid	\$335	\$410	Yes	No

(2) The director may by rule determine the species of shellfish that may be taken with the commercial fishery licenses established in this section, the gear that may be used with the licenses, and the areas or waters in which the licenses may be used. Where a fishery license has been established for a particular species, gear, geographical area, or combination thereof, a more general fishery license may not be used to take shellfish in that fishery. [2017 3rd sp.s. c 8 § 27. Prior: 2011 c 339 § 24; 2011 c 147 § 4; 2000 c 107 § 43; 1999 c 239 § 2; 1994 c 260 § 14; 1993 sp.s. c 17 § 40; (1993 c 340 § 17 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 8; 1983 1st ex.s. c 46 § 120; 1977 ex.s. c 327 § 6; 1971 ex.s. c 283 § 7; 1965 ex.s. c 73 § 4; 1959 c 309 § 12; 1955 c 12 § 75.28.130; prior: 1951 c 271 § 11; 1949 c 112 § 69(3); Rem. Supp. 1949 § 5780-507(3). Formerly RCW 75.28.130.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Purpose—Intent—1999 c 239: "The legislature finds that it is in the public interest to convert the Puget Sound shrimp fishery from the status of an emerging fishery to that of a limited entry fishery. The purpose of this act is to initiate this conversion, recognizing that additional details associated with the shrimp fishery limited entry program will need to be developed. The legislature intends to complete the development of the laws associated with this limited entry fishery program during the next regular legislative session and will consider recommendations from the industry and the department during this program." [1999 c 239 § 1.]

Finding—Severability—1994 c 260: See notes following RCW 77.70.280.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Dungeness crab-Puget Sound fishery license endorsement: RCW 77.70.110.

Additional notes found at www.leg.wa.gov

77.65.240 Surcharge on Dungeness crab-coastal fishery license. (Effective January 1, 2018.) A surcharge of one hundred twenty dollars shall be collected with each Dungeness crab-coastal fishery license issued under RCW 77.65.220. Moneys collected under this section shall be placed in the coastal crab account created under RCW 77.70.320. [2017 3rd sp.s. c 8 § 28; 2000 c 107 § 45; 1997 c 418 § 5. Formerly RCW 75.28.133.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

77.65.280 Fish dealer license—Exemption—Fees. (Effective January 1, 2018.) (1) A fish dealer license is required for a person in the state who:

(a) Takes possession of raw or frozen fish or shellfish, in whole or in parts, to prepare, repackage, process, or preserve. This includes, but is not limited to:

(i) Canning or processing of fish or shellfish for payment, whether the fish or shellfish is commercially harvested or taken for personal use; and

(ii) The commercial manufacture or preparation of fertilizer, oil, meal, caviar, fish bait, or any other by-products from fish or shellfish;

(b) Engages in the wholesale selling, buying, or brokering of raw or frozen fish or shellfish. Certain buyers may be additionally required to obtain a wholesale fish buyer endorsement as specified in RCW 77.65.340.

(2) A fish dealer license is not required for:

(a) Licensed commercial fish or shellfish harvesters who either sell only to licensed wholesale fish buyers or who possess a limited fish seller endorsement;

(b) Retail businesses that purchase exclusively from Washington licensed wholesale fish buyers or from limited fish sellers for sale to end consumers.

(3) A business engaged in any activity requiring a fish dealer license only needs to purchase one fish dealer license to cover the actions of all employees.

(4) The annual license fee for a resident fish dealer is four hundred dollars. The fee for a nonresident fish dealer license is four hundred seventy-five dollars. The application fee for both resident and nonresident licenses is one hundred five dollars. [2017 3rd sp.s. c 8 § 29; 2014 c 48 § 27; 2013 c 23 § 244; 2011 c 339 § 25; 2002 c 301 § 5; 2000 c 107 § 48; 1993 sp.s. c 17 § 43; 1989 c 316 § 16. Prior: 1985 c 457 § 20; 1985 c 248 § 1; 1983 1st ex.s. c 46 § 132; 1979 c 66 § 1; 1965 ex.s. c 28 § 1; 1955 c 212 § 11; 1955 c 12 § 75.28.300; prior: 1951 c 271 § 28; 1949 c 112 § 72(1); Rem. Supp. 1949 § 5780-510(1). Formerly RCW 75.28.300.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Additional notes found at www.leg.wa.gov

77.65.290 Repealed. (Effective January 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

77.65.300 Repealed. (Effective January 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

77.65.310 Wholesale fish buyers and limited fish sellers—Documentation of commercial harvest. (Effective January 1, 2018.) Wholesale fish buyers and limited fish sellers are required to document the commercial harvest of fish and shellfish according to the rules of the department. [2017 3rd sp.s. c 8 § 30; 1996 c 267 § 29; 1985 c 248 § 4. Formerly RCW 75.28.315.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Intent—Effective date—1996 c 267: See notes following RCW 77.12.177.

77.65.320 Wholesale fish buyers/limited fish seller—Performance bond. (Effective January 1, 2018.) (1) A wholesale fish buyer or limited fish seller must deposit with the department an acceptable performance bond on forms prescribed and furnished by the department before engaging in fish selling or buying activities. This performance bond shall be a corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under chapter 48.28 RCW and approved by the department.

(a) For wholesale fish buyers, the bond shall be filed and maintained in an amount equal to two thousand dollars. For each additional buyer engaged by the wholesale business, the bond must be increased an additional one thousand dollars.

(b) For limited fish sellers, the bond shall be filed and maintained in an amount equal to one thousand dollars.

(c) The department may increase the bond amount for persons who have violated rules relating to the accounting of commercial harvest.

(2) The director may suspend and refuse to reissue a wholesale fish buyer endorsement of a person who has taken possession of fish or shellfish without an acceptable performance bond on deposit with the department.

(3) The director may suspend and refuse to reissue a limited fish seller endorsement to a commercial fisher who has sold fish or shellfish without an acceptable performance bond on deposit with the department.

(4) The bond shall be conditioned upon the compliance with the requirements of this chapter and rules of the department relating to the payment of fines for violations of rules for the accounting of the commercial harvest of fish or shellfish. In lieu of the surety bond required by this section, the wholesale fish buyer or limited fish seller may file with the department a cash deposit, negotiable securities acceptable to the department, or an assignment of a savings account or of a savings certificate in a Washington bank on an assignment form prescribed by the department.

(5) Liability under the bond may be released only upon written notification from the department. Notification shall be given upon acceptance by the department of a substitute bond or forty-five days after the expiration of the wholesale fish buyer or limited fish seller annual endorsement. In no event shall the liability of the surety exceed the amount of the surety bond required under this chapter. [2017 3rd sp.s. c 8 § 31; 2000 c 107 § 49; 1996 c 267 § 30; 1985 c 248 § 6. Formerly RCW 75.28.323.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Intent—Effective date—1996 c 267: See notes following RCW 77.12.177.

77.65.330 Wholesale fish buyer/limited fish seller—Notification by director of a violation of rules relating to the accounting of commercial harvest—Payment of liability. (Effective January 1, 2018.) The director shall promptly notify by order a wholesale fish buyer or limited fish seller and the appropriate surety when a violation of rules relating to the accounting of commercial harvest has occurred. The notification shall specify the type of violation, the liability to be imposed for damages caused by the violation, and a notice that the amount of liability is due and payable to the department by the wholesale fish buyer or limited fish seller and the surety.

If the amount specified in the order is not paid within thirty days after receipt of the notice, the prosecuting attorney for any county in which the persons to whom the order is directed do business, or the attorney general upon request of the department, may bring an action on behalf of the state in the superior court for Thurston county or any county in which the persons to whom the order is directed do business to recover the amount specified in the final order of the department. The surety shall be liable to the state to the extent of the bond. [2017 3rd sp.s. c 8 § 32; 1985 c 248 § 7. Formerly RCW 75.28.328.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

77.65.340 Wholesale fish buyer endorsement—Fees. (Effective January 1, 2018.) (1) A wholesale fish buyer endorsement is required for a licensed fish dealer:

(a) To take first possession or ownership of fish or shellfish directly from a commercial fisher that is landed into the state of Washington;

(b) To take first possession or ownership of raw or frozen fish or shellfish in the state of Washington from interstate or foreign commerce; or

(c) To engage in the wholesale buying or selling of fish or shellfish harvested by Indian fishers lawfully exercising fishing rights reserved by federal statute, treaty, or executive order, and the dealer is also responsible for documenting the commercial harvest and sales according to the rules of the department.

(2) A business licensed as a fish dealer must purchase at least one wholesale fish buyer endorsement to engage in the activities in subsection (1) of this section, which allows the business to buy or sell on its premises and which allows one named employee to buy and sell off premises. A business must obtain an additional wholesale fish buyer endorsement for each additional employee who buys and sells fish or shellfish off premises.

(3) The annual fee for a resident wholesale fish buyer's endorsement is two hundred forty-five dollars. The annual fee for a nonresident wholesale fish buyer's endorsement is three hundred twenty dollars. The application fee for both resident and nonresident endorsements is one hundred five dollars. [2017 3rd sp.s. c 8 § 33; 2014 c 48 § 28; 2013 c 23 § 245; 2011 c 339 § 26; 2000 c 107 § 50; 1993 sp.s. c 17 § 46; 1989 c 316 § 17; 1985 c 248 § 2. Formerly RCW 75.28.340.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Additional notes found at www.leg.wa.gov

77.65.350 Salmon roe—Sale by crewmember on a boat designated on a salmon charter license—Requirements. (Effective January 1, 2018.) (1) Crewmembers on a boat designated on a salmon charter license may sell salmon roe subject to rules of the department as long as:

(a) The salmon is taken by an angler fishing on the charter boat and recorded on the angler's catch record card;

(b) The roe is the property of the angler until the roe is given to the crewmember. The crewmember shall notify the charter boat's passengers of this fact;

(c) The crewmember sells the roe to a licensed wholesale fish buyer; and

(d) The crewmember is employed on a salmon charter boat designated on a valid license at the time of the sale. [2017 3rd sp.s. c 8 § 34; 1996 c 267 § 31; 1993 c 340 § 22; 1989 c 316 § 18; 1983 1st ex.s. c 46 § 137; 1981 c 227 § 2. Formerly RCW 75.28.690.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Intent—Effective date—1996 c 267: See notes following RCW 77.12.177.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

77.65.360 Repealed. (Effective January 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

77.65.370 Food fish guide license—Game fish guide license. (Effective January 1, 2018.) (1) A person shall not offer or perform the services of a food fish guide without a food fish guide license in the taking of food fish for personal use, except that a charter boat license is required to operate a vessel from which a person may for a fee fish for food fish in state waters listed in RCW 77.65.150(4)(b).

(2) A person shall not offer or perform the services of a game fish guide without a game fish guide license in the taking of game fish for personal use.

(3) Only an individual at least sixteen years of age may hold a food fish guide or game fish guide license. No individual may hold more than one food fish guide or game fish guide license.

(4) An application for a food fish guide or game fish guide license must include the information required in RCW 77.65.560.

(5) A food fish guide license purchased by a person, firm, or business on behalf of an employee is subject to RCW 77.65.600.

(6) A food fish guide, a game fish guide, or a combination guide may sell recreational one-day temporary combination fishing licenses as described in RCW 77.32.470. [2017 3rd sp.s. c 8 § 35. Prior: 2015 c 103 § 2; 2015 c 97 § 4; 2013 c 314 § 3; 2009 c 333 § 8; 1998 c 190 § 98; 1993 c 340 § 26; 1991 c 362 § 2. Formerly RCW 75.28.710.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

77.65.390 Ocean pink shrimp—Delivery license—Fees. (Effective January 1, 2018.) An ocean pink shrimp delivery license is required for a commercial fishing vessel to deliver ocean pink shrimp taken for commercial purposes in offshore waters and delivered to a port in the state. As used in this section, "deliver" and "delivery" mean arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals from state or offshore waters. The annual license fee is three hundred dollars for residents and three hundred seventy-five dollars for nonresidents. The application fee is one hundred five dollars. Ocean pink shrimp delivery licenses are transferable. [2017 3rd sp.s. c 8 § 36; 2011 c 339 § 27; 2005 c 20 § 5; 2000 c 107 § 51; 1993 c 376 § 4. Formerly RCW 75.28.730.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Findings—Effective date—1993 c 376: See notes following RCW 77.65.380.

77.65.440 Alternate operator—Geoduck diver—Food fish guide—Fees. (Effective January 1, 2018.) The director shall issue the personal licenses listed in this section

according to the requirements of this title. The licenses and their annual fees are:

Personal License	Annual Fee (RCW 77.95.090 Surcharge)		Applica- tion Fee	Governing Section
	Resident	Nonresident		
(1) Alternate Operator	\$185	\$260	\$ 70	RCW 77.65.130
(2) Geoduck Diver	\$355	\$410	\$ 70	RCW 77.65.410
(3) Food Fish Guide	\$280 (plus \$20)	\$355 (plus \$100)	\$ 70	RCW 77.65.370

[2017 3rd sp.s. c 8 § 37; 2011 c 339 § 28; 2009 c 333 § 9; 2000 c 107 § 55; 1993 sp.s. c 17 § 42. Formerly RCW 75.28.780.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Additional notes found at www.leg.wa.gov

77.65.480 Taxidermist, fur dealer, game fish guide, and game farm—Licenses—Fees—Game fish stocking permit—Fees—Fishing or field trial permit—Fees. (Effective January 1, 2018.) (1) A taxidermy license allows the holder to practice taxidermy for commercial purposes, as that term is defined in RCW 77.15.110. The fee for this license is one hundred eighty dollars. The application fee is seventy dollars.

(2) A fur dealer's license allows the holder to purchase, receive, or resell raw furs for commercial purposes, as that term is defined in RCW 77.15.110. The fee for this license is one hundred eighty dollars. The application fee is seventy dollars.

(3)(a) A game fish guide license allows the holder to offer or perform the services of a game fish guide in the taking of game fish. The fee for this license is four hundred ten dollars for a resident and four hundred eighty-five dollars for a nonresident. The application fee is seventy dollars. An application for a game fish guide license must include the information required in RCW 77.65.560.

(b) A game fish guide license purchased by a person, firm, or business on behalf of an employee is subject to RCW 77.65.600.

(4) A game farm license allows the holder to operate a game farm to acquire, breed, grow, keep, and sell wildlife under conditions prescribed by the rules adopted pursuant to this title. The fee for this license is seventy-two dollars for the first year and forty-eight dollars for each following year. The application fee is seventy dollars.

(5) A game fish stocking permit allows the holder to release game fish into the waters of the state as prescribed by rule of the commission. The fee for this permit is twenty-four dollars. The application fee is seventy dollars.

(6) A fishing or field trial permit allows the holder to promote, conduct, hold, or sponsor a fishing or field trial contest in accordance with rules of the commission. The fee for a fishing contest permit is twenty-four dollars. The fee for a field trial contest permit is twenty-four dollars. The application fee is seventy dollars. [2017 3rd sp.s. c 8 § 38; 2015 c

103 § 3; 2013 c 314 § 2; 2011 c 339 § 30; 2009 c 333 § 11; 1991 sp.s. c 7 § 4; 1987 c 506 § 83; 1985 c 464 § 5; 1983 c 284 § 3; 1981 c 310 § 25; 1980 c 78 § 115; 1975 1st ex.s. c 15 § 30. Formerly RCW 77.32.211.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

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

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Additional notes found at www.leg.wa.gov

77.65.490 Activities requiring license/permit. (Effective January 1, 2018.) (1) A license issued by the director is required to:

- Practice taxidermy for commercial purposes;
- Deal in raw furs for commercial purposes;
- Act as a fishing guide; or
- Operate a game farm.

(2) A permit issued by the director is required to:

- Conduct, hold, or sponsor hunting or fishing contests or competitive field trials using live wildlife;
- Collect wild animals, wild birds, game fish, food fish, shellfish, or protected wildlife for research or display;
- Stock game fish; or
- Conduct commercial activities on department-owned or controlled lands.

(3) Aquaculture as defined in RCW 15.85.020 is exempt from the requirements of this section, except when being stocked in public waters under contract with the department. [2017 3rd sp.s. c 8 § 39; 2001 c 253 § 56.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

77.65.500 Reports required from persons with licenses or permits under RCW 77.65.480. (Effective January 1, 2018.) Licensed taxidermists, fur dealers, fishing guides, game farmers, and persons stocking game fish or conducting a hunting, fishing, or field trial contest shall make reports as required by rules of the director. [2017 3rd sp.s. c 8 § 40; 2015 c 97 § 9; 1987 c 506 § 84; 1983 c 284 § 4; 1981 c 310 § 26; 1980 c 78 § 116; 1955 c 36 § 77.32.220. Prior: 1947 c 275 § 111; Rem. Supp. 1947 § 5992-120. Formerly RCW 77.32.220.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

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

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.65.510 Limited fish seller endorsement—Food safety requirements—Fees—Other provisions. (Effective January 1, 2018.) (1) The limited fish seller endorsement permits a license holder or alternate operator to clean, dress,

and sell his or her commercially harvested catch directly to consumers at retail. The limited [fish] seller endorsement may be issued as an optional addition to all holders of a commercial fishing license issued by the department and may be purchased at the time of the underlying license sale or any time thereafter.

(2) The holder of a limited fish seller endorsement selling their own catch directly to consumers is exempt from the permitting requirements of chapter 246-215 WAC. To ensure food safety for consumers, the holder of a limited fish seller endorsement must follow these requirements: (a) Only sell fresh, whole fish or fresh fish that has been cleaned and dressed; (b) use ice from a commercial source to hold the fish; and (c) provide the buyer with a receipt stating the date of purchase, Washington fish-receiving ticket number documenting the original delivery, name, address, and phone number of the holder of the limited fish seller endorsement from whom the fish or shellfish was purchased, and the species and weight or number of fish or shellfish sold. Failure to satisfy these food safety requirements is punishable as an infraction under RCW 77.15.160. A licensed commercial fisher holding a limited fish seller endorsement may allow a designated alternate to sell under the authority of that endorsement.

(3) An individual need only add one limited fish seller endorsement to his or her license portfolio. If a limited fish seller endorsement is selected by an individual holding more than one commercial fishing license issued by the department, an endorsement is considered to be added to all commercial fishing licenses held by that individual, and is the only endorsement required for the individual to sell at retail any species permitted by any of the underlying endorsed licenses.

(4) The fee for a resident limited fish seller endorsement is seventy dollars. The fee for a nonresident limited fish seller endorsement is one hundred forty-five dollars. The application fee for both a resident and nonresident endorsement is one hundred five dollars.

(5) The holder of a limited fish seller endorsement is responsible for documenting the commercial harvest and sales according to the rules of the department.

(6) The limited fish seller endorsement is to be held by a natural person and is not transferable or assignable. If the endorsed license is transferred, the limited fish seller endorsement immediately becomes void, and the transferor is not eligible for a full or prorated reimbursement of the annual fee paid for the limited fish seller endorsement. Upon becoming void, the holder of a limited fish seller endorsement must surrender the physical endorsement to the department.

(7) The holder of a qualifying commercial fishing license or an alternate operator designated on such a license, must either possess a limited fish seller endorsement or a wholesale fish buyer endorsement provided for in RCW 77.65.340 in order to lawfully sell their catch or harvest in the state to anyone other than a licensed wholesale fish buyer. [2017 3rd sp.s. c 8 § 41; 2011 c 339 § 31; 2009 c 195 § 1; 2003 c 387 § 2; 2002 c 301 § 2.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding—2002 c 301: "The legislature finds that commercial fishing is vitally important not just to the economy of Washington, but also to the cultural heritage of the maritime communities in the state. Fisher men and women have a long and proud history in the Pacific Northwest. State and local governments should seek out ways to enable and encourage these professionals to share the rewards of their craft with the nonfishing citizens of and visitors to the state of Washington by encouraging the exploration and development of new niche markets." [2002 c 301 § 1.]

Additional notes found at www.leg.wa.gov

77.65.515 Repealed. (Effective January 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

77.65.520 Repealed. (Effective January 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

77.65.580 Vessel registration number decal and identifying decal for food fish guides, game fish guides, and charter boat operators. (Effective January 1, 2018.) (1) The department must issue a department vessel registration number decal and an identifying decal to all food fish guides, game fish guides, and charter boat operators licensed under RCW 77.65.010.

(2) Any person who acts or offers to act as a food fish guide, game fish guide, or charter boat operator must display both decals on vessels in a location easily visible to customers and adjacent vessels. [2017 3rd sp.s. c 8 § 43; 2015 c 97 § 5.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

77.65.590 Fish guide combination license—Rule making—Fee. (Effective January 1, 2018.) (1) A fish guide combination license allows the holder to offer or perform the services of a food fish guide and game fish guide.

(2) The commission must adopt rules to create and sell a fish guide combination license. The cost of the fish guide combination license or licenses must be below a fee equal to the total cost of the individual licenses contained within the combination. [2017 3rd sp.s. c 8 § 44; 2015 c 97 § 7.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

77.65.610 Crewmember license—Requirements—Fee—Exemptions. (Effective January 1, 2018.) (1)(a) An individual age sixteen and older who works on board any vessel while operating in a commercial fishery regulated by the state must obtain a crewmember license from the department. However, an individual on the vessel designated as the primary or alternate operator on the commercial fishing license and an individual on the vessel licensed and working as a geoduck diver or geoduck tender do not also need a crewmember license. Crewmembers working for licensed charters or guides are not required to have a crewmember license.

(b) A crewmember license is required for each individual who participates in the operation of the vessel or the harvest. For the purposes of this section, the term "harvest" includes participation in tending, deploying, retrieving, or baiting fishing gear, harvesting, or placing fish or shellfish in holds.

(c) An albacore tuna crewmember license satisfies the requirements specified in (a) and (b) of this subsection on vessels fishing for albacore tuna or baitfish lampara.

(2) A crewmember license must be purchased in the name of the individual working as the crewmember. The license holder may use the license aboard any commercial fishing vessel, except an albacore tuna crewmember license is only valid for participating in the albacore tuna fishery or baitfish lampara fishery. A crewmember license purchased by a crewmember may not be transferred to another individual.

(3) Up to two crewmember licenses may be purchased and held by a commercial fishing license holder for use by any individual working on the vessel named in the commercial fishing license. Each crewmember license held by a commercial fishing license holder covers one crewmember per trip, but the same crewmember license may be used to authorize a different individual to act as a crewmember on a subsequent trip.

(4) The fee for an annual crewmember license is thirty-five dollars for residents and one hundred ten dollars for non-residents. The fee for an annual albacore tuna crewmember license is thirty-five dollars for residents and nonresidents. Additional application fees and surcharges do not apply except that if the license is purchased through the automated licensing system the fees authorized in RCW 77.32.050 apply.

(5) The licenses must be available through the automated licensing system and transaction fees and dealer fees apply, except as provided in subsection (4) of this section. The annual crewmember license is valid for a calendar year.

(6) Family members of the commercial license holder or alternate operators are exempt from the requirements of this section. For purposes of this section, family members include children, grandchildren, spouse, parents, or siblings of the commercial license holder. [2017 3rd sp.s. c 8 § 15.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

77.65.900 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 77.70 RCW LICENSE LIMITATION PROGRAMS

Sections

77.70.150	Sea urchin dive fishery license—Limitation on issuance—Transfer of license—Issuance of new licenses. (<i>Effective January 1, 2018.</i>)
77.70.190	Sea cucumber dive fishery license—Limitation on issuance—Transfer of license—Fee—Issuance of new licenses. (<i>Effective January 1, 2018.</i>)
77.70.220	Geoduck fishery license—Fees—Conditions and limitations—OSHA regulations—Violations—Vessel identification number/fee. (<i>Effective January 1, 2018.</i>)
77.70.280	Crab fishery—License required—Dungeness crab-coastal fishery license—Coastal crab and replacement vessel defined—Federal fleet reduction program. (<i>Effective January 1, 2018.</i>)
77.70.290	Crab taken in offshore waters—Criteria for landing in Washington state—Limitations. (<i>Effective January 1, 2018.</i>)
77.70.300	Crab taken in offshore waters—Dungeness crab offshore delivery license—Fee. (<i>Effective January 1, 2018.</i>)
77.70.430	Puget Sound crab pot buoy tag program—Fee—Coastal crab pot buoy tag program—Fee—Review. (<i>Effective January 1, 2018.</i>)

77.70.490 Pacific sardine purse seine fishery license—Fees—Temporary annual fishery permit—Fees—Adoption of rules regarding bycatch. (*Effective January 1, 2018.*)

77.70.150 Sea urchin dive fishery license—Limitation on issuance—Transfer of license—Issuance of new licenses. (*Effective January 1, 2018.*) (1) A sea urchin dive fishery license is required to take sea urchins for commercial purposes. A sea urchin dive fishery license authorizes the use of only one diver in the water at any time during sea urchin harvest operations. If the same vessel has been designated on two sea urchin dive fishery licenses, two divers may be in the water. A natural person may not hold more than two sea urchin dive fishery licenses.

(2) Except as provided in subsection (5) of this section, the director shall issue no new sea urchin dive fishery licenses. For licenses issued for the year 2000 and thereafter, the director shall renew existing licenses only to a natural person who held the license at the end of the previous year. If a sea urchin dive fishery license is not held by a natural person as of December 31, 1999, it is not renewable. However, if the license is not held because of revocation or suspension of licensing privileges, the director shall renew the license in the name of a natural person at the end of the revocation or suspension if the license holder applies for renewal of the license before the end of the year in which the revocation or suspension ends.

(3) Where a licensee failed to obtain the license during the previous year because of a license suspension or revocation by the director or the court, the licensee may qualify for a license by establishing that the person held such a license during the last year in which the person was eligible.

(4) Sea urchin dive fishery licenses are transferable subject to the fees and restrictions in RCW 77.65.020(2).

(5) If fewer than twenty natural persons are eligible for sea urchin dive fishery licenses, the director may accept applications for new licenses. The additional licenses may not cause more than twenty natural persons to be eligible for a sea urchin dive fishery license. New licenses issued under this section shall be distributed according to rules of the department that recover the value of such licensed privilege. [2017 3rd sp.s. c 8 § 45; 2010 c 193 § 14; 2005 c 110 § 1; 2001 c 253 § 58; 1999 c 126 § 1; 1998 c 190 § 104; 1993 c 340 § 41; 1990 c 62 § 2; 1989 c 37 § 2. Formerly RCW 75.30.210.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

Legislative finding—1990 c 62; 1989 c 37: "The legislature finds that a significant commercial sea urchin fishery is developing within state waters. The potential for depletion of the sea urchin stocks in these waters is increasing, particularly as the sea urchin fishery becomes an attractive alternative to fishermen facing increasing restrictions on other types of commercial fishery activities.

The legislature finds that the number of vessels engaged in commercial sea urchin fishing has steadily increased. This factor, combined with advances in marketing techniques, has resulted in strong pressures on the supply of sea urchins. The legislature desires to maintain the livelihood of those vessel owners who have historically and continuously participated in the sea urchin fishery. The legislature desires that the director have the authority to consider extenuating circumstances concerning failure to meet landing requirements for both initial endorsement issuance and endorsement renewal.

The legislature finds that increased regulation of commercial sea urchin fishing is necessary to preserve and efficiently manage the commercial sea urchin fishery in the waters of the state. The legislature is aware that the continuing license provisions of the administrative procedure act, RCW 34.05.422(3) provide procedural safeguards, but finds that the pressure on the sea urchin resource endangers both the resource and the economic well-being of the sea urchin fishery, and desires, therefore, to exempt sea urchin endorsements from the continuing license provision." [1990 c 62 § 1; 1989 c 37 § 1.]

77.70.190 Sea cucumber dive fishery license—Limitation on issuance—Transfer of license—Fee—Issuance of new licenses. (Effective January 1, 2018.) (1) A sea cucumber dive fishery license is required to take sea cucumbers for commercial purposes. A sea cucumber dive fishery license authorizes the use of only one diver in the water at any time during sea cucumber harvest operations. If the same vessel has been designated on two sea cucumber dive fishery licenses, two divers may be in the water. A natural person may not hold more than two sea cucumber dive fishery licenses.

(2) Except as provided in subsection (5) of this section, the director shall issue no new sea cucumber dive fishery licenses. For licenses issued for the year 2000 and thereafter, the director shall renew existing licenses only to a natural person who held the license at the end of the previous year. If a sea cucumber dive fishery license is not held by a natural person as of December 31, 1999, it is not renewable. However, if the license is not held because of revocation or suspension of licensing privileges, the director shall renew the license in the name of a natural person at the end of the revocation or suspension if the license holder applies for renewal of the license before the end of the year in which the revocation or suspension ends.

(3) Where a licensee failed to obtain the license during either of the previous two years because of a license suspension by the director or the court, the licensee may qualify for a license by establishing that the person held such a license during the last year in which the person was eligible.

(4) Sea cucumber dive fishery licenses are transferable subject to the fees and restrictions in RCW 77.65.020(2).

(5) If fewer than twenty persons are eligible for sea cucumber dive fishery licenses, the director may accept applications for new licenses. The additional licenses may not cause more than twenty natural persons to be eligible for a sea cucumber dive fishery license. New licenses issued under this section shall be distributed according to rules of the department that recover the value of such licensed privilege. [2017 3rd sp.s. c 8 § 46; 2011 c 339 § 33; 2010 c 193 § 15; 2005 c 110 § 2; 2001 c 253 § 59; 1999 c 126 § 2; 1998 c 190 § 105; 1993 c 340 § 44; 1990 c 61 § 2. Formerly RCW 75.30.250.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

Legislative findings—1990 c 61: "The legislature finds that a significant commercial sea cucumber fishery is developing within state waters. The potential for depletion of the sea cucumber stocks in these waters is increasing, particularly as the sea cucumber fishery becomes an attractive alternative to commercial fishers who face increasing restrictions on other types of commercial fishery activities.

The legislature finds that the number of commercial fishers engaged in commercially harvesting sea cucumbers has rapidly increased. This factor, combined with increases in market demand, has resulted in strong pressures on the supply of sea cucumbers.

The legislature finds that increased regulation of commercial sea cucumber fishing is necessary to preserve and efficiently manage the commercial sea cucumber fishery in the waters of the state.

The legislature finds that it is desirable in the long term to reduce the number of vessels participating in the commercial sea cucumber fishery to fifty vessels to preserve the sea cucumber resource, efficiently manage the commercial sea cucumber fishery in the waters of the state, and reduce conflict with upland owners.

The legislature finds that it is important to preserve the livelihood of those who have historically participated in the commercial sea cucumber fishery that began about 1970 and that the 1988 and 1989 seasons should be used to document historical participation." [1990 c 61 § 1.]

77.70.220 Geoduck fishery license—Fees—Conditions and limitations—OSHA regulations—Violations—Vessel identification number/fee. (Effective January 1, 2018.) (1) A person shall not harvest geoduck clams commercially without a geoduck fishery license. This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020. The geoduck fishery license fee and the application fee are specified in RCW 77.65.220.

(2) Only a person who has entered into a geoduck harvesting agreement with the department of natural resources under RCW 79.135.210 may hold a geoduck fishery license.

(3) A geoduck fishery license authorizes no taking of geoducks outside the boundaries of the public lands designated in the underlying harvesting agreement, or beyond the harvest ceiling set in the underlying harvesting agreement.

(4) A geoduck fishery license expires when the underlying geoduck harvesting agreement terminates.

(5) The director shall determine the number of geoduck fishery licenses that may be issued for each geoduck harvesting agreement, the number of units of gear whose use the license authorizes, and the type of gear that may be used, subject to RCW 77.60.070. In making those determinations, the director shall seek to conserve the geoduck resource and prevent damage to its habitat.

(6) The holder of a geoduck fishery license and the holder's agents and representatives shall comply with all applicable commercial diving safety regulations adopted by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists on May 8, 1979, 84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq. A violation of those regulations is a violation of this subsection. For the purposes of this section, persons who dive for geoducks are "employees" as defined by the federal occupational safety and health act. A violation of this subsection is grounds for suspension or revocation of a geoduck fishery license following a hearing under the procedures of chapter 34.05 RCW. The director shall not suspend or revoke a geoduck fishery license if the violation has been corrected within ten days of the date the license holder receives written notice of the violation. If there is a substantial probability that a violation of the commercial diving standards could result in death or serious physical harm to a person engaged in harvesting geoduck clams, the director shall suspend the license immediately until the violation has been corrected. If the license holder is not the operator of the harvest vessel and has contracted with another per-

son for the harvesting of geoducks, the director shall not suspend or revoke the license if the license holder terminates its business relationship with that person until compliance with this subsection is secured.

(7) A person using a vessel in the geoduck fishery is required to apply for and obtain a vessel identification number from the department. The application fee for the vessel identification number is one hundred five dollars. [2017 3rd sp.s. c 8 § 47; 2011 c 339 § 34; 2000 c 107 § 71; 1998 c 190 § 106; 1993 c 340 § 46. Formerly RCW 75.30.280.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Finding, intent—Captions not law—Effective date—Severability—1993 c 340: See notes following RCW 77.65.010.

77.70.280 Crab fishery—License required—Dungeness crab-coastal fishery license—Coastal crab and replacement vessel defined—Federal fleet reduction program. (Effective January 1, 2018.) (1) A person shall not commercially fish for coastal crab in Washington state waters without a Dungeness crab—coastal fishery license. Gear used must consist of one buoy attached to each crab pot. Each crab pot must be fished individually.

(2) A Dungeness crab—coastal fishery license is transferable. Except as provided in subsections (3) and (7) of this section, such a license shall only be issued to a person who proved active historical participation in the coastal crab fishery by having designated, after December 31, 1993, a vessel or a replacement vessel on the qualifying license that singly or in combination meets the following criteria:

(a) Made a minimum of eight coastal crab landings totaling a minimum of five thousand pounds per season in at least two of the four qualifying seasons identified in subsection (4) of this section, as documented by valid Washington state shellfish receiving tickets; and showed historical and continuous participation in the coastal crab fishery by having held one of the following licenses or their equivalents each calendar year beginning 1990 through 1993, and was designated on the qualifying license of the person who held one of the following licenses in 1994:

(i) Crab pot—Non-Puget Sound license, issued under *RCW 77.65.220(1)(b);

(ii) Nonsalmon delivery license, issued under RCW 77.65.210;

(iii) Salmon troll license, issued under RCW 77.65.160;

(iv) Salmon delivery license, issued under RCW 77.65.170;

(v) Food fish trawl license, issued under RCW 77.65.200; or

(vi) Shrimp trawl license, issued under RCW 77.65.220;

or

(b) Made a minimum of four Washington landings of coastal crab totaling two thousand pounds during the period from December 1, 1991, to March 20, 1992, and made a minimum of eight crab landings totaling a minimum of five thousand pounds of coastal crab during each of the following periods: December 1, 1991, to September 15, 1992; December 1, 1992, to September 15, 1993; and December 1, 1993, to September 15, 1994. For landings made after December 31,

1993, the vessel shall have been designated on the qualifying license of the person making the landings; or

(c) Made any number of coastal crab landings totaling a minimum of twenty thousand pounds per season in at least two of the four qualifying seasons identified in subsection (4) of this section, as documented by valid Washington state shellfish receiving tickets, showed historical and continuous participation in the coastal crab fishery by having held one of the qualifying licenses each calendar year beginning 1990 through 1993, and the vessel was designated on the qualifying license of the person who held that license in 1994.

(3) A Dungeness crab-coastal fishery license shall be issued to a person who had a new vessel under construction between December 1, 1988, and September 15, 1992, if the vessel made coastal crab landings totaling a minimum of five thousand pounds by September 15, 1993, and the new vessel was designated on the qualifying license of the person who held that license in 1994. All landings shall be documented by valid Washington state shellfish receiving tickets. License applications under this subsection may be subject to review by the advisory review board in accordance with **RCW 77.70.030. For purposes of this subsection, "under construction" means either:

(a)(i) A contract for any part of the work was signed before September 15, 1992; and

(ii) The contract for the vessel under construction was not transferred or otherwise alienated from the contract holder between the date of the contract and the issuance of the Dungeness crab-coastal fishery license; and

(iii) Construction had not been completed before December 1, 1988; or

(b)(i) The keel was laid before September 15, 1992; and

(ii) Vessel ownership was not transferred or otherwise alienated from the owner between the time the keel was laid and the issuance of the Dungeness crab-coastal fishery license; and

(iii) Construction had not been completed before December 1, 1988.

(4) The four qualifying seasons for purposes of this section are:

(a) December 1, 1988, through September 15, 1989;

(b) December 1, 1989, through September 15, 1990;

(c) December 1, 1990, through September 15, 1991; and

(d) December 1, 1991, through September 15, 1992.

(5) For purposes of this section and RCW 77.70.340, "coastal crab" means Dungeness crab (cancer magister) taken in all Washington territorial and offshore waters south of the United States-Canada boundary and west of the Bonilla-Tatoosh line (a line from the western end of Cape Flattery to Tatoosh Island lighthouse, then to the buoy adjacent to Duntz Rock, then in a straight line to Bonilla Point of Vancouver island), Grays Harbor, Willapa Bay, and the Columbia river.

(6) For purposes of this section, "replacement vessel" means a vessel used in the coastal crab fishery in 1994, and that replaces a vessel used in the coastal crab fishery during any period from 1988 through 1993, and which vessel's licensing and catch history, together with the licensing and catch history of the vessel it replaces, qualifies a single applicant for a Dungeness crab—coastal license. A Dungeness crab—coastal license may only be issued to a person who

designated a vessel in the 1994 coastal crab fishery and who designated the same vessel in 1995.

(7) A Dungeness crab—coastal fishery license may not be issued to a person who participates in the federal fleet reduction program created in RCW 77.70.460 within ten years of that person's participation in the federal program, if reciprocal restrictions are imposed by the states of Oregon and California on persons participating in the federal fleet reduction program. [2017 3rd sp.s. c 8 § 48; 2003 c 174 § 5; 2000 c 107 § 76; 1998 c 190 § 108; 1995 c 252 § 1; 1994 c 260 § 2. Formerly RCW 75.30.350.]

Reviser's note: *(1) RCW 77.65.220 was amended by 2017 3rd sp.s. c 8 § 27, removing subsection (1)(b), effective January 1, 2018.

***(2) RCW 77.70.030 was repealed by 2001 c 291 § 501, effective July 1, 2001.

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Finding—1994 c 260: "The legislature finds that the commercial crab fishery in coastal and offshore waters is overcapitalized. The legislature further finds that this overcapitalization has led to the economic destabilization of the coastal crab industry, and can cause excessive harvesting pressures on the coastal crab resources of Washington state. In order to provide for the economic well-being of the Washington crab industry and to protect the livelihood of Washington crab fishers who have historically and continuously participated in the coastal crab fishery, the legislature finds that it is in the best interests of the economic well-being of the coastal crab industry to reduce the number of fishers taking crab in coastal waters, to reduce the number of vessels landing crab taken in offshore waters, to limit the number of future licenses, and to limit fleet capacity by limiting vessel size." [1994 c 260 § 1.]

Additional notes found at www.leg.wa.gov

77.70.290 Crab taken in offshore waters—Criteria for landing in Washington state—Limitations. (Effective January 1, 2018.) (1) The director shall allow the landing into Washington state of crab taken in offshore waters only if:

(a) The crab are legally caught and landed by fishers with a valid Washington state Dungeness crab-coastal fishery license; or

(b)(i) The director determines that the landing of offshore Dungeness crab by fishers without a Washington state Dungeness crab-coastal fishery license is in the best interest of the coastal crab processing industry; (ii) the director has been requested to allow such landings by at least three Dungeness crab processors; (iii) the landings are permitted only between the dates of December 1st to February 15th inclusively; (iv) only crab fishers commercially licensed to fish by Oregon or California are permitted to land, if the crab was taken with gear that consisted of one buoy attached to each crab pot, and each crab pot was fished individually; (v) the fisher landing the crab has obtained a valid delivery license; and (vi) the decision is made on a case-by-case basis for the sole reason of improving the economic stability of the commercial crab fishery.

(2) Nothing in this section allows the commercial fishing of Dungeness crab in waters within three miles of Washington state by fishers who do not possess a valid Dungeness crab-coastal fishery license. Landings of offshore Dungeness crab by fishers without a valid Dungeness crab-coastal fishery license do not qualify the fisher for such licenses. [2017 3rd sp.s. c 8 § 49; 1997 c 418 § 2; 1994 c 260 § 3. Formerly RCW 75.30.360.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Finding—Severability—1994 c 260: See notes following RCW 77.70.280.

Additional notes found at www.leg.wa.gov

77.70.300 Crab taken in offshore waters—Dungeness crab offshore delivery license—Fee. (Effective January 1, 2018.) A person commercially fishing for Dungeness crab in offshore waters outside of Washington state jurisdiction shall obtain a Dungeness crab offshore delivery license from the director if the person does not possess a valid Dungeness crab-coastal fishery license and the person wishes to land Dungeness crab into a place or a port in the state. The annual fee for a Dungeness crab offshore delivery license is two hundred fifty dollars. The director may specify restrictions on landings of offshore Dungeness crab in Washington state as authorized in RCW 77.70.290.

Fees from the offshore Dungeness crab delivery license shall be placed in the coastal crab account created in RCW 77.70.320. [2017 3rd sp.s. c 8 § 50; 2000 c 107 § 77; 1994 c 260 § 4. Formerly RCW 75.30.370.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Finding—Severability—1994 c 260: See notes following RCW 77.70.280.

Additional notes found at www.leg.wa.gov

77.70.430 Puget Sound crab pot buoy tag program—Fee—Coastal crab pot buoy tag program—Fee—Review. (Effective January 1, 2018.) (1) In order to administer a Puget Sound crab pot buoy tag program, the department may charge a fee to holders of a Dungeness crab—Puget Sound fishery license to reimburse the department for the production of Puget Sound crab pot buoy tags and the administration of a Puget Sound crab pot buoy tag program.

(2) In order to administer a Washington coastal Dungeness crab pot buoy tag program, the department may charge a fee to holders of a Dungeness crab—coastal fishery license and to holders of out-of-state licenses who are issued a pot certificate by the department to reimburse the department for the production of Washington coastal crab pot buoy tags and the administration of a Washington coastal crab pot buoy tag program.

(3) The department shall annually review the costs of crab pot buoy tag production under this section with the goal of minimizing the per tag production costs. Any savings in production costs shall be passed on to the fishers required to purchase crab pot buoy tags under this section in the form of a lower tag fee. [2017 3rd sp.s. c 8 § 51; 2006 c 143 § 1; 2005 c 395 § 1; 2001 c 234 § 1.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Additional notes found at www.leg.wa.gov

77.70.490 Pacific sardine purse seine fishery license—Fees—Temporary annual fishery permit—Fees—Adoption of rules regarding bycatch. (Effective January 1, 2018.) (1) A Washington Pacific sardine purse seine fishery license:

(a) May only be issued to a person that held a coastal pilchard experimental fishery permit in 2008, except as otherwise provided in this section;

(b) Must be renewed annually to remain active; and

(c) Subject to the restrictions of subsections (6) and (7) of this section and RCW 77.65.040, is transferable.

(2) A Washington Pacific sardine purse seine fishery license may be issued to any person that held a coastal pilchard experimental fishery permit in 2005, 2006, or 2007 and is precluded from qualifying under subsection (1) of this section because the vessel designated on the permit sank prior to 2008.

(3) Beginning in 2010, after taking into consideration the status of the Pacific sardine population, the impact of removal of sardines and other forage fish to the marine ecosystem, including the effect on endangered marine species, and the market for Pacific sardines in the state, the director may issue:

(a) A Washington Pacific sardine purse seine fishery license to any person provided that the issuance would not raise the number of licenses beyond the number initially issued in 2009;

(b) A Washington Pacific sardine purse seine temporary annual fishery permit to any person if the combined number of active Washington Pacific sardine purse seine fishery licenses and annual temporary permits already issued during the year is less than twenty-five.

(4) The annual fee for a Washington Pacific sardine purse seine fishery license and the application fee are specified in RCW 77.65.200.

(5) The fee for a Washington Pacific sardine purse seine temporary annual fishery permit and the application fee are specified in RCW 77.65.200. A temporary annual fishery permit expires at the end of the calendar year in which the permit is issued.

(6) Only a person who owns or operates the vessel designated on the license or permit may hold a Washington Pacific sardine purse seine fishery license or temporary annual fishery permit.

(7) A person may not own or hold an ownership interest in more than two Washington Pacific sardine purse seine fishery licenses.

(8) The director shall adopt rules that require a person fishing under a Washington Pacific sardine purse seine fishery license or a temporary annual permit to minimize bycatch, and to the extent bycatch cannot be avoided, to minimize the mortality of such bycatch. [2017 3rd sp.s. c 8 § 52; 2011 c 339 § 36; 2009 c 331 § 3.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Effective date—2011 c 339: See note following RCW 43.84.092.

Chapter 77.105 RCW

RECREATIONAL SALMON AND MARINE FISH ENHANCEMENT PROGRAM

Sections

77.105.900 Decodified.

77.105.900 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

[2017 RCW Supp—page 914]

Chapter 77.120 RCW BALLAST WATER MANAGEMENT

Sections

77.120.010	Definitions.
77.120.070	Violation of chapter—Penalties—Rules.
77.120.110	Ballast water and biofouling management account.
77.120.130	Department's authority to enter into partnerships, contracts, or other agreements.
77.120.140	Biofouling—Agency rule-making authority.

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

(1) "Ballast tank" means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(2) "Ballast water" means any water and matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

(3) "Biofouling" means the accumulation of aquatic organisms on a vessel such as attached or associated mobile microorganisms, plants, and animals on surfaces and structures immersed in or exposed to the aquatic environment.

(4) "Empty/refill exchange" means to pump out, until the tank is empty or as close to empty as the master or operator determines is safe, the ballast water taken on in ports, estuarine, or territorial waters, and then refilling the tank with open sea waters.

(5) "Exchange" means to replace the water in a ballast tank using either flow through exchange, empty/refill exchange, or other exchange methodology recommended or required by the United States coast guard.

(6) "Flow through exchange" means to flush out ballast water by pumping in midocean water at the bottom of the tank and continuously overflowing the tank from the top until three full volumes of water have been changed to minimize the number of original organisms remaining in the tank.

(7) "Nonindigenous species" means any species or other viable biological material that enters an ecosystem beyond its natural range.

(8) "Open sea exchange" means an exchange that occurs fifty or more nautical miles offshore. If the United States coast guard requires a vessel to conduct an exchange further offshore, then that distance is the required distance for purposes of compliance with this chapter.

(9) "Recognized marine trade association" means those trade associations in Washington state that promote improved ballast water management practices by educating their members on the provisions of this chapter, participating in regional ballast water coordination through the Pacific ballast water group, assisting the department in the collection of ballast water exchange forms, and the monitoring of ballast water. This includes members of the Puget Sound marine committee for Puget Sound and the Columbia river steamship operators association for the Columbia river.

(10) "Sediments" means any matter settled out of ballast water within a vessel.

(11) "Untreated ballast water" includes exchanged or unexchanged ballast water that has not undergone treatment.

(12) "Vessel" means a ship, boat, barge, or other floating craft of three hundred gross tons or more, United States and

foreign, carrying, or capable of carrying, ballast water into the coastal waters of the state after operating outside of the coastal waters of the state, except those vessels described in RCW 77.120.020.

(13) "Voyage" means any transit by a vessel destined for any Washington port.

(14) "Waters of the state" means any surface waters, including internal waters contiguous to state shorelines within the boundaries of the state. [2017 3rd sp.s. c 17 § 307; 2007 c 350 § 8; 2000 c 108 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

77.120.070 Violation of chapter—Penalties—Rules.

(1) The department may establish by rule schedules for any penalty allowed in this chapter. The schedules may provide for the incremental assessment of a penalty based on criteria established by rule.

(2) The director or the director's designee may impose a civil penalty or warning for a violation of the requirements of this chapter on the owner or operator in charge of a vessel who fails to comply with the requirements imposed under this chapter. The penalty shall not exceed twenty-seven thousand five hundred dollars for each day of a continuing violation. In determining the amount of a civil penalty, the department shall set standards by rule that consider if the violation was intentional, negligent, or without any fault, and shall consider the quality and nature of risks created by the violation. The owner or operator subject to such a penalty may contest the determination by requesting an adjudicative proceeding within twenty days. Any determination not timely contested is final and may be reduced to a judgment enforceable in any court with jurisdiction. If the department prevails using any judicial process to collect a penalty under this section, the department shall also be awarded its costs and reasonable attorneys' fees.

(3) The department, in cooperation with the United States coast guard, may enforce the requirements of this chapter. [2017 3rd sp.s. c 17 § 304; 2007 c 350 § 12; 2000 c 108 § 8.]

77.120.110 Ballast water and biofouling management account. (1) The ballast water and biofouling management account is created in the state treasury. All receipts from legislative appropriations, gifts, grants, donations, penalties, and fees received under this chapter must be deposited into the account.

(2) Expenditures from the account may be used only to carry out the purposes of this chapter. However, penalties may not be used for the salaries of permanent department employees.

(3) Moneys in the account may be spent only after appropriation. [2017 3rd sp.s. c 17 § 106; 2009 c 333 § 27; 2007 c 350 § 14.]

77.120.130 Department's authority to enter into partnerships, contracts, or other agreements. The department may enter into partnerships, contracts, or any other form of agreements with other entities to carry out the intent of this chapter. The department shall ensure that any such entity is registered and licensed to do business in Washing-

ton. All agreements must be consistent with existing state laws, agency rules, state water quality standards, and collective bargaining agreements. [2017 3rd sp.s. c 17 § 204.]

77.120.140 Biofouling—Agency rule-making authority. (1) The owner or operator of a vessel covered by this chapter is required to ensure that the vessel under their ownership or control does not release biofouling into waters of the state except as authorized by this section.

(2) The department may adopt by rule standards and requirements governing the release of biofouling on vessels arriving or moored at a Washington port.

(3) The department shall adopt rules under subsection (2) of this section for adoption in consultation with a collaborative forum with advisors from regulated industries and the potentially affected parties including shipping interests, ports, shellfish growers, fisheries, environmental interests, interested citizens who have knowledge of the issues, and appropriate governmental representatives including the United States coast guard and the United States environmental protection agency. The rules must:

(a) Ensure that biofouling management poses minimal risk of release of nonindigenous species;

(b) Be based on the best available technology that is economically achievable; and

(c) Where practical and appropriate, be compatible with standards and requirements set by the United States coast guard, the United States environmental protection agency, or the international maritime organization. [2017 3rd sp.s. c 17 § 301.]

Chapter 77.125 RCW

MARINE FINFISH AQUACULTURE PROGRAMS

Sections

77.125.040 Report to the legislature.

77.125.040 Report to the legislature. Rules to implement this chapter shall be adopted no sooner than thirty days following the end of the 2002 regular legislative session. [2017 3rd sp.s. c 25 § 36; 2001 c 86 § 4.]

Chapter 77.135 RCW

INVASIVE SPECIES

Sections

77.135.010 Definitions.

77.135.110 Aquatic conveyance—Clean and drain requirements—Enforcement—Adoption of rules.

77.135.120 Mandatory check stations.

77.135.160 Department-authorized representatives—Adoption of rules—Fee schedule.

77.135.200 Aquatic invasive species management account.

77.135.210 Aquatic invasive species prevention permit—Operators of vessels and aquatic conveyances.

77.135.220 Aquatic invasive species prevention permits—Commercial transporters and aquatic conveyances.

77.135.230 Aquatic invasive species prevention permit—Fee—Exempt vessels.

77.135.240 Aquatic invasive species local management grant program.

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

(1) "Aquatic conveyance" means transportable personal property having the potential to move an aquatic invasive species from one aquatic environment to another. Aquatic conveyances include but are not limited to vessels and associated equipment, float planes, construction equipment, fish tanker trucks, hydroelectric and irrigation equipment, personal fishing and hunting gear, and materials used for aquatic habitat mitigation or restoration.

(2) "Aquatic invasive species" means an invasive species of the animal kingdom with a life cycle that is at least partly dependent upon fresh, brackish, or marine waters. Examples include nutria, waterfowl, amphibians, fish, and shellfish.

(3) "Aquatic plant" means a native or nonnative emergent, submersed, partially submersed, free-floating, or floating-leaved plant species that is dependent upon fresh, brackish, or marine water ecosystems and includes all stages of development and parts.

(4) "Certificate of inspection" means a department-approved document that declares, to the extent technically or measurably possible, that an aquatic conveyance does not carry or contain an invasive species. Certification may be in the form of a decal, label, rubber stamp imprint, tag, permit, locking seal, or written statement.

(5) "Clean and drain" means to remove the following from areas on or within an aquatic conveyance to the extent technically and measurably possible:

(a) Visible native and nonnative aquatic animals, plants, or other organisms; and

(b) Raw water.

(6) "Commercial vessel" means a management category of aquatic conveyances:

(a) Required to have valid marine documentation as a vessel of the United States or similar required documentation for a country other than the United States; and

(b) Not subject to vessel registration requirements under chapter 88.02 RCW or ballast water requirements under chapter 77.120 RCW.

(7) "Cryptogenic species" means a species that scientists cannot commonly agree are native or nonnative or are part of the animal kingdom.

(8) "Decontaminate" means, to the extent technically and measurably possible, the application of a treatment to kill, destroy, remove, or otherwise eliminate all known or suspected invasive species carried on or contained within an aquatic conveyance or structural property by use of physical, chemical, or other methods. Decontamination treatments may include drying an aquatic conveyance for a time sufficient to kill aquatic invasive species through desiccation.

(9) "Detect" means the verification of invasive species' presence as defined by the department.

(10) "Eradicate" means, to the extent technically and measurably possible, to kill, destroy, remove, or otherwise eliminate an invasive species from a water body or property using physical, chemical, or other methods.

(11) "Infested site management" means management actions as provided under RCW 77.135.070 that may include long-term actions to contain, control, or eradicate a prohibited species.

(12) "Introduce" means to intentionally or unintentionally release, place, or allow the escape, dissemination, or

establishment of an invasive species on or into a water body or property as a result of human activity or a failure to act.

(13) "Invasive species" means nonnative species of the animal kingdom that are not naturally occurring in Washington for purposes of breeding, resting, or foraging, and that pose an invasive risk of harming or threatening the state's environmental, economic, or human resources. Invasive species include all stages of species development and body parts. They may also include genetically modified or cryptogenic species.

(14) "Invasive species council" means the Washington invasive species council established in RCW 79A.25.310 or a similar collaborative state agency forum. The term includes the council and all of its officers, employees, agents, and contractors.

(15) "Mandatory check station" means a location where a person transporting an aquatic conveyance must stop and allow the conveyance to be inspected for aquatic invasive species.

(16) "Possess" means to have authority over the use of an invasive species or use of an aquatic conveyance that may carry or contain an invasive species. For the purposes of this subsection, "authority over" includes the ability to intentionally or unintentionally hold, import, export, transport, purchase, sell, barter, distribute, or propagate an invasive species.

(17) "Prohibited species" means a classification category of nonnative species as provided in RCW 77.135.030.

(18) "Property" means both real and personal property.

(19) "Quarantine declaration" means a management action as provided under RCW 77.135.050 involving the prohibition or conditioning of the movement of aquatic conveyances and waters from a place or an area that is likely to contain a prohibited species.

(20) "Rapid response" means expedited management actions as provided under RCW 77.135.060 triggered when invasive species are detected, for the time-sensitive purpose of containing or eradicating the species before it spreads or becomes further established.

(21) "Raw water" means water from a water body and held on or within property. "Raw water" does not include water from precipitation that is captured in a conveyance, structure, or depression that is not otherwise intended to function as a water body, or water from a potable water supply system, unless the water contains visible aquatic organisms.

(22) "Registered vessel" means a management category of aquatic conveyances required to register as vessels under RCW 88.02.550 or similar requirements for a state other than Washington or a country other than the United States.

(23) "Regulated species" means a classification category of nonnative species as provided in RCW 77.135.030.

(24) "Seaplane" means a management category of aquatic conveyances capable of landing on or taking off from water and required to register as an aircraft under RCW 47.68.250 or similar registration in a state other than Washington or a country other than the United States.

(25) "Small vessel" means a management category of aquatic conveyances including every description of vessel on the water used or capable of being used as a means of transportation on the water, except:

(a) Inner tubes, air mattresses, sailboards, and small rafts or flotation devices or toys customarily used by swimmers;

(b) Vessels meeting registration requirements under chapter 88.02 RCW; and

(c) Seaplanes.

(26) "Water body" means an area that carries or contains a collection of water, regardless of whether the feature carrying or containing the water is natural or nonnatural. Examples include basins, bays, coves, streams, rivers, springs, lakes, wetlands, reservoirs, ponds, tanks, irrigation canals, and ditches. [2017 3rd sp.s. c 17 § 305. Prior: 2014 c 202 § 102.]

Findings—2014 c 202: "The legislature finds that:

(1) The state's fish, wildlife, and habitat are exceptionally valuable environmental resources for the state's citizens.

(2) The state's fish, wildlife, and habitat also provide exceptionally valuable economic, cultural, and recreational resources. These include hydroelectric power, agriculture, forests, water supplies, commercial and recreational fisheries, aquaculture, and public access to outdoor recreational opportunities.

(3) Invasive species pose a grave threat to these environmental and economic resources, especially to salmon recovery and state and federally listed threatened and endangered species. Because of the significant harm invasive species can cause, invasive species constitute a public nuisance.

(4) If allowed to become established, invasive species can threaten human health and cause environmental and economic disasters affecting not only our state, but other states and nations.

(5) The risk of invasive species spreading into Washington increases as travel and commerce grows in volume and efficiency.

(6) Prevention of invasive species is a cost-effective, successful, and proven management strategy. Prevention is the state's highest management priority with an emphasis on education and outreach, inspections, and rapid response.

(7) The integrated management of invasive species through pathways regulated by the department is critical to preventing the introduction and spread of a broad range of such species, including plants, diseases, and parasites.

(8) Washington's citizens must work together to protect the state from invasive species.

(9) Public and private partnerships, cooperative agreements, and compacts are important for preventing new arrivals and managing existing populations of invasive species, and coordinating these actions on local, state, national, and international levels.

(10) The department requires authority for this mission to effectively counter the unpredictable nature of invasive species' introductions and spread, enable the utilization of new advances in invasive ecology science, and implement applicable techniques and technology to address invasive species.

(11) An integrated management approach provides the best way for the state to manage invasive species and includes opportunities for creating an informed public, encouraging public involvement, and striving for local, regional, national, and international cooperation and consistency on management standards. An integrated management approach also applies sound science to minimize the chance that invasive species used for beneficial purposes will result in environmental harm.

(12) This chapter provides authority for the department to effectively address invasive species using an integrated management approach.

(13) The department of fish and wildlife currently has sufficient statutory authority to effectively address invasive species risks posed through discharge of ballast water under chapter 77.120 RCW and by private sector shellfish aquaculture operations regulated under chapter 77.115 RCW. The programs developed by the department under these chapters embody the principles of prevention as the highest priority, integrated management of pathways, public-private partnerships, clean and drain principles, and rapid response capabilities." [2014 c 202 § 101.]

77.135.110 Aquatic conveyance—Clean and drain requirements—Enforcement—Adoption of rules. (1) A person in possession of an aquatic conveyance must meet clean and drain requirements after the conveyance's use in or on a water body or property. A certificate of inspection is not needed to meet clean and drain requirements.

(2) A fish and wildlife officer or ex officio fish and wildlife officer may order a person transporting an aquatic conveyance not meeting clean and drain requirements to:

(a) Clean and drain the conveyance at the discovery site, if the department determines there are sufficient resources available; or

(b) Transport the conveyance to a reasonably close location where resources are sufficient to meet the clean and drain requirements.

(3) This section may be enforced immediately on the transportation of aquatic plants by registered vessels, small vessels, seaplanes, and commercial vessels. The department must adopt rules to implement all other aspects of clean and drain requirements, including:

(a) Other types of aquatic conveyances subject to this requirement;

(b) When transport of an aquatic conveyance is authorized if clean and drain services are not readily available at the last water body used; and

(c) Exemptions to clean and drain requirements where the department determines there is minimal risk of spreading invasive species. [2017 3rd sp.s. c 17 § 308; 2014 c 202 § 113.]

Findings—2014 c 202: See note following RCW 77.135.010.

77.135.120 Mandatory check stations. (1) The department may establish mandatory check stations to inspect aquatic conveyances for clean and drain requirements and aquatic invasive species. The check stations must be operated by at least one fish and wildlife officer, an ex officio fish and wildlife officer in coordination with the department, or department-authorized representative, and must be plainly marked by signs and operated in a safe manner.

(2) Aquatic conveyances required to stop at mandatory check stations include registered vessels, commercial vessels, and small vessels. The department may establish rules governing other types of aquatic conveyances that must stop at mandatory check stations. The rules must provide sufficient guidance so that a person transporting the aquatic conveyance readily understands that he or she is required to stop.

(3) A person who encounters a mandatory check station while transporting an aquatic conveyance must:

(a) Stop at the mandatory check station;

(b) Allow the aquatic conveyance to be inspected for clean and drain requirements and aquatic invasive species;

(c) Follow clean and drain orders if clean and drain requirements are not met pursuant to RCW 77.135.110; and

(d) Follow decontamination orders pursuant to RCW 77.135.130 if an aquatic invasive species is found.

(4) A person who complies with the department directives under this section is exempt from criminal penalties under RCW 77.15.809 and 77.15.811, civil penalties under *RCW 77.15.160(4), and civil forfeiture under RCW 77.15.070, unless the person has a prior conviction for an invasive species violation within the past five years. [2017 3rd sp.s. c 17 § 309; 2014 c 202 § 114.]

*Reviser's note: RCW 77.15.160 was amended by 2017 3rd sp.s. c 8 § 42, changing subsection (4) to subsection (5), effective January 1, 2018.

Findings—2014 c 202: See note following RCW 77.135.010.

77.135.160 Department-authorized representatives—Adoption of rules—Fee schedule. (1) The department may authorize representatives to operate its inspection and decontamination stations and mandatory check stations. Department-authorized representatives may be department volunteers, other law enforcement agencies, or independent businesses.

(2) The department must adopt rules governing the types of services that department-authorized representatives may perform under this chapter.

(3) Department-authorized representatives must have official identification, training, and administrative capacity to fulfill their responsibilities under this section.

(4) By December 1, 2018, the department must provide the legislature with recommendations for a fee schedule that department-authorized representatives may charge users whose aquatic conveyances receive inspection and decontamination services. [2017 3rd sp.s. c 17 § 306; 2014 c 202 § 118.]

Findings—2014 c 202: See note following RCW 77.135.010.

77.135.200 Aquatic invasive species management account. The aquatic invasive species management account is created in the state treasury. All receipts directed to the account from RCW 88.02.640 and 77.135.230, as well as legislative appropriations, gifts, donations, fees, and penalties received by the department for aquatic invasive species management, must be deposited into the account. Moneys in the account may be used only after appropriation. Expenditures from the account may only be used to implement aquatic invasive species-related provisions under this title. [2017 3rd sp.s. c 17 § 101.]

77.135.210 Aquatic invasive species prevention permit—Operators of vessels and aquatic conveyances. (1) The department may issue aquatic invasive species prevention permits to operators of vessels and aquatic conveyances.

(2) A person must obtain a Washington state aquatic invasive species prevention permit for each seaplane or vessel registered in another state, before placing or operating such a vessel or seaplane on any water body in the state.

(3) The valid aquatic invasive species prevention permit must be present and readily available for inspection by a fish and wildlife officer or ex officio fish and wildlife officer at the location where the vessel or seaplane is placed or operated.

(4) Aquatic invasive species prevention permits for conveyances listed in subsection (2) of this section are not transferable. [2017 3rd sp.s. c 17 § 201.]

77.135.220 Aquatic invasive species prevention permits—Commercial transporters and aquatic conveyances. (1) The department may issue aquatic invasive species prevention permits to commercial transporters of vessels and aquatic conveyances.

(2) A person must obtain a Washington state aquatic invasive species prevention permit before commercially transporting into or through the state one or more of the following conveyances that have previously been placed or operated in the waters of any state or country: (a) A small

vessel; (b) a registered vessel; (c) a seaplane; or (d) a commercial vessel.

(3) The valid aquatic invasive species prevention permit must be present and readily available for inspection upon request by a fish and wildlife officer or ex officio fish and wildlife officer at any location where the listed conveyance is associated with the transport vehicle.

(4) The aquatic invasive species prevention permit is transferable between vehicles and vehicle operators of the same business used to commercially transport aquatic conveyances but a separate permit is required for each vehicle operator commercially transporting aquatic conveyances at any given time.

(5) An aquatic invasive species prevention permit is not required to commercially transport new conveyances if the vehicle operator has documentation present and readily available proving all conveyances originated from the manufacturer or vendor and the conveyances have never been placed or operated in waters of any state or country. [2017 3rd sp.s. c 17 § 202.]

77.135.230 Aquatic invasive species prevention permit—Fee—Exempt vessels. (1) Washington state aquatic invasive species prevention permits are valid for one year beginning from the date that the permit is marked for activation unless otherwise directed by the department. The permits must be made available for purchase throughout the year through the department's automated licensing system consistent with RCW 77.32.050.

(2) The aquatic invasive species prevention permit fee for a nonresident registered vessel or seaplane as required under RCW 77.135.210 is twenty dollars.

(3) The aquatic invasive species prevention permit fee for a person commercially transporting a small vessel, registered vessel, seaplane, or commercial vessel as required under RCW 77.135.220 is twenty dollars.

(4) The department may adopt rules addressing conditions and costs of obtaining duplicate aquatic invasive species prevention permits.

(5) Permit fees collected under this section must be deposited into the aquatic invasive species management account created in RCW 77.135.200.

(6) Exemptions for aquatic invasive species prevention permits include:

(a) A military vessel or seaplane owned by the United States government; and

(b) A vessel clearly identified as being owned by any federal, tribal, state, or local government agency or other public corporations, and used primarily for governmental purposes.

(7)(a) The following nonresident aquatic conveyances are exempt from aquatic invasive species prevention permit requirements under this section while placed or operated on shared boundary waters of the state:

(i) Vessels having valid state of Idaho or Oregon registration or numbering; and

(ii) Seaplanes or commercial vessels having a valid Idaho or Oregon aquatic invasive species prevention or similar permit.

(b) The department may adopt by rule a regional reciprocity process to further exempt aquatic conveyances from

permit requirements under this section in part or whole. A reciprocity system may be implemented only where the participating state or country does not require a Washington resident to purchase an equivalent permit. [2017 3rd sp.s. c 17 § 203.]

77.135.240 Aquatic invasive species local management grant program. (1) Money in the aquatic invasive species management account created in RCW 77.135.200 may be appropriated to the department to establish an aquatic invasive species local management grant program. The department shall enter into agreement with the recreation and conservation office to administer the grant funds or other financial assistance, assist the department in developing grant program policies and funding criteria, and consult with the department prior to awarding grants. State agencies, cities, counties, tribes, special purpose districts, academic institutions, and nonprofit groups are eligible for competitive grants to:

- (a) Manage prohibited level 1 or level 2 aquatic [invasive] species at a local level;
- (b) Develop rapid response management cooperative agreements for local water bodies;
- (c) Develop or implement prohibited species management cooperative agreements for local water bodies; and
- (d) Conduct innovative applied research that directly supports on-the-ground prevention, control, and eradication efforts.

(2) The department may give preference to projects that have matching funds, provide in-kind services, or maintain or enhance outdoor recreational opportunities. [2017 3rd sp.s. c 17 § 302.]

Title 78

MINES, MINERALS, AND PETROLEUM

Chapters

- 78.44** Surface mining.
- 78.60** Geothermal resources.

Chapter 78.44 RCW SURFACE MINING

Sections

- 78.44.085 Application fee—Annual permit fee—Confidential records—Appeals—Collection of fees.

78.44.085 Application fee—Annual permit fee—Confidential records—Appeals—Collection of fees. (1) An applicant for an expansion of a permitted surface mine, a new reclamation permit under RCW 78.44.081, or for combining existing public or private reclamation permits, shall pay a nonrefundable application fee to the department before being granted the requested permit or permit expansion. The amount of the application fee shall be four thousand five hundred dollars.

(2) Permit holders submitting a revision to an application for an existing reclamation plan that is not an expansion shall pay a nonrefundable reclamation plan revision fee of two thousand five hundred dollars.

(3) After June 30, 2017, each public or private permit holder shall pay an annual permit fee in an amount pursuant to this section. The annual permit fee shall be payable to the department prior to the reclamation permit being issued and on the anniversary of the permit date each year thereafter.

(4)(a) Except as otherwise provided in this subsection, each public or private permit holder must pay an annual fee of two thousand dollars.

(b) Annual fees paid by a county for mines used exclusively for public works projects and having less than seven acres of disturbed area per mine shall not exceed one thousand dollars.

(c) Annual fees are waived for all mines used primarily for public works projects if the mines are owned and primarily operated by counties with 1993 populations of less than twenty thousand persons, and if each mine has less than seven acres of disturbed area.

(5) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department are to be held as confidential and not released as part of a public records request under chapter 42.56 RCW.

(6) Appeals from any determination of the department shall not stay the requirement to pay any annual permit fee. Failure to pay the annual fees may constitute grounds for an order to suspend surface mining, pay fines, or cancel the reclamation permit as provided in this chapter.

(7) All fees collected by the department shall be deposited into the surface mining reclamation account created in RCW 78.44.045.

(8) If the department delegates enforcement responsibilities to a county, city, or town, the department may allocate funds collected under this section to the county, city, or town.

(9) Within sixty days after receipt of an application for a new or expanded permit, the department shall advise applicants of any information necessary to successfully complete the application.

(10) In addition to other enforcement authority, the department may refer matters to a collection agency licensed under chapter 19.16 RCW when permit fees or fines are past due. The collection agency may impose its own fees for collecting delinquent permit fees or fines. [2017 3rd sp.s. c 27 § 1; 2006 c 341 § 1; 2001 1st sp.s. c 5 § 1; 1997 c 413 § 1; 1996 c 70 § 1; 1993 c 518 § 14.]

Additional notes found at www.leg.wa.gov

Chapter 78.60 RCW GEOTHERMAL RESOURCES

Sections

- 78.60.010 Legislative declaration.
- 78.60.070 Drilling permits—Applications—Hearing—Fees.
- 78.60.120 Notification of abandonment or suspension of operations—Required—Procedure.

78.60.010 Legislative declaration. The public has a direct interest in the safe, orderly, and nearly pollution-free development of the geothermal resources of the state, as defined in RCW 78.60.030. The legislature hereby declares that it is in the best interests of the state to further the development of geothermal resources for the benefit of all of the

citizens of the state while at the same time fully providing for the protection of the environment. The development of geothermal resources shall be so conducted as to protect the rights of landowners, other owners of interests therein, and the general public. In providing for such development, it is the purpose of this chapter to provide for the orderly exploration, safe drilling, production, and proper abandonment of geothermal resources in the state of Washington. [2017 c 259 § 1; 1974 ex.s. c 43 § 1. Formerly RCW 79.76.010.]

78.60.070 Drilling permits—Applications—Hearing—Fees. (1) Any person proposing to drill a well or redrill an abandoned well for geothermal resources shall file with the department a written application for a permit to commence such drilling or redrilling on a form prescribed by the department accompanied by a permit fee of two hundred dollars. The department shall forward a duplicate copy to the department of ecology within ten days of filing.

(2) Upon receipt of a proper application relating to drilling or redrilling the department shall set a date, time, and place for a public hearing on the application. The public hearing on the drilling application shall be in the county in which the drilling or redrilling is proposed to be made.

(3) Any person proposing to drill a core hole for the purpose of gathering geothermal data, including but not restricted to heat flow, temperature gradients, and rock conductivity, shall be required to obtain a single permit covering all core holes according to subsection (1) of this section, including a single permit fee. Such core holes as described by this subsection are not required to be the subject of a public hearing but are subject to all other provisions of this chapter, including a bond or other security as specified in RCW 78.60.130.

(4) All moneys paid to the department under this section shall be deposited with the state treasurer for credit to the general fund. [2017 c 259 § 2; 2007 c 338 § 1; 1974 ex.s. c 43 § 7. Formerly RCW 79.76.070.]

78.60.120 Notification of abandonment or suspension of operations—Required—Procedure. (1) Before any operation to plug and abandon or suspend the operation of any well is commenced, the owner or operator shall submit in writing a notification of abandonment or suspension of operations to the department for approval. No operation to abandon or suspend the operation of a well shall commence without approval by the department. The department shall respond to such notification in writing within ten working days following receipt of the notification.

(2) Failure to abandon or suspend operations in accordance with the method approved by the department shall constitute a violation of this chapter, and the department shall take appropriate action under the provisions of RCW 78.60.270. [2017 c 259 § 3; 1974 ex.s. c 43 § 12. Formerly RCW 79.76.120.]

Title 79 PUBLIC LANDS

Chapters

79.02 Public lands management—General.

79.10 Land management authorities and policies.

79.13 Land leases.

79.15 Sale of valuable materials.

79.64 Funds for managing and administering lands.

79.105 Aquatic lands—General.

79.110 Aquatic lands—Easements and rights-of-way.

Chapter 79.02 RCW

PUBLIC LANDS MANAGEMENT—GENERAL

Sections

79.02.420 Finding—Intent—Community and technical college forest reserve land base—Management—Disposition of revenue.

79.02.420 Finding—Intent—Community and technical college forest reserve land base—Management—Disposition of revenue. (1) The legislature finds that the state's community and technical colleges need a dedicated source of revenue to augment other sources of capital improvement funding. The intent of this section is to ensure that the forestland purchased under section 310, chapter 16, Laws of 1990 1st ex. sess. and known as the community and technical college forest reserve land base, is managed in perpetuity and in the same manner as state forestlands for sustainable commercial forestry and multiple use of lands consistent with RCW 79.10.120. These lands will also be managed to provide an outdoor education and experience area for organized groups. The lands will provide a source of revenue for the long-term capital improvement needs of the state community and technical college system.

(2) There has been increasing pressure to convert forestlands within areas of the state subject to population growth. Loss of forestland in urbanizing areas reduces the production of forest products and the available supply of open space, watershed protection, habitat, and recreational opportunities. The land known as the community and technical college forest reserve land base is forever reserved from sale. However, the timber and other products on the land may be sold, or the land may be leased in the same manner and for the same purposes as authorized for state granted lands if the department finds the sale or lease to be in the best interest of this forest reserve land base and approves the terms and conditions of the sale or lease.

(3) The land exchange and acquisition powers provided in RCW 79.17.020 may be used by the department to reposition land within the community and technical college forest reserve land base consistent with subsection (1) of this section.

(4) By June 30, 2019, the department must exchange land within the community and technical college forest reserve for land of equal value held for the benefit of charitable, educational, penal, and reformatory institutions that is currently leased to certain community and technical colleges under section 1, chapter 168, Laws of 1985 and section 1, chapter 198, Laws of 2004. The department must transfer the community and technical college forest reserve land that the department acquires in the exchange out of the community and technical college forest reserve, and the department must transfer ownership of that land to the state board for community and technical colleges to be managed for educational purposes.

(5) Up to twenty-five percent of the revenue from these lands, as determined by the board, will be deposited in the forest development account to reimburse the forest development account for expenditures from the account for management of these lands.

(6) The community college forest reserve account, created under section 310, chapter 16, Laws of 1990 1st ex. sess., is renamed the community and technical college forest reserve account. The remainder of the revenue from these lands must be deposited in the community and technical college forest reserve account. Money in the account may be appropriated by the legislature for the capital improvement needs of the state community and technical college system or to acquire additional forest reserve lands. [2017 3rd sp.s. c 35 § 1; 2003 c 334 § 225; 1996 c 264 § 1. Formerly RCW 76.12.240.]

Intent—2003 c 334: See note following RCW 79.02.010.

Chapter 79.10 RCW

LAND MANAGEMENT AUTHORITIES AND POLICIES

Sections

79.10.520	Prioritizing investments on forest health treatments.
79.10.530	Identification of lands for forest health treatment—Prioritized list—Report to the legislature.

79.10.520 Prioritizing investments on forest health treatments. (1)(a) Subject to the availability of amounts appropriated for this specific purpose, the department shall, to the extent feasible given all applicable trust responsibilities, develop and implement a policy for prioritizing investments on forest health treatments to protect state lands and state forestlands, as those terms are defined in RCW 79.02.010, to: (i) Reduce wildfire hazards and losses from wildfire; (ii) reduce insect infestation and disease; and (iii) achieve cumulative impact of improved forest health and resilience at a landscape scale.

(b) The prioritization policy in (a) of this subsection must consider whether state lands and state forestlands are within an area that is subject to a forest health hazard warning or order pursuant to RCW 76.06.180.

(2)(a) The department's prioritization of state lands and state forestlands must be based on an evaluation of the economic and noneconomic value of:

- (i) Timber or other commercial forest products removed during any mechanical treatments;
- (ii) Timber or other commercial forest products likely to be spared from damage by wildfire;
- (iii) Homes, structures, agricultural products, and public infrastructure likely to be spared from damage by wildfire;
- (iv) Impacts to recreation and tourism; and
- (v) Ecosystem services such as water quality, air quality, or carbon sequestration.

(b) The department's evaluation of economic values may rely on heuristic techniques.

(3) The definitions in this subsection apply throughout this section and RCW 79.10.530 and 79.64.130 unless the context clearly requires otherwise.

(a) "Forest health" has the same meaning as defined in RCW 76.06.020.

(b) "Forest health treatment" or "treatment" means actions taken by the department to restore forest health including, but not limited to, sublandscape assessment and project planning, site preparation, reforestation, mechanical treatments including timber harvest, road realignment for fire protection and aquatic improvements, and prescribed burning. [2017 c 248 § 1.]

79.10.530 Identification of lands for forest health treatment—Prioritized list—Report to the legislature.

(1)(a) Subject to the availability of amounts appropriated for this specific purpose, consistent with the prioritization policy developed pursuant to RCW 79.10.520, and to the extent feasible given all applicable trust responsibilities, the department must identify areas of state lands and state forestlands that would benefit from forest health treatments at the landscape level for the next twenty years, and ones that would benefit the most during the following six years, and prioritize and list specific lands for treatment during the subsequent biennium. The department shall update this list by November 15th of each even-numbered year.

(b) To expedite initial treatments under chapter 248, Laws of 2017, for the 2017-2019 biennium the department may prioritize and, if funds are appropriated for this purpose, address lands for treatment that are currently identified by the department as pilot treatment projects.

(2) In order to develop a prioritized list that evaluates forest health treatments at a landscape scale, the department should consult with and take into account the land management plans and activities of nearby landowners, if available, including federal agencies, other state agencies, local governments, tribes, and private property owners, in addition to any statewide assessments done by the department. The department may include federally, locally, or privately managed lands on the list. The department may fund treatment on these lands provided that the treatments are funded with nontrust funds, and provided that the treatments produce a net benefit to the health of state lands and state forestlands.

(3) By December 1st of each even-numbered year, the department must submit a report to the legislature consistent with the requirements of RCW 43.01.036, to the office of financial management, and to the board of natural resources. The report must include:

(a) A brief summary of the department's progress towards treating the state lands and state forestlands included on the preceding biennium's prioritization list;

(b) A list of lands prioritized for forest health treatments in the next biennium, including state lands and state forestlands prioritized for treatment pursuant to subsection (1) of this section;

(c) Recommended funding amounts required to carry out the treatment activities for the next biennium, including a summary of potential nontimber revenue sources that could finance specific forest health treatments pursuant to RCW 79.10.520, including but not limited to ecosystem services such as water and carbon sequestration as well as insurance and fire mitigation; and

(d) A summary of trends in forest health conditions. [2017 c 248 § 2.]

Chapter 79.13 RCW LAND LEASES

Sections

79.13.420 Nondefault or early termination provision.

79.13.420 Nondefault or early termination provision.

(1) For the purposes of this section, "nondefault or early termination provision" means a provision that authorizes the department to terminate a lease in the event the department includes the leased land in a plan for higher and better use, land exchange, or sale.

(2) Any nondefault or early termination provision included in a state land lease for agricultural or grazing purposes must:

(a) Require advance written notice of at least one hundred eighty days by the department to the lessee prior to termination of the lease; and

(b) Require the department to provide to the lessee, along with the notice under (a) of this subsection, written documentation demonstrating that the department has included the leased land in a plan for higher and better use, land exchange, or sale.

(3) This section does not require the department to include a nondefault or early termination provision in any state land lease for agricultural or grazing purposes.

(4) This section does not prohibit the department from allowing the lessee to surrender the leasehold subject to terms provided in the lease.

(5) This section does not prohibit the department from executing other lease provisions designed to protect the interests of the lessee in the event that the lease is terminated under a nondefault or early termination provision. [2017 c 56 § 1.]

Chapter 79.15 RCW

SALE OF VALUABLE MATERIALS

Sections

79.15.060 Date of sale limited by time of appraisal—Transfer of authority.

79.15.510 Contract harvesting—Program established.

79.15.520 Contract harvesting revolving account.

79.15.550 Mitigation against the potential for contract default—Report to the legislature. (*Expires January 1, 2019.*)

79.15.060 Date of sale limited by time of appraisal—

Transfer of authority. (1) For the sale of valuable materials under this chapter, if the board is required by law to appraise the sale, the board must establish a minimum appraisal value that is valid for a period of one hundred eighty days, or a longer period as may be established by resolution. The board may reestablish the minimum appraisal value at any time. For any valuable materials sales that the board is required by law to appraise, the board may by resolution transfer this authority to the department.

(2) Where the board has set a minimum appraisal value for a valuable materials sale, the department may set the final appraisal value of valuable materials for auction, which must be based on current market prices. The department may also appraise any valuable materials sale not required by law to be approved by the board. [2009 c 418 § 4; 2003 c 334 § 329.]

Findings—Intent—2009 c 418: See note following RCW 79.15.510.

Intent—2003 c 334: See note following RCW 79.02.010.

79.15.510 Contract harvesting—Program established. (1) The department may establish a contract harvesting program for directly contracting for the removal of timber and other valuable materials from state lands and for conducting silvicultural treatments consistent with RCW 79.15.540.

(2) The contract requirements must be compatible with the office of financial management's guide to public service contracts.

(3) The department may not use contract harvesting for more than twenty percent of the total annual volume of timber offered for sale. However, volume removed primarily to address an identified forest health issue under RCW 79.15.540 may not be included in calculating the annual limit of contract harvesting sales. Forest biomass resulting from harvesting to address an identified forest health issue under RCW 79.15.540 may be utilized in accordance with chapter 79.150 RCW. [2010 c 126 § 11; (2010 c 126 § 12 repealed by 2017 c 64 § 2); 2009 c 418 § 2; 2004 c 218 § 6; 2003 c 313 § 3.]

Findings—Intent—2009 c 418: "The legislature finds that it is in the best interest of the trust beneficiaries to capture additional revenues while providing for additional environmental protection and improving forest health on state trust lands. Further, the legislature finds that contract harvesting is one method to achieve these desired outcomes while also providing the department of natural resources with the ability to offer opportunities to merchandise high value wood. The legislature intends that the department of natural resources should have the ability to expand their contract sales in areas where other sales do not generate as much revenue or provide resource management benefits. The legislature further intends that the department of natural resources distribute the increased contract harvest authority across all trusts and markets." [2009 c 418 § 1.]

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Additional notes found at www.leg.wa.gov

79.15.520 Contract harvesting revolving account. (1) The contract harvesting revolving account is created in the custody of the state treasurer. All receipts from the gross proceeds of the sale of logs from a contract harvesting sale must be deposited into the account. Expenditures from the account may be used only for the payment of harvesting costs incurred on contract harvesting sales and for payment of costs incurred from silvicultural treatments necessary to improve forest health conducted under RCW 79.15.540. Only the commissioner or the commissioner's designee may authorize expenditures from the account. The board of natural resources has oversight of the account, and the commissioner must periodically report to the board of natural resources as to the status of the account, its disbursement, and receipts. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) When the logs from a contract harvesting sale are sold, the gross proceeds must be deposited into the contract harvesting revolving account. Moneys equal to the harvesting costs must be retained in the account and be deducted from the gross proceeds to determine the net proceeds. The net proceeds from the sale of the logs must be distributed in accordance with RCW 43.30.325(1)(b). The final receipt of gross proceeds on a contract harvesting sale must be retained

in the contract harvesting revolving account until all required costs for that sale have been paid. The contract harvesting revolving account is an interest-bearing account and the interest must be credited to the account. The account balance may not exceed five million dollars at the end of each calendar year. Moneys in excess of five million dollars must be disbursed according to RCW 79.22.040, 79.22.050, and 79.64.040. If the department permanently discontinues the use of contract harvesting sales, any sums remaining in the contract harvesting revolving account must be returned to the resource management cost account and the forest development account in proportion to each account's contribution to the initial balance of the contract harvesting revolving account. [2009 c 418 § 3; 2004 c 218 § 7; 2003 c 313 § 4.]

Findings—Intent—2009 c 418: See note following RCW 79.15.510.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Additional notes found at www.leg.wa.gov

79.15.550 Mitigation against the potential for contract default—Report to the legislature. (Expires January 1, 2019.) (1) The department is directed, to the extent possible under current law consistent with its responsibility to the trust beneficiaries, to consider requests from purchasers for timber sale extensions and to provide flexibility in timber sale contract administration to help mitigate against the potential for contract default.

(2) By December 1, 2009, the department shall report to the appropriate committees of the legislature on the status of existing contracts, contract extensions, contract defaults, and shall provide a timber market forecast for 2010 and 2011. [2009 c 418 § 5.]

Expiration date—2017 c 64; 2013 c 255; 2009 c 418: "Section 5 of this act expires January 1, 2019." [2017 c 64 § 1; 2013 c 255 § 1; 2009 c 418 § 7.]

Findings—Intent—2009 c 418: See note following RCW 79.15.510.

Chapter 79.64 RCW

FUNDS FOR MANAGING AND ADMINISTERING LANDS

Sections

79.64.040	Deductions from proceeds of all transactions authorized—Limitations.
79.64.110	Revenue distribution.
79.64.130	Forest health revolving account.

79.64.040 Deductions from proceeds of all transactions authorized—Limitations. (1) The board shall determine the amount deemed necessary in order to achieve the purposes of this chapter and shall provide by rule for the deduction of this amount from the moneys received from all leases, sales, contracts, licenses, permits, easements, and rights-of-way issued by the department and affecting state lands and aquatic lands, except as provided in RCW 79.64.130, provided that no deduction shall be made from the proceeds from agricultural college lands.

(2) Moneys received as deposits from successful bidders, advance payments, and security under RCW 79.15.100, 79.15.080, and 79.11.150 prior to December 1, 1981, which have not been subjected to deduction under this section are not subject to deduction under this section.

(3) Except as otherwise provided in subsection (5) of this section, the deductions authorized under this section shall not exceed twenty-five percent of the moneys received by the department in connection with any one transaction pertaining to state lands and aquatic lands other than second-class tide and shore lands and the beds of navigable waters, and fifty percent of the moneys received by the department pertaining to second-class tide and shore lands and the beds of navigable waters.

(4) In the event that the department sells logs using the contract harvesting process described in RCW 79.15.500 through 79.15.530, the moneys received subject to this section are the net proceeds from the contract harvesting sale.

(5) During the 2015-2017 and 2017-2019 fiscal biennia, the board may increase the twenty-five percent limitation up to thirty-two percent. [2017 3rd sp.s. c 1 § 985; 2017 c 248 § 5; 2015 3rd sp.s. c 4 § 972; 2014 c 32 § 4; 2013 2nd sp.s. c 4 § 1001; 2012 2nd sp.s. c 7 § 927. Prior: 2011 1st sp.s. c 50 § 966; 2011 c 216 § 16; 2009 c 564 § 957; 2007 c 522 § 958; 2005 c 518 § 945; 2004 c 199 § 227; prior: 2003 c 334 § 522; 2003 c 313 § 8; 2001 c 250 § 16; 1999 c 279 § 2; 1981 2nd ex.s. c 4 § 3; 1971 ex.s. c 224 § 2; 1967 ex.s. c 63 § 2; 1961 c 178 § 4.]

Reviser's note: This section was amended by 2017 c 248 § 5 and by 2017 3rd sp.s. c 1 § 985, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Intent—2003 c 334: See note following RCW 79.02.010.

Findings—Severability—2003 c 313: See notes following RCW 79.15.500.

Additional notes found at www.leg.wa.gov

79.64.110 Revenue distribution. (1) Any moneys derived from the lease of state forestlands or from the sale of valuable materials, oils, gases, coal, minerals, or fossils from those lands, except as provided in RCW 79.64.130, or the appraised value of these resources when transferred to a public agency under RCW 79.22.060, except as provided in RCW 79.22.060(4), must be distributed as follows:

(a) For state forestlands acquired through RCW 79.22.040 or by exchange for lands acquired through RCW 79.22.040:

(i) The expense incurred by the state for administration, reforestation, and protection, not to exceed twenty-five percent, which rate of percentage shall be determined by the board, must be returned to the forest development account created in RCW 79.64.100. During the 2015-2017 and 2017-2019 fiscal biennia, the board may increase the twenty-five percent limitation up to twenty-seven percent.

(ii) Any balance remaining must be paid to the county in which the land is located or, for counties participating in a land pool created under RCW 79.22.140, to each participating county proportionate to its contribution of asset value to the land pool as determined by the board. Payments made under this subsection are to be paid, distributed, and prorated, except as otherwise provided in this section, to the various funds in the same manner as general taxes are paid and distributed during the year of payment.

(iii) Any balance remaining, paid to a county with a population of less than sixteen thousand, must first be applied to the reduction of any indebtedness existing in the current expense fund of the county during the year of payment.

(iv) With regard to moneys remaining under this subsection (1)(a), within seven working days of receipt of these moneys, the department shall certify to the state treasurer the amounts to be distributed to the counties. The state treasurer shall distribute funds to the counties four times per month, with no more than ten days between each payment date.

(b) For state forestlands acquired through RCW 79.22.010 or by exchange for lands acquired through RCW 79.22.010, except as provided in RCW 79.64.120:

(i) Fifty percent shall be placed in the forest development account.

(ii) Fifty percent shall be prorated and distributed to the state general fund, to be dedicated for the benefit of the public schools, to the county in which the land is located or, for counties participating in a land pool created under RCW 79.22.140, to each participating county proportionate to its contribution of asset value to the land pool as determined by the board, and according to the relative proportions of tax levies of all taxing districts in the county. The portion to be distributed to the state general fund shall be based on the regular school levy rate under RCW 84.52.065 (1) and (2) and the levy rate for any maintenance and operation special school levies. With regard to the portion to be distributed to the counties, the department shall certify to the state treasurer the amounts to be distributed within seven working days of receipt of the money. The state treasurer shall distribute funds to the counties four times per month, with no more than ten days between each payment date. The money distributed to the county must be paid, distributed, and prorated to the various other funds in the same manner as general taxes are paid and distributed during the year of payment.

(2) A school district may transfer amounts deposited in its debt service fund pursuant to this section into its capital projects fund as authorized in RCW 28A.320.330. [2017 3rd sp.s. c 13 § 315; 2017 3rd sp.s. c 1 § 986; 2017 c 248 § 6; 2015 3rd sp.s. c 4 § 973; 2012 c 166 § 6; 2009 c 354 § 8; 2007 c 503 § 1; 2003 c 334 § 207.]

Reviser's note: This section was amended by 2017 c 248 § 6, 2017 3rd sp.s. c 1 § 986, and by 2017 3rd sp.s. c 13 § 315, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Findings—Intent—2012 c 166: See note following RCW 79.02.010.

Finding—Intent—2009 c 354: See note following RCW 84.33.140.

Intent—2003 c 334: See note following RCW 79.02.010.

79.64.130 Forest health revolving account. (1)(a) The forest health revolving account is created in the custody of the state treasurer. All receipts from the proceeds of forest health treatment sales as defined in this section and RCW 79.10.520 and 79.10.530 and all legislative transfers, gifts, grants, and federal funds must be deposited into the account. Expenditures from the account may be used only for the payment of costs, including management and administrative costs, incurred on forest health treatments necessary to improve forest health as defined in RCW 79.10.520. Only the commissioner or the commissioner's designee may authorize expenditures from the account. The board of natural resources has oversight of the account, and the commissioner must periodically report to the board of natural resources as to the status of the account, its disbursement, and receipts. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(b) The forest health revolving account is an interest-bearing account and the interest must be credited to the account.

(2) Beginning calendar year 2018, the fund balance attributable to the receipts from the proceeds of forest health treatment sales is subject to the following:

(a) Any unobligated amounts up to ten million dollars at the end of the calendar year are not subject to disbursements to trust beneficiaries, the resource management account, or the forest development account.

(b) Any unobligated amounts exceeding ten million dollars at the end of the calendar year must be disbursed to the appropriate trust beneficiaries as determined by the board of natural resources and these disbursements are not subject to the deductions for the resource management cost account described in RCW 79.64.040 or the forest development account described in RCW 79.64.110.

(c) If the board of natural resources determines that the department has permanently discontinued using the forest health revolving account for the forest health treatments under RCW 79.10.520 and 79.10.530, the board must disburse all remaining fund balance attributable to the proceeds of forest health treatment sales to the appropriate trust beneficiaries, and these disbursements are not subject to the deductions for the resource management cost account described in RCW 79.64.040 or the forest development account described in RCW 79.64.110.

(3)(a) Except as provided in (b) and (c) of this subsection, expenditures on state lands and state forestlands for forest health treatments by the department from the forest health revolving account must be consistent with the prioritization policy under RCW 79.10.520 and the prioritization list created under RCW 79.10.530.

(b) The department is not bound to adhere to the list submitted to the legislature under RCW 79.10.520 in the event that emerging information or changed circumstances support a reprioritization of lands consistent with the policy created under RCW 79.10.520.

(c) The department is not required to apply the prioritization policy of RCW 79.10.520 where doing so would be incompatible with the conditions of funding provided by the

federal government or another organization that is contributing funds to forest health treatments involving the department. [2017 c 248 § 3.]

Chapter 79.105 RCW
AQUATIC LANDS—GENERAL

Sections

79.105.150 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account.

79.105.150 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account. (1) After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.115.150(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to the lands; and for volunteer cooperative fish and game projects. During the 2013-2015, 2015-2017, and 2017-2019 fiscal biennia, the aquatic lands enhancement account may be used to support the shellfish program, the ballast water program, hatcheries, the Puget Sound toxic sampling program and steelhead mortality research at the department of fish and wildlife, the knotweed program at the department of agriculture, actions at the University of Washington for reducing ocean acidification, which may include the creation of a center on ocean acidification, the Puget SoundCorps program, and support of the marine resource advisory council and the Washington coastal marine advisory council. During the 2013-2015 fiscal biennium, the legislature may transfer from the aquatic lands enhancement account to the geoduck aquaculture research account for research related to shellfish aquaculture. During the 2015-2017 fiscal biennium, the legislature may transfer moneys from the aquatic lands enhancement account to the marine resources stewardship trust account.

(2) In providing grants for aquatic lands enhancement projects, the recreation and conservation funding board shall:

(a) Require grant recipients to incorporate the environmental benefits of the project into their grant applications;

(b) Utilize the statement of environmental benefits, consideration, except as provided in RCW 79.105.610, of whether the applicant is a Puget Sound partner, as defined in RCW 90.71.010, whether a project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, and except as otherwise provided in RCW 79.105.630, and effective one calendar year following the development and statewide availability of model evergreen community management plans and ordinances under RCW 35.105.050, whether the applicant is an entity that has been recognized, and what gradation of recognition was received,

in the evergreen community recognition program created in RCW 35.105.030 in its prioritization and selection process; and

(c) Develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grants.

(3) To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270.

(4) The department shall consult with affected interest groups in implementing this section.

(5) After January 1, 2010, any project designed to address the restoration of Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2017 3rd sp.s. c 1 § 987; 2015 3rd sp.s. c 4 § 974; 2013 2nd sp.s. c 4 § 1002. Prior: 2012 2nd sp.s. c 7 § 929; 2012 2nd sp.s. c 2 § 6008; 2011 2nd sp.s. c 9 § 911; 2011 1st sp.s. c 50 § 967; 2010 1st sp.s. c 37 § 949; 2009 c 564 § 959; 2008 c 299 § 28; 2007 c 341 § 32; prior: 2005 c 518 § 946; 2005 c 155 § 121; 2004 c 276 § 914; 2002 c 371 § 923; 2001 c 227 § 7; 1999 c 309 § 919; 1997 c 149 § 913; 1995 2nd sp.s. c 18 § 923; 1994 c 219 § 12; 1993 sp.s. c 24 § 927; 1987 c 350 § 1; 1985 c 57 § 79; 1984 c 221 § 24; 1982 2nd ex.s. c 8 § 4; 1969 ex.s. c 273 § 12; 1967 ex.s. c 105 § 3; 1961 c 167 § 9. Formerly RCW 79.90.245, 79.24.580.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 2: See note following RCW 43.155.050.

Effective dates—2011 2nd sp.s. c 9: See note following RCW 28B.50.837.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2009 c 564: See note following RCW 2.68.020.

Short title—2008 c 299: See note following RCW 35.105.010.

Effective date—2007 c 341: See RCW 90.71.907.

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

Finding—1994 c 219: See note following RCW 43.88.030.

Additional notes found at www.leg.wa.gov

Chapter 79.110 RCW
AQUATIC LANDS—EASEMENTS AND RIGHTS-OF-WAY

Sections

79.110.240 Charge for term of easement—Recovery of costs.

79.110.240 Charge for term of easement—Recovery of costs. (1) Until July 1, 2030, the charge for the term of an easement granted under RCW 79.110.230(2) will be determined as follows and will be paid in advance upon grant of the easement:

(a) Five thousand dollars for individual easement crossings that are no longer than one mile in length;

(b) Twelve thousand five hundred dollars for individual easement crossings that are more than one mile but less than five miles in length; or

(c) Twenty thousand dollars for individual easement crossings that are five miles or more in length.

(2) The charge for easements under subsection (1) of this section must be adjusted annually by the rate of yearly change in the most recently published Seattle-Tacoma-Bremerton consumer price index, all urban consumers (CPI-U), over the consumer price index for the same period of the preceding year, as compiled by the bureau of labor statistics, United States department of labor for the state of Washington rounded up to the nearest fifty dollars.

(3) The term of the easement is thirty years or a period of less than thirty years if requested by the person or entity seeking the easement.

(4) In addition to the charge for the easement under subsection (1) of this section, the department may recover its administrative costs incurred in receiving an application for the easement, approving the easement, and reviewing plans for and construction of the public utility lines. For the purposes of this subsection, "administrative costs" is equivalent to twenty percent of the fee for the easement as determined under subsection (1) of this section and adjusted under subsection (2) of this section. For public utility lines owned by a governmental entity, the administrative costs will be calculated based on the length of the easement and the fee that it would be charged if it were subject to the easement charges in this section. When multiple public utility lines are owned by the same entity and are authorized under the same easement, the administrative fee for the easement shall be equal to twenty percent of the easement fee for the single longest public utility line. Administrative costs recovered by the department must be deposited into the resource management cost account.

(5) Applicants under RCW 79.110.230(2) providing a residence with an individual service connection for electrical, natural gas, cable television, or telecommunications service are not required to pay the charge for the easement under subsection (1) of this section but shall pay administrative costs under subsection (4) of this section.

(6) A final decision on applications for an easement must be made within one hundred twenty days after the department receives the completed application and after all applicable regulatory permits for the aquatic easement have been acquired. This subsection applies to applications submitted before June 13, 2002, as well as to applications submitted on or after June 13, 2002. Upon request of the applicant, the department may reach a decision on an application within sixty days and charge an additional fee for an expedited processing. The fee for an expedited processing is ten percent of the combined total of the easement charge and administrative costs.

(7) Beginning December 31, 2021, every four years the legislature shall review the granting of easements on state-owned aquatic lands under this chapter and determine whether all applications for easements are processed within one hundred twenty days for normal processing of applications and sixty days for expedited processing of applications,

and whether the granting of easements on state-owned aquatic lands generates reasonable income for the aquatic lands enhancement account. [2017 c 19 § 1; 2008 c 55 § 2; 2005 c 155 § 162; 2002 c 152 § 3. Formerly RCW 79.90.575.]

Findings—2002 c 152: "The legislature finds that local public utilities provide essential services to all of the residents of the state and that the construction and improvement of local utility infrastructure is critical to the public health, safety, and welfare, community and economic development, and installation of modern and reliable communication and energy technology. The legislature further finds that local utility lines must cross state-owned aquatic lands in order to reach all state residents and that, for the benefit of such residents, the state should permit the crossings, consistent with all applicable state environmental laws, in a nondiscriminatory, economic, and timely manner. The legislature further finds that this act and the valuation methodology in section 3 of this act applies only to the uses listed in section 2 of this act, and does not establish a precedent for valuation for any other uses on state-owned aquatic lands." [2002 c 152 § 1.]

Additional notes found at www.leg.wa.gov

Title 79A

PUBLIC RECREATIONAL LANDS

Chapters

- 79A.20** Wildlife and recreation lands—Funding of maintenance and operations.
79A.25 Recreation and conservation funding board.
79A.60 Regulation of recreational vessels.
79A.80 Access to recreational lands.

Chapter 79A.20 RCW

WILDLIFE AND RECREATION LANDS—FUNDING OF MAINTENANCE AND OPERATIONS

Sections

- 79A.20.005 Repealed.
 79A.20.010 Repealed.
 79A.20.030 Repealed.
 79A.20.900 Repealed.

79A.20.005 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79A.20.010 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79A.20.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

79A.20.900 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 79A.25 RCW

RECREATION AND CONSERVATION FUNDING BOARD

(Formerly: Interagency committee for outdoor recreation)

Sections

- 79A.25.210 Firearms range account—Grant program—Rules.

79A.25.210 Firearms range account—Grant program—Rules. The firearms range account is hereby created in the state general fund. Moneys in the account shall be subject to legislative appropriation and shall be used for purchase and development of land, construction or improvement

of range facilities, including fixed structure construction or remodeling, equipment purchase, safety or environmental improvements, noise abatement, and liability protection for public and nonprofit firearm range training and practice facilities.

Grant funds shall not be used for expendable shooting supplies, or normal operating expenses. In making grants, the board shall give priority to projects for noise abatement or safety improvement. Grant funds shall not supplant funds for other organization programs.

The funds will be available to nonprofit shooting organizations, school districts, and state, county, or local governments on a match basis. All entities receiving matching funds must be open on a regular basis and usable by law enforcement personnel or the general public who possess Washington concealed pistol licenses or Washington hunting licenses or who are enrolled in a firearm safety class.

Applicants for a grant from the firearms range account shall provide matching funds in either cash or in-kind contributions. The match must represent one dollar in value for each one dollar of the grant except that in the case of a grant for noise abatement or safety improvements the match must represent one dollar in value for each two dollars of the grant. In-kind contributions include but are not limited to labor, materials, and new property. Existing assets and existing development may not apply to the match.

Applicants other than school districts or local or state government must be registered as a nonprofit or not-for-profit organization with the Washington secretary of state. The organization's articles of incorporation must contain provisions for the organization's structure, officers, legal address, and registered agent.

Organizations requesting grants must provide the hours of range availability for public and law enforcement use. The fee structure will be submitted with the grant application.

Any nonprofit organization or agency accepting a grant under this program will be required to pay back the entire grant amount to the firearms range account if the use of the range facility is discontinued less than ten years after the grant is accepted.

Entities receiving grants must make the facilities for which grant funding is received open for hunter safety education classes and firearm safety classes on a regular basis for no fee.

Government units or school districts applying for grants must open their range facility on a regular basis for hunter safety education classes and firearm safety classes.

The board shall adopt rules to implement chapter 195, Laws of 1990, pursuant to chapter 34.05 RCW. During the 2017-2019 fiscal biennium, expenditures from the firearms range account may be used to implement chapter 74, Laws of 2017 (SHB 1100) (concealed pistol licenses) and chapter 282, Laws of 2017 (SB 5268) (concealed pistol license notices). [2017 3rd sp.s. c 1 § 997; 2007 c 241 § 54; 1996 c 96 § 1; 1994 sp.s. c 7 § 443; 1990 c 195 § 2. Formerly RCW 77.12.720.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

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

Findings—1990 c 195: "Firearms are collected, used for hunting, recreational shooting, and self-defense, and firearm owners as well as bow users need safe, accessible areas in which to shoot their equipment. Approved shooting ranges provide that opportunity, while at the same time, promote public safety. Interest in all shooting sports has increased while safe locations to shoot have been lost to the pressures of urban growth." [1990 c 195 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 79A.60 RCW

REGULATION OF RECREATIONAL VESSELS

Sections

79A.60.045 Vessel impoundment—Procedure—Forfeiture.

79A.60.045 Vessel impoundment—Procedure—Forfeiture. (1) Whenever the operator of a vessel is arrested for a violation of RCW 79A.60.040, the arresting officer, or another officer acting at the arresting officer's direction, has authority to impound the vessel as provided in this section.

(2) This section is not intended to limit or constrain the ability of local government from enacting and enforcing ordinances or other regulations relating to the impoundment of vessels for the purposes of enforcing RCW 79A.60.040.

(3) Unless vessel impound is required for evidentiary purposes, a law enforcement officer must seek a series of reasonable alternatives to impound before impounding the vessel. Reasonable alternatives to impound may include, but are not limited to:

(a) Working with the vessel's owner to locate a qualified operator who can take possession of the vessel within thirty minutes following the arrest of the vessel's operator and giving possession of the vessel to such a person;

(b) Leaving the vessel at a marina, dock, or moorage facility, provided that:

(i) The owner is present and willing to sign a liability waiver by which the owner agrees to waive any claims related to such an action against the law enforcement officer and the officer's agency and indemnify the officer and the agency against any claims related to such an action by any third party; and

(ii) The owner agrees to pay any applicable moorage charges or fees; and

(c) Towing the vessel to the closest boat ramp, marina, or similar type facility where the owner can meet the impounding officer within thirty minutes in order to:

(i) Moor the vessel by accepting any applicable moorage charges or fees; or

(ii) Take possession of the vessel if the owner was not present at the time of the arrest.

(4) For the purposes of this section, storing an impounded vessel may include, but is not limited to:

(a) Removing the vessel to and placing it in a secure or other type of moorage facility; or

(b) Placing the vessel in the custody of an operator licensed by the United States coast guard per 46 C.F.R. Sec. 11.482 to provide commercial assistance towing services in Washington state who must:

(i) Tow it to a storage facility operated by the towing entity for storage or to a moorage facility for storage; or

(ii) Tow it to a location designated by the operator or owner of the vessel.

(5) In exigent circumstances, an impounding officer may temporarily attach an impounded vessel to a mooring buoy or anchor the vessel to the bottom for up to twenty-four hours, after which time the impounding officer must move or cause the vessel to be moved to an appropriate facility for storage as outlined in subsection (4) of this section.

(6) If the impounding officer secures a vessel by placing it on its trailer, the officer, moorage facility representative, or commercial assistance towing service is authorized to detach the vessel's trailer from the vehicle to which it is attached, attach the trailer to an impounding vehicle, operate the vessel to load it on the trailer, and then tow the vessel on its trailer to the storage facility.

(7) All vessels must be handled appropriately and returned in substantially the same condition as they existed before being impounded, unless forfeited pursuant to subsection (12) of this section. Except as provided in subsection (12)(b) of this section, all personal property in the vessel must be kept intact and must be returned to the vessel's owner or agent during the normal business hours of the entity storing the vessel upon request, provided the vessel owner, or the owner's agent, is able to provide sufficient proof of his or her identity.

(8) No moorage facility or vessel towing service provider is required to accept an impounded or otherwise secured vessel under this section for towing or storage. An impounding officer intending to secure a vessel by means of storing it at a moorage facility must have the permission of the owner or operator of the moorage facility prior to leaving the vessel at the facility. The impounding officer shall identify an authorized person on the vessel impound authorization and inventory form to represent the vessel impound facility. The officer must provide a copy of the vessel impound authorization and inventory form to the designated person representing the vessel impound facility along with the addresses of the registered and legal owners of the vessel. The moorage facility may require that the impounding officer's agency take responsibility for the foreclosure process set forth in subsection (12) of this section before they consent to accept an impounded vessel.

(9)(a) An impounding officer impounding a vessel pursuant to this section shall notify the legal and registered owner or owners of the impoundment of the vessel. The notification must be in writing and sent within one business day after the impound by first-class mail, digital transmission, or facsimile to the last known address of the registered and legal owner or owners of the vessel, as identified by the department of licensing, and must inform the owner or owners of the identity of the person or agency authorizing the impound. The impounding officer may serve the operator with the vessel impound authorization and inventory form at the time of impound if the operator is a legal or registered owner of the vessel. Personal service of the vessel impound authorization and inventory form meets the notice requirement of this subsection with respect to the legal or registered owner personally served. The notification must be provided on a vessel impound authorization and inventory form and include: (i) The name, address, and telephone number of the facility where the vessel is being held; (ii) the right of redemption

and opportunity for a hearing to contest the validity of the impoundment; and (iii) the rate that is being charged for the storage of the vessel while impounded.

(b) A notice does not need to be sent to the legal or registered owner or owners of an impounded vessel if the vessel has been redeemed.

(c) The impounded vessel may not be redeemed by the operator within a twelve-hour period starting at the time of the operator's arrest. The vessel may be redeemed by or released to an owner or an agent of the owner that is not the operator within the twelve-hour period following arrest.

(10) A moorage facility that accepts a vessel impounded pursuant to this section for storage may charge the owner of the vessel up to one hundred twenty-five percent of the normal moorage rates of tenants or guests in addition to a fee for securing the impounded vessel. A moorage facility must store the vessel in the least costly boat slip or storage area available that is appropriate for the vessel size. An entity that provides emergency vessel towing services that accepts a vessel impounded pursuant to this section for towing or storage, or both, may charge its normal towing and storage fees. The costs of removal and storage of vessels under this section is a lien upon the vessel until paid, unless the impoundment is determined to be invalid. The registered owner of a vessel impounded pursuant to this section is responsible for paying all fees associated with the towing and storage of the vessel resulting from its impoundment, except as otherwise provided in subsection (15) of this section.

(11) Within fifteen days of impoundment of the vessel, or until the vessel is forfeited pursuant to subsection (12) of this section, the legal or registered owner of a vessel impounded and stored pursuant to this section may redeem the vessel by paying all towing and storage fees charged as allowed in subsection (10) of this section. Within fifteen days of impoundment of the vessel, or until the vessel is forfeited pursuant to subsection (12) of this section, any person who shows proof of ownership or written authorization from the impounded vessel's registered or legal owner or the vessel's insurer may view the vessel without charge during the normal business hours of the entity storing the vessel. The moorage facility may request that a representative of the impounding agency be present during redemption. If requested, the impounding agency must provide a representative as requested by the moorage facility.

(12) If an impounded vessel stored pursuant to this section is not redeemed by its registered or legal owner pursuant to subsection (11) of this section within fifteen days of its impoundment, the entity storing the vessel, or the agency of the impounding officer, if required by the moorage facility under subsection (8) of this section, may initiate foreclosure. Forfeiture by the vessel owner is complete twenty days after mailing of the notice required by this subsection, unless within that time the owner, or any lienholder or holder of a security interest, pays all fees associated with the towing and storage of the vessel resulting from its impoundment. However, foreclosure may not be completed while a hearing under subsection (15) of this section to contest the validity of the impoundment is pending in district or municipal court or while any appeal of a decision of the district or municipal court on the validity of the impoundment is pending.

(a) In order to foreclose on the vessel, the foreclosing entity must mail notice of its intent. Such a notice must, at a minimum, state: (i) The intent of the foreclosing entity to foreclose on the vessel; (ii) that, when the foreclosure process is complete, the owner forfeits all ownership interest in the vessel; (iii) the right of the foreclosing entity to take possession of or dispose of the vessel upon completion of the foreclosure process; and (iv) that the owner, or other interested person or entity, may avoid forfeiture of the vessel by paying all fees associated with the towing and storage of the vessel resulting from its impoundment within twenty days of mailing of the notice. The notice must be mailed to the owner of the vessel at the address on file with the state with which the vessel is registered, or on file with the federal government, if the vessel is registered with the federal government, and any lienholder or secured interests on record. A notice need not be sent to the purported owner or any other person whose interest in the vessel is not recorded with a state or with the federal government.

(b) Upon completion of the foreclosure process, the registered and legal owners of the vessel forfeit any and all ownership interest in it and the entity administering the foreclosure process must dispose of it through sale. The proceeds of a sale under this section shall be applied first to payment of the amount of reasonable charges incurred by the entity for towing, storage, and sale, then to the owner or to satisfy any liens of record or security interests of record on the vessel in the order of their priority. If the sale is for a sum less than the applicable charges, the foreclosing entity is entitled to assert a claim for the deficiency against the vessel owner. Nothing in this section prevents any lienholder or secured party from asserting a claim for any deficiency owed the lienholder or secured party. If more than one thousand dollars remains after the satisfaction of amounts owed to the entity and to any owner or bona fide security interest, then the foreclosing entity must remit the moneys to the department of licensing for deposit in the derelict vessel removal account established in RCW 79.100.100. A copy of the forfeited vessel disposition report form identifying the vessel resulting in any surplus shall accompany the remitted funds. Transfer of ownership of the vessel after foreclosure must comply with RCW 79.100.150, when applicable. All personal property in the vessel not claimed prior to foreclosure must be turned over to the law enforcement agency that authorized the impoundment. The personal property must be disposed of pursuant to chapter 63.32 or 63.40 RCW, or as otherwise provided by law. Within fourteen days of the completion of the foreclosure process of a vessel pursuant to this subsection, the foreclosing entity shall send a forfeited vessel disposition report, together with a copy of the vessel impound authorization and inventory form and the notice of intent to foreclose, to the department of licensing so that the department may include documentation in the ownership records of the vessel. The vessel disposition information sent to the department of licensing on the forfeited vessel disposition report relieves the previous owner of the vessel from any civil or criminal liability for the operation of the vessel from the date of sale thereafter, and transfers full liability for the vessel to the party to whom the vessel is transferred by the foreclosing entity.

(13) Any individual or entity whose assistance has been requested by an impounding officer who in good faith provides trailering, towing, or secured or other type of moorage of a vessel impounded pursuant to this section is not liable for any damage to or theft of the vessel or its contents, or for damages for loss of use of the vessel resulting from any act or omission in providing assistance other than for acts or omissions constituting gross negligence or willful or wanton misconduct, or for any damages arising from any act or omission committed during the foreclosure process.

(14) If a law enforcement officer impounds and secures a vessel pursuant to this section, the impounding officer and the government agency employing the officer are not liable for any damage to or theft of the vessel or its contents, or for damages for loss of use of the vessel, or for any damages arising from any act or omission committed during the foreclosure process.

(15) Any legal or registered owner seeking to redeem an impounded vessel under this section has a right to a hearing in the district or municipal court for the jurisdiction in which the vessel was impounded to contest the validity of the impoundment. The district court has jurisdiction to determine the issues involving all impoundments including those authorized by the state or its agents, unless the impoundment was authorized by municipal agents. The municipal court has exclusive jurisdiction to determine the issues involving impoundments authorized by agents of the municipality. Any request for a hearing must be made in writing per the instructions provided on the uniform vessel impound authorization and inventory form and must be received by the appropriate court within ten business days of the date that the vessel impound authorization and inventory form was mailed to or served on the registered or legal owner or owners of the impounded vessel. If the hearing request is not received by the court within ten business days of the sending or personal service of the notice of impoundment pursuant to subsection (9) of this section, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the court shall proceed to hear and determine the validity of the impoundment.

(a) Within five days after the request for a hearing, the court shall notify the operator of the impound facility, the registered and legal owners of the vessel, and the officer or agency authorizing the impound in writing of the hearing date and time.

(b) At the hearing, the petitioner may produce any relevant evidence that is admissible under court rules to show that the impoundment, towing, or storage fees charged were not proper. The court may consider a written report made under oath by the officer who authorized the impoundment in lieu of the officer's personal appearance at the hearing.

(c) At the conclusion of the hearing, the court shall determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the fees established in subsection (10) of this section, and who is responsible for payment of the fees. The court may not adjust fees or charges that are in compliance with subsection (10) of this section.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chap-

ter together with court costs must be assessed against the petitioner.

(e) If the impoundment is determined to be in violation of this section, then the registered and legal owners of the vessel bear no impoundment, towing, or storage fees, any security must be returned or discharged as appropriate, and the agency that authorized the impoundment is liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment in favor of the moorage facility or vessel towing contractor against the agency authorizing the impound for the impoundment, towing, and storage fees incurred. In addition, the court shall enter judgment in favor of the petitioner for the amount of the filing fee required by law for the impound hearing petition. If an impoundment is determined to be in violation of this section, the impounding officer and the government agency employing the officer are not liable for damage to or theft of the vessel or its contents, or damages for loss of use of the vessel, if the impounding officer had reasonable suspicion to believe that the operator of the vessel was operating the vessel while under the influence of intoxicating liquor or any drug, was in physical control of the vessel while under the influence of intoxicating liquor or any drug, or was operating the vessel in a reckless manner, or if the impounding officer otherwise acted reasonably under the circumstances in acting to impound and secure the vessel.

(f) If any judgment entered under this subsection is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment must read essentially as follows:

TO:

YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the Court located at in the sum of \$, in an action entitled, Case No. YOU ARE FURTHER NOTIFIED that attorneys' fees and costs will be awarded against you under RCW if the judgment is not paid within 15 days of the date of this notice.

DATED this day of, (year)

Signature

Typed name and address of party mailing notice

(16) By September 30, 2017, the department of licensing in collaboration with the commission shall create the following forms for use in the enforcement of this section:

(a) A vessel impound authorization and inventory form. This form must include sections for the impounding officer to record the addresses of the registered and legal owners of the vessel and the designated individual that will act on behalf of the impound facility; and

(b) A forfeited vessel disposition report form.

(17) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Impound" means to take and hold a vessel in legal custody.

(b) "Legal owner" means a person having a perfected security interest or a registered owner of a vessel unencumbered by a security interest.

(c) "Moorage facility" includes a private moorage facility as defined in RCW 88.26.010, a moorage facility as defined in RCW 53.08.310, or a moorage facility owned or operated by the agency of the arresting officer.

(d) "Registered owner" or "owner" means the person whose lawful right of possession of a vessel has most recently been recorded with the department of licensing.

(e) "Secure moorage" is in-water moorage or dry storage at a moorage facility in a location specifically designated for the moorage of vessels and in a location where access is controlled or security is provided.

(f) "Vessel" includes any vessel as defined in RCW 79A.60.010 and includes any associated trailer or towing device used to transport the vessel if it is included in the impoundment. [2017 c 247 § 1.]

Chapter 79A.80 RCW
ACCESS TO RECREATIONAL LANDS

Sections

- 79A.80.020 Discover pass.
79A.80.090 Recreation access pass account.

79A.80.020 Discover pass. (1) Except as otherwise provided in this chapter, a discover pass is required for any motor vehicle to:

- (a) Park at any recreation site or lands; or
(b) Operate on any recreation site or lands.

(2) Except as provided in RCW 79A.80.110, the cost of a discover pass is thirty dollars. Every four years the office of financial management must review the cost of the discover pass and, if necessary, recommend to the legislature an adjustment to the cost of the discover pass to account for inflation.

(3) A discover pass is valid for one year beginning from the date that the discover pass is marked for activation. The activation date may differ from the purchase date pursuant to any policies developed by the agencies.

(4) Sales of discover passes must be consistent with RCW 79A.80.100.

(5) The discover pass must contain space for two motor vehicle license plate numbers. A discover pass is valid only for those vehicle license plate numbers written on the pass. However, the agencies may offer for sale a family discover pass that is fully transferable among vehicles and does not require the placement of a license plate number on the pass to be valid. The agencies must collectively set a price for the sale of a family discover pass that is no more than fifty dollars. A discover pass is valid only for use with one motor vehicle at any one time.

(6)(a) One complimentary discover pass must be provided to a volunteer who performed twenty-four hours of service on agency- sanctioned volunteer projects in a year. The agency must provide vouchers to volunteers identifying the number of volunteer hours they have provided for each project. The vouchers may be brought to an agency to be redeemed for a discover pass.

(b) Married spouses under chapter 26.04 RCW may present an agency with combined vouchers demonstrating the collective performance of twenty-four hours of service on agency-sanctioned volunteer projects in a year to be redeemed for a single complimentary discover pass. [2017 c 121 § 1; 2013 2nd sp.s. c 15 § 1; 2012 c 261 § 2; 2011 c 320 § 3.]

Effective date—2012 c 261: See note following RCW 79A.80.010.

Effective date—2011 c 320: See note following RCW 79A.80.005.

79A.80.090 Recreation access pass account. (1) The recreation access pass account is created in the state treasury. All moneys received from the sale of discover passes and day-use permits must be deposited into the account.

(2) Each fiscal biennium, the first seventy-one million dollars in revenue must be distributed to the agencies in the following manner:

(a) Eight percent to the department of fish and wildlife and deposited into the state wildlife account created in RCW 77.12.170;

(b) Eight percent to the department of natural resources and deposited into the parkland trust revolving fund created in RCW 43.30.385;

(c) Eighty-four percent to the state parks and recreation commission and deposited into the state parks renewal and stewardship account created in RCW 79A.05.215;

(d) During the 2015-2017 fiscal biennium, expenditures from the recreation access pass account may be used for Skamania county court costs. During the 2015-2017 and 2017-2019 fiscal biennia, expenditures from the recreation access pass account may be used for the state parks and recreation commission, in partnership with the departments of fish and wildlife and natural resources, to develop options and recommendations to improve recreational access fee systems.

(3) Each fiscal biennium, revenues in excess of seventy-one million dollars must be distributed equally among the agencies to the accounts identified in subsection (2) of this section. [2017 3rd sp.s. c 1 § 988; 2016 sp.s. c 36 § 948; 2011 c 320 § 10.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

Effective date—2011 c 320: See note following RCW 79A.80.005.

Title 80 PUBLIC UTILITIES

Chapters

80.01	Utilities and transportation commission.
80.28	Gas, electrical, and water companies.
80.36	Telecommunications.

Chapter 80.01 RCW

UTILITIES AND TRANSPORTATION COMMISSION

Sections

80.01.080 Public service revolving fund.

80.01.080 Public service revolving fund. There is created in the state treasury a public service revolving fund. Regulatory fees payable by all types of public service compa-

nies shall be deposited to the credit of the public service revolving fund. Except for expenses payable out of the pipeline safety account, all expense of operation of the Washington utilities and transportation commission shall be payable out of the public service revolving fund. [2017 3rd sp.s. c 25 § 11; 2010 1st sp.s. c 37 § 950; 2006 c 3 § 2; 2003 1st sp.s. c 25 § 940; 2002 c 371 § 924; 2001 c 238 § 8; 1961 c 14 § 80.01.080. Prior: 1949 c 117 § 11; Rem. Supp. 1949 § 10964-115-11. Formerly RCW 43.53.090.]

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Intent—Finding—Effective date—2001 c 238: See notes following RCW 80.24.060.

Additional notes found at www.leg.wa.gov

Chapter 80.28 RCW

GAS, ELECTRICAL, AND WATER COMPANIES

Sections

80.28.370	Community solar companies—Definitions.
80.28.375	Community solar companies—Requirements to engage in business—Registration.

80.28.370 Community solar companies—Definitions.

The definitions in this section apply throughout this section and RCW 80.28.375 unless the context clearly requires otherwise.

(1) "Community solar company" means a person, firm, or corporation, other than an electric utility or a community solar cooperative, that owns a community solar project and provides community solar project services to project participants.

(2) "Community solar project" means a solar energy system that has a direct current nameplate generating capacity that is no larger than one thousand kilowatts.

(3) "Community solar project services" means the provision of electricity generated by a community solar project, or the provision of the financial benefits associated with electricity generated by a community solar project, to multiple project participants, and may include other services associated with the use of the community solar project such as system monitoring and maintenance, warranty provisions, performance guarantees, and customer service.

(4) "Electric utility" means a consumer-owned utility or investor-owned utility as those terms are defined in RCW 19.280.020.

(5) "Project participant" means a customer who enters into a lease, power purchase agreement, loan, or other financial agreement with a community solar company in order to obtain a beneficial interest in, other than direct ownership of, a community solar project.

(6) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity. [2017 3rd sp.s. c 36 § 10.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

80.28.375 Community solar companies—Requirements to engage in business—Registration. (1) No community solar company may engage in business in this state

except in accordance with the provisions of this chapter. Engaging in business as a community solar company includes advertising, soliciting, offering, or entering into an agreement to own a community solar project and provide community solar project services to electric utility customers.

(2) A community solar company must register with the commission before engaging in business in this state or applying for certification from the Washington State University extension energy program under RCW 82.16.165(1). Registration with the commission as a community solar company must occur on an annual basis. The registration must be on a form prescribed by the commission and contain that information as the commission may by rule require, but must include at a minimum:

- (a) The name and address of the community solar company;
- (b) The name and address of the community solar company's registered agent, if any;
- (c) The name, address, and title of each officer or director;
- (d) The community solar company's most current balance sheet;
- (e) The community solar company's latest annual report, if any;
- (f) A description of the services the community solar company offers or intends to offer, including financing models; and
- (g) Disclosure of any pending litigation against it.

(3) As a precondition to registration, the commission may require the procurement of a performance bond or other mechanism sufficient to cover any advances or deposits the community solar company may collect from project participants or order that the advances or deposits be held in escrow or trust.

(4) The commission may deny registration to any community solar company that:

- (a) Does not provide the information required by this section;
- (b) Fails to provide a performance bond or other mechanism, if required;
- (c) Does not possess adequate financial resources to provide the proposed service; or
- (d) Does not possess adequate technical competency to provide the proposed service.

(5) The commission must take action to approve or issue a notice of hearing concerning any application for registration within thirty days after receiving the application. The commission may approve an application with or without a hearing. The commission may deny an application after a hearing.

(6) The commission may charge a community solar company an annual application fee to recover the cost of processing applications for registration under this section.

(7) The commission may adopt rules that describe the manner by which it will register a community solar company, ensure that the terms and conditions of community solar projects or community solar project services comply with the requirements of chapter 36, Laws of 2017 3rd sp. sess., establish the community solar company's responsibilities for responding to customer complaints and disputes, and adopt annual reporting requirements. In addition to the application

fee authorized under subsection (6) of this section, the commission may adopt regulatory fees applicable to community solar companies pursuant to RCW 80.04.080, 80.24.010, and 80.24.020. Such fees may not exceed the cost of ensuring compliance with this chapter.

(8) The commission may suspend or revoke a registration upon complaint by any interested party, or upon the commission's own motion after notice and opportunity for hearing, when it finds that a registered community solar company or its agent has violated this chapter or the rules of the commission, or that the community solar company or its agent has been found by a court or governmental agency to have violated the laws of a state or the United States.

(9) For the purpose of ensuring compliance with this chapter, the commission may issue penalties against community solar companies for violations of this chapter as provided for public service companies pursuant to chapter 80.04 RCW.

(10) Upon request of the commission, a community solar company registered under this section must provide information about its community solar projects or community solar project services.

(11) A violation of this section constitutes an unfair or deceptive act in trade or commerce in violation of chapter 19.86 RCW, the consumer protection act. Acts in violation of chapter 36, Laws of 2017 3rd sp. sess. are not reasonable in relation to the development and preservation of business, and constitute matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(12) For the purposes of RCW 19.86.170, actions or transactions of a community solar company may not be deemed otherwise permitted, prohibited, or regulated by the commission. [2017 3rd sp.s. c 36 § 11.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

Chapter 80.36 RCW TELECOMMUNICATIONS

Sections

80.36.901 Repealed.

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

Title 81 TRANSPORTATION

Chapters

81.53 Railroads—Crossings.
81.61 Railroads—Railroad crew transportation.

Chapter 81.53 RCW RAILROADS—CROSSINGS

Sections

81.53.281 Crossing signals, warning devices—Grade crossing protective fund—Use and transfer of funds—Allocation of costs—Procedure—Federal funding.

81.53.281 Crossing signals, warning devices—Grade crossing protective fund—Use and transfer of funds—Allocation of costs—Procedure—Federal funding. There is hereby created in the state treasury a "grade crossing protective fund" to carry out the provisions of RCW 81.53.261, 81.53.271, 81.53.281, 81.53.291, and 81.53.295; for grants and/or subsidies to public, private, and nonprofit entities for rail safety projects authorized or ordered by the commission; and for personnel and associated costs related to supervising and administering rail safety grants and/or subsidies. During the 2013-2015 fiscal biennium, funds in this account may also be used to conduct the study required under section 102, chapter 222, Laws of 2014. The commission shall transfer from the public service revolving fund's miscellaneous fees and penalties accounts moneys appropriated for these purposes as needed. At the time the commission makes each allocation of cost to said grade crossing protective fund, it shall certify that such cost shall be payable out of said fund. When federal-aid highway funds are involved, the department of transportation shall, upon entry of an order by the commission requiring the installation or upgrading of a grade crossing protective device, submit to the commission an estimate for the cost of the proposed installation and related work. Upon receipt of the estimate the commission shall pay to the department of transportation the percentage of the estimate specified in RCW 81.53.295, as now or hereafter amended, to be used as the grade crossing protective fund portion of the cost of the installation and related work.

The commission may adopt rules for the allocation of money from the grade crossing protective fund. During the 2015-2017 and 2017-2019 fiscal biennia, the commission may waive rules regarding local matching fund requirements, maximum awards for individual projects, and other application requirements as necessary to expedite the allocation of money from the grade crossing protective fund to address underprotected grade crossings as identified by the commission. [2017 c 313 § 715; 2016 c 14 § 701; 2014 c 222 § 702; 2003 c 190 § 3; 1998 c 245 § 166; 1987 c 257 § 1; 1985 c 405 § 509; 1982 c 94 § 3; 1975 1st ex.s. c 189 § 2; 1973 c 115 § 4; 1969 c 134 § 3.]

Effective date—2017 c 313: See note following RCW 43.19.642.

Effective date—2016 c 14: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 2016]." [2016 c 14 § 802.]

Effective date—2014 c 222: See note following RCW 47.28.030.

Findings—2003 c 190: See note following RCW 81.53.271.

Additional notes found at www.leg.wa.gov

Chapter 81.61 RCW

RAILROADS—RAILROAD CREW TRANSPORTATION

(Formerly: Railroads—Passenger-carrying vehicles for employees)

Sections

81.61.010	Definitions. (<i>Effective January 1, 2018.</i>)
81.61.040	Inspection of railroad crew transportation vehicles. (<i>Effective January 1, 2018.</i>)
81.61.050	Contract railroad crew transportation and vehicles—Commission duties and powers. (<i>Effective January 1, 2018.</i>)
81.61.060	Operation of contract crew transportation vehicle—Grounds for disqualification, reporting. (<i>Effective January 1, 2018.</i>)
81.61.070	Safety complaint, accident, and penalty data compilation—Exemption. (<i>Effective January 1, 2018.</i>)

81.61.010 Definitions. (*Effective January 1, 2018.*)

Unless the context clearly requires otherwise:

(1) "Contract crew transportation vehicle," as used in this chapter, means every motor vehicle, designed to transport fifteen or fewer passengers, including the driver, that is owned, leased, operated, or maintained by a person contracting with a railroad company or its agents, contractors, subcontractors, vendors, subvendors, secondary vendors, or subcarriers, and used primarily to provide railroad crew transportation.

(2) "Passenger-carrying vehicle," as used in this chapter, means those buses, vans, trucks, and cars owned, operated, and maintained by a railroad company and primarily used to transport railroad employees in other than the cab of such vehicle and designed primarily for operation on roads which may or may not be equipped with retractable flanged wheels for operation on railroad tracks. [2017 c 333 § 1; 1977 ex.s. c 2 § 1.]

Effective date—2017 c 333: "This act takes effect January 1, 2018." [2017 c 333 § 7.]

81.61.040 Inspection of railroad crew transportation vehicles. (*Effective January 1, 2018.*)

(1) The commission may, in enforcing rules and orders under this chapter, inspect any passenger-carrying vehicle or contract crew transportation vehicle. Upon request, the chief of the state patrol may assist the commission in these inspections.

(2) Consistent with RCW 81.61.050, the commission must develop an inspection program for contract crew transportation vehicles. This program must require a periodic inspection of each vehicle, including a review of operational practices. [2017 c 333 § 5; 1977 ex.s. c 2 § 4.]

Effective date—2017 c 333: See note following RCW 81.61.010.

81.61.050 Contract railroad crew transportation and vehicles—Commission duties and powers. (*Effective January 1, 2018.*)

(1) The commission must regulate persons providing contract railroad crew transportation and every contract crew transportation vehicle with respect to driver qualifications, equipment safety, safety of operations, hours of service by drivers, passenger safety, drug testing requirements, and record retention. This regulation must be consistent with the manner in which the commission regulates these areas under chapter 81.70 RCW and the manner in which it regulates safety under chapter 81.68 RCW, as well as with the approach used in federal motor carrier safety regulations under Title 49 of the code of federal regulations. In the event of a conflict between this chapter and the laws referenced in this subsection, this chapter governs.

(2) The commission must adopt rules under chapter 34.05 RCW as necessary to carry out this chapter regarding the operation of contract crew transportation vehicles.

(3)(a) The commission must require insurance coverage for each contract crew transportation vehicle that satisfies the following minimum amounts:

- (i) Five million dollars combined single limit coverage for bodily injury and property damage liability coverage; and
- (ii) Uninsured and underinsured motorist coverage of one million dollars.

(b) If a third party contracts with the person operating the vehicle on behalf of the railroad company or its agents, con-

tractors, subcontractors, vendors, subvendors, secondary vendors, or subcarriers to transport railroad crew, the insurance requirements may be satisfied by either the third party or the person operating the vehicle, so long as the person operating the vehicle names the third party as an additional insured or named insured. The railroad company may also satisfy the insurance requirements. Proof of coverage must be provided to the commission by the person contracting with the railroad company.

(4) The commission must require the form and posting of adequate notices in a conspicuous location in all contract crew transportation vehicles to advise railroad employee passengers of their rights, the opportunity to submit safety complaints to the commission, the complaint process, and contact information for the commission.

(5) The commission must require persons providing contract railroad crew transportation to ensure that all drivers of contract crew transportation vehicles successfully complete at least eight hours of commission-approved safety training that includes, but is not limited to, vehicle and passenger safety awareness, rail yard safety, grade crossing safety, load securement, and distracted and fatigued driving.

(6) The commission must investigate safety complaints related to contract railroad crew transportation under this chapter and take appropriate enforcement action as authorized.

(7) The commission may enforce this chapter with respect to persons providing contract railroad crew transportation under the authority in RCW 81.04.380 through 81.04.405, including assessing penalties as warranted.

(8) The commission may suspend or revoke a permit upon complaint by any interested party, or upon the commission's own motion after notice and opportunity for hearing, when it finds that any person owning, leasing, operating, or maintaining contract crew transportation vehicles has violated this chapter or the rules of the commission, or that the company or its agent has been found by a court or governmental agency to have violated the laws of a state or the United States. [2017 c 333 § 2.]

Effective date—2017 c 333: See note following RCW 81.61.010.

81.61.060 Operation of contract crew transportation vehicle—Grounds for disqualification, reporting. (*Effective January 1, 2018.*) (1) A person is immediately and automatically disqualified from operating a contract crew transportation vehicle for a period of three years if (a) the person is convicted of, or is found to have committed, two or more traffic violations that result in suspension or revocation of the person's driver's license within a three-year period, for a reason other than the nonpayment of fines, or (b) the person is found guilty of, or is found to have committed, any drug or alcohol-related traffic offense, using a vehicle to commit a felony, leaving the scene of an accident, prohibited passing of another vehicle, a railroad-highway grade crossing offense identified in RCW 46.25.090(8), or driving with a suspended, revoked, or canceled license.

(2) A driver that sustains a conviction or a traffic violation as outlined under this section while employed by a contract carrier must report the conviction or infraction to the carrier within ten days of the date of conviction or the finding that the infraction was committed. [2017 c 333 § 3.]

Effective date—2017 c 333: See note following RCW 81.61.010.

81.61.070 Safety complaint, accident, and penalty data compilation—Exemption. (*Effective January 1, 2018.*) (1) The commission must compile data regarding any reported safety complaints, accidents, regulatory violations and fines, and corrective actions taken by the commission involving vehicles regulated under this chapter. A railroad company, and any person that owns or leases, operates, or maintains contract crew transportation vehicles in the state, must, at the request of the commission, provide data relevant to any complaints and accidents, including location, time of day, visibility, a description of the event, whether any property damage or personal injuries resulted, and any corrective action taken by the railroad company, person operating the contract crew transportation vehicle, or commission. The commission must make this data available upon request.

(2) Information included in safety complaints that identifies the employee who submitted the complaint is exempt from public inspection and copying pursuant to RCW 42.56.330. [2017 c 333 § 4.]

Effective date—2017 c 333: See note following RCW 81.61.010.

Title 82 EXCISE TAXES

Chapters

- 82.01** Department of revenue.
- 82.04** Business and occupation tax.
- 82.08** Retail sales tax.
- 82.12** Use tax.
- 82.13** Collection and remittance of retail sales and use tax—Marketplace facilitators, referers, and remote sellers.
- 82.14** Local retail sales and use taxes.
- 82.16** Public utility tax.
- 82.18** Solid waste collection tax.
- 82.19** Litter tax.
- 82.27** Tax on enhanced food fish.
- 82.29A** Leasehold excise tax.
- 82.32** General administrative provisions.
- 82.42** Aircraft fuel tax.
- 82.44** Motor vehicle excise tax.
- 82.45** Excise tax on real estate sales.
- 82.46** Counties and cities—Excise tax on real estate sales.
- 82.50** Travel trailers and campers excise tax.
- 82.60** Tax deferrals for investment.
Projects in rural counties.
- 82.63** Tax deferrals for high-technology businesses.
- 82.73** Washington main street program tax incentives.
- 82.74** Tax deferrals for fruit.
And vegetable businesses.
- 82.75** Tax deferrals for biotechnology and medical device manufacturing businesses.
- 82.80** Local option transportation taxes.
- 82.82** Community empowerment zones—Tax deferral program.
- 82.85** Job creation and economic development investment incentives—Pilot program.

Chapter 82.01 RCW
DEPARTMENT OF REVENUE

Sections

82.01.060 Director—Powers and duties—Rule-making authority.

82.01.060 Director—Powers and duties—Rule-making authority. The director of revenue, hereinafter in chapter 26, Laws of 1967 ex. sess. referred to as the director, through the department of revenue, hereinafter in chapter 26, Laws of 1967 ex. sess. referred to as the department, must:

(1) Assess and collect all taxes and administer all programs relating to taxes which are the responsibility of the tax commission at the time chapter 26, Laws of 1967 ex. sess. takes effect or which the legislature may hereafter make the responsibility of the director or of the department;

(2) Make, adopt and publish such rules as he or she may deem necessary or desirable to carry out the powers and duties imposed upon him or her or the department by the legislature. However, the director may not adopt rules after July 23, 1995, that are based solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule;

(3) Rules adopted by the tax commission before July 23, 1995, remain in force until such time as they may be revised or rescinded by the director;

(4) Provide by general regulations for an adequate system of departmental review of the actions of the department or of its officers and employees in the assessment or collection of taxes;

(5) Maintain a tax research section with sufficient technical, clerical and other employees to conduct constant observation and investigation of the effectiveness and adequacy of the revenue laws of this state and of the sister states in order to assist the governor, the legislature and the director in estimation of revenue, analysis of tax measures, and determination of the administrative feasibility of proposed tax legislation and allied problems;

(6) Recommend to the governor such amendments, changes in, and modifications of the revenue laws as seem proper and requisite to remedy injustice and irregularities in taxation, and to facilitate the assessment and collection of taxes in the most economical manner;

(7) Provide the opportunity for any person feeling aggrieved by any action taken against the person by the department in the administration of chapters 19.02, 19.80, and 59.30 RCW to request a review of the department's action. Such review may be conducted as a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494; and

(8)(a) Establish background investigation policies applicable to those current and prospective department employees and contractors that are or may be authorized by the department to access federal tax information. Such policies must require a criminal history record check through the Washington state patrol criminal identification system and through the federal bureau of investigation, at the expense of the department. The record check must include a fingerprint check using a complete Washington state criminal identification fingerprint card, which must be forwarded by the Washington state patrol to the federal bureau of investigation. The depart-

ment's background investigation policies must also satisfy any specific background investigation standards established by the internal revenue service.

(b) Information received by the department pursuant to this subsection may be used only for the purposes of making, supporting, or defending decisions regarding the appointment, hiring, or retention of persons, or for complying with any requirements from the internal revenue service. Further dissemination or use of the information is prohibited, notwithstanding any other provision of law. [2017 c 323 § 801; 2011 c 298 § 36; 1995 c 403 § 106; 1977 c 75 § 92; 1967 ex.s. c 26 § 3.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

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

Additional notes found at www.leg.wa.gov

Chapter 82.04 RCW
BUSINESS AND OCCUPATION TAX

Sections

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- 82.04.426 Exemptions—Semiconductor microchips. (*Effective January 1, 2018; contingent effective date; contingent expiration date.*)

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- 82.04.4277 Deductions—Health and social welfare organizations—Mental health or chemical dependency services. (*Effective until January 1, 2018.*)
- 82.04.4277 Deductions—Health and social welfare organizations—Mental health or chemical dependency services. (*Effective January 1, 2018, until January 1, 2020.*)
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- 82.04.448 Credit—Manufacturing semiconductor materials. (*Effective until January 1, 2018; contingent effective date; contingent expiration date.*)
- 82.04.448 Credit—Manufacturing semiconductor materials. (*Effective January 1, 2018; contingent effective date; contingent expiration date.*)
- 82.04.4481 Credit—Property taxes paid by aluminum smelter. (*Effective January 1, 2018.*)
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- 82.04.4483 Credit—Programming or manufacturing software in rural counties.
- 82.04.4489 Credit—Motion picture competitiveness program.
- 82.04.449 Credit—Washington customized employment training program. (*Effective January 1, 2018.*)
- 82.04.4496 Credit—Clean alternative fuel commercial vehicles. (*Effective January 1, 2018, until January 1, 2022.*)
- 82.04.545 Exemptions—Sales of electricity or gas to silicon smelters. (*Effective until January 1, 2018; contingent expiration date.*)
- 82.04.545 Exemptions—Sales of electricity or gas to silicon smelters. (*Effective January 1, 2018; contingent expiration date.*)
- 82.04.628 Exemptions—Commercial fertilizer, agricultural crop protection products, and seed.

82.04.040 "Sale," "casual or isolated sale," "lease or rental," "adoption fee," "animal care and control agency," "animal rescue group," "animal rescue organization." (1) Except as otherwise provided in this subsection, "sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "sale at retail" or "retail sale" under RCW 82.04.050. It includes lease or rental, conditional sale contracts, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not. The term "sale" does not include the transfer of the ownership of, title to, or possession of an animal by an animal rescue organization in exchange for the payment of an adoption fee.

(2) "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved.

(3)(a) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. "Lease or rental" includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. Sec. 7701(h)(1), as amended or renumbered as of January 1, 2003. The definition in this subsection (3) must be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the United States internal revenue code, Washing-

ton state's commercial code, or other provisions of federal, state, or local law.

(b) "Lease or rental" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments, and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (3)(b)(iii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(4)(a) "Adoption fee" means an amount charged by an animal rescue organization to adopt an animal, except that "adoption fee" does not include any separately itemized charge for any incidental inanimate items provided to persons adopting an animal, including food, identification tags, collars, and leashes.

(b) "Animal care and control agency" means the same as in RCW 16.52.011 and also includes any similar entity operating outside of this state.

(c) "Animal rescue group" means a nonprofit organization that:

(i)(A) Is exempt from federal income taxation under 26 U.S.C. Sec. 501(c) of the federal internal revenue code as it exists on July 23, 2017; or

(B) Is registered as a charity with the Washington secretary of state under chapter 19.09 RCW, whether such registration is required by law or voluntary;

(ii) Has as its primary purpose the prevention of abuse, neglect, cruelty, exploitation, or homelessness of animals; and

(iii) Exclusively obtains dogs, cats, or other animals for placement that are:

(A) Stray or abandoned;

(B) Surrendered or relinquished by animal owners or caretakers;

(C) Transferred from other animal rescue organizations; or

(D) Born in the care of such nonprofit organization other than through intentional breeding by the nonprofit organization.

(d) "Animal rescue organization" means an animal care and control agency or an animal rescue group. [2017 c 323 § 201; 2004 c 153 § 402; 2003 c 168 § 103; 1961 c 15 § 82.04.040. Prior: 1959 ex.s. c 5 § 1; 1959 ex.s. c 3 § 1; 1955 c 389 § 5; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Application—2017 c 323 §§ 201 and 202: "Sections 201 and 202 of this act apply both prospectively and retroactively to July 1, 2015." [2017 c 323 § 203.]

Tax preference performance statement exemption—Automatic expiration date exemption: "RCW 82.32.805 and 82.32.808 do not apply to any provisions of this act." [2017 c 323 § 1101.]

Additional notes found at www.leg.wa.gov

82.04.050 "Sale at retail," "retail sale." (1)(a) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who:

(i) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(ii) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(iii) Purchases for the purpose of consuming the property purchased in producing for sale as a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(iv) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(v) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065; or

(vi) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(b) The term includes every sale of tangible personal property that is used or consumed or to be used or consumed in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property is resold or used as provided in (a)(i) through (vi) of this subsection following such use.

(c) The term also means every sale of tangible personal property to persons engaged in any business that is taxable under RCW 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908.

(2) The term "sale at retail" or "retail sale" includes the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities

in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and also includes the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then conveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but does not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" means those cleaning and care-taking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it is presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The installing, repairing, altering, or improving of digital goods for consumers;

(h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection may be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section may be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" includes the sale of or charge made for personal, business, or professional

services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

- (a) Abstract, title insurance, and escrow services;
- (b) Credit bureau services;
- (c) Automobile parking and storage garage services;
- (d) Landscape maintenance and horticultural services

but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(e) Service charges associated with tickets to professional sporting events;

(f) The following personal services: Tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services; and

(g)(i) Operating an athletic or fitness facility, including all charges for the use of such a facility or for any associated services and amenities, except as provided in (g)(ii) of this subsection.

(ii) Notwithstanding anything to the contrary in (g)(i) of this subsection (3), the term "sale at retail" and "retail sale" under this subsection does not include:

(A) Separately stated charges for the use of an athletic or fitness facility where such use is primarily for a purpose other than engaging in or receiving instruction in a physical fitness activity;

(B) Separately stated charges for the use of a discrete portion of an athletic or fitness facility, other than a pool, where such discrete portion of the facility does not by itself meet the definition of "athletic or fitness facility" in this subsection;

(C) Separately stated charges for services, such as advertising, massage, nutritional consulting, and body composition testing, that do not require the customer to engage in physical fitness activities to receive the service. The exclusion in this subsection (3)(g)(ii)(C) does not apply to personal training services and instruction in a physical fitness activity;

(D) Separately stated charges for physical therapy provided by a physical therapist, as those terms are defined in RCW 18.74.010, or occupational therapy provided by an occupational therapy practitioner, as those terms are defined in RCW 18.59.020, when performed pursuant to a referral from an authorized health care practitioner or in consultation with an authorized health care practitioner. For the purposes of this subsection (3)(g)(ii)(D), an authorized health care practitioner means a health care practitioner licensed under chapter 18.83, 18.25, 18.36A, 18.57, 18.57A, 18.71, or 18.71A RCW;

(E) Rent or association fees charged by a landlord or residential association to a tenant or residential owner with access to an athletic or fitness facility maintained by the landlord or residential association, unless the rent or fee varies depending on whether the tenant or owner has access to the facility;

(F) Services provided in the regular course of employment by an employee with access to an athletic or fitness facility maintained by the employer for use without charge by its employees or their family members;

(G) The provision of access to an athletic or fitness facility by an educational institution to its students and staff. However, charges made by an educational institution to its alumni or other members of the public for the use of any of the educational institution's athletic or fitness facilities are a retail sale under this subsection (3)(g). For purposes of this subsection (3)(g)(ii)(G), "educational institution" has the same meaning as in RCW 82.04.170;

(H) Yoga, chi gong, or martial arts classes, training, or events held at a community center, park, school gymnasium, college or university, hospital or other medical facility, private residence, or any other facility that is not operated within and as part of an athletic or fitness facility.

(iii) Nothing in (g)(ii) of this subsection (3) may be construed to affect the taxation of sales made by the operator of an athletic or fitness facility, where such sales are defined as a retail sale under any provision of this section other than this subsection (3).

(iv) For the purposes of this subsection (3)(g), the following definitions apply:

(A) "Athletic or fitness facility" means an indoor or outdoor facility or portion of a facility that is primarily used for: Exercise classes; strength and conditioning programs; personal training services; tennis, racquetball, handball, squash, or pickleball; or other activities requiring the use of exercise or strength training equipment, such as treadmills, elliptical machines, stair climbers, stationary cycles, rowing machines, pilates equipment, balls, climbing ropes, jump ropes, and weightlifting equipment.

(B) "Martial arts" means any of the various systems of training for physical combat or self-defense. "Martial arts" includes, but is not limited to, karate, kung fu, tae kwon do, Krav Maga, boxing, kickboxing, jujitsu, shootfighting, wrestling, aikido, judo, hapkido, Kendo, tai chi, and mixed martial arts.

(C) "Physical fitness activities" means activities that involve physical exertion for the purpose of improving or maintaining the general fitness, strength, flexibility, conditioning, or health of the participant. "Physical fitness activities" includes participating in yoga, chi gong, or martial arts.

(4)(a) The term also includes the renting or leasing of tangible personal property to consumers.

(b) The term does not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term also includes the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.

(6)(a) The term also includes the sale of prewritten computer software to a consumer, regardless of the method of delivery to the end user. For purposes of (a) and (b) of this subsection, the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

(b) The term "retail sale" does not include the sale of or charge made for:

- (i) Custom software; or
- (ii) The customization of prewritten computer software.

(c)(i) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

(ii)(A) The service described in (c)(i) of this subsection (6) includes the right to access and use prewritten computer software to perform data processing.

(B) For purposes of this subsection (6)(c)(ii), "data processing" means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

(7) The term also includes the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8)(a) The term also includes the following sales to consumers of digital goods, digital codes, and digital automated services:

- (i) Sales in which the seller has granted the purchaser the right of permanent use;
- (ii) Sales in which the seller has granted the purchaser a right of use that is less than permanent;
- (iii) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and
- (iv) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(b) A retail sale of digital goods, digital codes, or digital automated services under this subsection (8) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(c) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(9) The term also includes the charge made for providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (9),

an operator must do more than maintain, inspect, or set up the tangible personal property.

(10) The term does not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(11) The term also does not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor does it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; (c) farmers for the purpose of providing bee pollination services; and (d) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(12) The term does not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor does the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor does the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development.

(13) The term does not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services.

(14) The term does not include the sale for resale of any service described in this section if the sale would otherwise constitute a "sale at retail" and "retail sale" under this section.

(15)(a) The term "sale at retail" or "retail sale" includes amounts charged, however labeled, to consumers to engage in any of the activities listed in this subsection (15)(a), including the furnishing of any associated equipment or,

except as otherwise provided in this subsection, providing instruction in such activities, where such charges are not otherwise defined as a "sale at retail" or "retail sale" in this section:

(i)(A) Golf, including any variant in which either golf balls or golf clubs are used, such as miniature golf, hitting golf balls at a driving range, and golf simulators, and including fees charged by a golf course to a player for using his or her own cart. However, charges for golf instruction are not a retail sale, provided that if the instruction involves the use of a golfing facility that would otherwise require the payment of a fee, such as green fees or driving range fees, such fees, including the applicable retail sales tax, must be separately identified and charged by the golfing facility operator to the instructor or the person receiving the instruction.

(B) Notwithstanding (a)(i)(A) of this subsection (15) and except as otherwise provided in this subsection (15)(a)(i)(B), the term "sale at retail" or "retail sale" does not include amounts charged to participate in, or conduct, a golf tournament or other competitive event. However, amounts paid by event participants to the golf facility operator are retail sales under this subsection (15)(a)(i). Likewise, amounts paid by the event organizer to the golf facility are retail sales under this subsection (15)(a)(i), if such amounts vary based on the number of event participants;

(ii) Ballooning, hang gliding, indoor or outdoor sky diving, paragliding, parasailing, and similar activities;

(iii) Air hockey, billiards, pool, foosball, darts, shuffleboard, ping pong, and similar games;

(iv) Access to amusement park, theme park, and water park facilities, including but not limited to charges for admission and locker or cabana rentals. Discrete charges for rides or other attractions or entertainment that are in addition to the charge for admission are not a retail sale under this subsection (15)(a)(iv). For the purposes of this subsection, an amusement park or theme park is a location that provides permanently affixed amusement rides, games, and other entertainment, but does not include parks or zoos for which the primary purpose is the exhibition of wildlife, or fairs, carnivals, and festivals as defined in (b)(i) of this subsection;

(v) Batting cage activities;

(vi) Bowling, but not including competitive events, except that amounts paid by the event participants to the bowling alley operator are retail sales under this subsection (15)(a)(vi). Likewise, amounts paid by the event organizer to the operator of the bowling alley are retail sales under this subsection (15)(a)(vi), if such amounts vary based on the number of event participants;

(vii) Climbing on artificial climbing structures, whether indoors or outdoors;

(viii) Day trips for sightseeing purposes;

(ix) Bungee jumping, zip lining, and riding inside a ball, whether inflatable or otherwise;

(x) Horseback riding offered to the public, where the seller furnishes the horse to the buyer and providing instruction is not the primary focus of the activity, including guided rides, but not including therapeutic horseback riding provided by an instructor certified by a nonprofit organization that offers national or international certification for therapeutic riding instructors;

(xi) Fishing, including providing access to private fishing areas and charter or guided fishing, except that fishing contests and license fees imposed by a government entity are not a retail sale under this subsection;

(xii) Guided hunting and hunting at game farms and shooting preserves, except that hunting contests and license fees imposed by a government entity are not a retail sale under this subsection;

(xiii) Swimming, but only in respect to (A) recreational or fitness swimming that is open to the public, such as open swim, lap swimming, and special events like kids night out and pool parties during open swim time, and (B) pool parties for private events, such as birthdays, family gatherings, and employee outings. Fees for swimming lessons, to participate in swim meets and other competitions, or to join a swim team, club, or aquatic facility are not retail sales under this subsection (15)(a)(xiii);

(xiv) Go-karting, bumper cars, and other motorized activities where the seller provides the vehicle and the premises where the buyer will operate the vehicle;

(xv) Indoor or outdoor playground activities, such as inflatable bounce structures and other inflatables; mazes; trampolines; slides; ball pits; games of tag, including laser tag and soft-dart tag; and human gyroscope rides, regardless of whether such activities occur at the seller's place of business, but not including playground activities provided for children by a licensed child day care center or licensed family day care provider as those terms are defined in *RCW 43.215.010;

(xvi) Shooting sports and activities, such as target shooting, skeet, trap, sporting clays, "5" stand, and archery, but only in respect to discrete charges to members of the public to engage in these activities, but not including fees to enter a competitive event, instruction that is entirely or predominately classroom based, or to join or renew a membership at a club, range, or other facility;

(xvii) Paintball and airsoft activities;

(xviii) Skating, including ice skating, roller skating, and inline skating, but only in respect to discrete charges to members of the public to engage in skating activities, but not including skating lessons, competitive events, team activities, or fees to join or renew a membership at a skating facility, club, or other organization;

(xix) Nonmotorized snow sports and activities, such as downhill and cross-country skiing, snowboarding, ski jumping, sledding, snow tubing, snowshoeing, and similar snow sports and activities, whether engaged in outdoors or in an indoor facility with or without snow, but only in respect to discrete charges to the public for the use of land or facilities to engage in nonmotorized snow sports and activities, such as fees, however labeled, for the use of ski lifts and tows and daily or season passes for access to trails or other areas where nonmotorized snow sports and activities are conducted. However, fees for the following are not retail sales under this subsection (15)(a)(xix): (A) Instructional lessons; (B) permits issued by a governmental entity to park a vehicle on or access public lands; and (C) permits or leases granted by an owner of private timberland for recreational access to areas used primarily for growing and harvesting timber; and

(xx) Scuba diving; snorkeling; river rafting; surfing; kiteboarding; flyboarding; water slides; inflatables, such as

water pillows, water trampolines, and water rollers; and similar water sports and activities.

(b) Notwithstanding anything to the contrary in this subsection (15), the term "sale at retail" or "retail sale" does not include charges:

(i) Made for admission to, and rides or attractions at, fairs, carnivals, and festivals. For the purposes of this subsection, fairs, carnivals, and festivals are events that do not exceed twenty-one days and a majority of the amusement rides, if any, are not affixed to real property;

(ii) Made by an educational institution to its students and staff for activities defined as retail sales by (a)(i) through (xx) of this subsection. However, charges made by an educational institution to its alumni or other members of the general public for these activities are a retail sale under this subsection (15). For purposes of this subsection (15)(b)(ii), "educational institution" has the same meaning as in RCW 82.04.170;

(iii) Made by a vocational school for commercial diver training that is licensed by the workforce training and education coordinating board under chapter 28C.10 RCW; or

(iv) Made for day camps offered by a nonprofit organization or state or local governmental entity that provide youth not older than age eighteen, or that are focused on providing individuals with disabilities or mental illness, the opportunity to participate in a variety of supervised activities. [2017 3rd sp.s. c 37 § 1201; 2015 3rd sp.s. c 6 § 1105; (2015 3rd sp.s. c 6 § 1104 expired January 1, 2016); 2015 c 169 § 1; 2013 2nd sp.s. c 13 § 802; 2011 c 174 § 202. Prior: 2010 c 112 § 14; 2010 c 111 § 201; 2010 c 106 § 202; prior: 2009 c 563 § 301; 2009 c 535 § 301; prior: 2007 c 54 § 4; 2007 c 6 § 1004; prior: 2005 c 515 § 2; 2005 c 514 § 101; prior: 2004 c 174 § 3; 2004 c 153 § 407; 2003 c 168 § 104; 2002 c 178 § 1; 2000 2nd sp.s. c 4 § 23; prior: 1998 c 332 § 2; 1998 c 315 § 1; 1998 c 308 § 1; 1998 c 275 § 1; 1997 c 127 § 1; prior: 1996 c 148 § 1; 1996 c 112 § 1; 1995 1st sp.s. c 12 § 2; 1995 c 39 § 2; 1993 sp.s. c 25 § 301; 1988 c 253 § 1; prior: 1987 c 285 § 1; 1987 c 23 § 2; 1986 c 231 § 1; 1983 2nd ex.s. c 3 § 25; 1981 c 144 § 3; 1975 1st ex.s. c 291 § 5; 1975 1st ex.s. c 90 § 1; 1973 1st ex.s. c 145 § 1; 1971 ex.s. c 299 § 3; 1971 ex.s. c 281 § 1; 1970 ex.s. c 8 § 1; prior: 1969 ex.s. c 262 § 30; 1969 ex.s. c 255 § 3; 1967 ex.s. c 149 § 4; 1965 ex.s. c 173 § 1; 1963 c 7 § 1; prior: 1961 ex.s. c 24 § 1; 1961 c 293 § 1; 1961 c 15 § 82.04.050; prior: 1959 ex.s. c 5 § 2; 1957 c 279 § 1; 1955 c 389 § 6; 1953 c 91 § 3; 1951 2nd ex.s. c 28 § 3; 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

*Reviser's note: RCW 43.215.010 was recodified as RCW 43.216.010 pursuant to 2017 3rd sp.s. c 6 § 821, effective July 1, 2018.

Tax preference performance statement and expiration—2017 3rd sp.s. c 37 § 1201: "RCW 82.32.805 and 82.32.808 do not apply to this part." [2017 3rd sp.s. c 37 § 1202.]

Expiration date—2015 3rd sp.s. c 6 § 1104: "Section 1104 of this act expires January 1, 2016." [2015 3rd sp.s. c 6 § 2304.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Tax preference performance statement—Tax preference intended to be permanent—2015 3rd sp.s. c 6 §§ 1102-1106: See notes following RCW 82.04.330.

Effective date—2015 c 169: "This act takes effect January 1, 2016." [2015 c 169 § 14.]

Intent—2013 2nd sp.s. c 13: "It is the intent of part VIII of this act to provide a sales tax exemption for cover charges to patrons at establishments that provide the opportunity to dance. The intent is to provide tax relief to businesses who have been reporting the income for cover charges under the service and other classification, but not intending to avoid their tax obligation of collecting retail sales tax because of department and taxpayer confusion regarding the appropriate tax treatment of this income. To ensure proper tax reporting in the future by businesses who provide the opportunity to dance, the legislature intends to review the tax preference and its actual fiscal impact on state revenues to determine if the fiscal impact to state revenues reasonably conforms with the fiscal estimate in the fiscal note for this legislation." [2013 2nd sp.s. c 13 § 801.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Retroactive application—2010 c 112: See note following RCW 82.32.780.

Purpose—2010 c 111: "The 2009 legislature enacted Engrossed Substitute House Bill No. 2075 (chapter 535, Laws of 2009), an act relating to the excise taxation of certain products and services provided or furnished electronically. The bill took effect July 26, 2009.

Engrossed Substitute House Bill No. 2075, at eighty-five pages, was a comprehensive piece of legislation that made major changes to state and local sales and use taxes, as well as the state business and occupation tax. Moreover, Engrossed Substitute House Bill No. 2075 was a complex piece of legislation because of the intricate interrelationship between the sales tax and the business and occupation tax and also because the bill affects the taxation of products and services that involve technologies that are changing rapidly.

Because of the complexity and length of Engrossed Substitute House Bill No. 2075, it was the legislature's expectation that, in the course of implementing the bill, ambiguities and unintended consequences would be discovered, which, if not corrected, will unsettle expectations. Thus, the legislature further anticipated that it would need to consider legislation in the 2010 legislative session to address these issues.

Therefore, the purpose of this act is to clarify ambiguities, correct unintended consequences, restore expectations, and conform the law to the original intent of the legislature." [2010 c 111 § 101.]

Retroactive application—2010 c 111: "(1) Except as provided in subsection (2) of this section, this act applies both prospectively and retroactively to July 26, 2009.

(2) Sections 202, 402, and 502 of this act, and those provisions of sections 401 and 501 of this act that eliminate the sales and use tax exemptions in RCW 82.08.02082 and 82.12.02082, apply prospectively only." [2010 c 111 § 902.]

Effective date—2010 c 111: "This act takes effect July 1, 2010." [2010 c 111 § 903.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Severability—2007 c 54: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 54 § 32.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Findings—2005 c 515: "The legislature finds that:

(1) Public entities that receive tax dollars must continuously improve the way they operate and deliver service so citizens receive maximum value for their tax dollars; and

(2) An explicit statement clarifying that no sales or use tax shall apply to the entire charge paid by regional transit authorities for bus or rail combined operations and maintenance agreements that are provided to such authorities in support of their provision of urban transportation or transportation services is necessary to improve efficient service." [2005 c 515 § 1.]

Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30: See notes following RCW 81.112.300.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Intent—1995 1st sp.s. c 12: "It is the intent of the legislature that massage services be recognized as health care practitioners for the purposes of business and occupation tax application. To achieve this intent massage services are being removed from the definition of sale at retail and retail sale." [1995 1st sp.s. c 12 § 1.]

Intent—Severability—Effective date—1981 c 144: See notes following RCW 82.16.010.

Credit for retail sales or use taxes paid to other jurisdictions with respect to property used: RCW 82.12.035.

"Services rendered in respect to" defined: RCW 82.04.051.

Additional notes found at www.leg.wa.gov

82.04.060 "Sale at wholesale," "wholesale sale."

"Sale at wholesale" or "wholesale sale" means:

- (1) Any sale, which is not a sale at retail, of:
 - (a) Tangible personal property;
 - (b) Services defined as a retail sale in RCW 82.04.050(2)
- (a) or (g);
- (c) Activities defined as a retail sale in RCW 82.04.050(15);
- (d) Prewritten computer software;
- (e) Services described in RCW 82.04.050(6)(c);
- (f) Extended warranties as defined in RCW 82.04.050(7);
- (g) Competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065; or
- (h) Digital goods, digital codes, or digital automated services;

(2) Any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers. For the purposes of this subsection (2), "real or personal property" does not include any natural products named in RCW 82.04.100; and

(3) The sale of any service for resale, if the sale is excluded from the definition of "sale at retail" and "retail sale" in RCW 82.04.050(14). [2017 c 323 § 512; 2015 c 169 § 2; 2010 c 106 § 203; 2009 c 535 § 403; 2007 c 6 § 1007; 2005 c 514 § 102; 2002 c 367 § 1; 1998 c 332 § 5; 1996 c 148 § 3; 1983 2nd ex.s. c 3 § 26; 1961 c 15 § 82.04.060. Prior: 1955 ex.s. c 10 § 4; 1955 c 389 § 7; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2015 c 169: See note following RCW 82.04.050.

Effective date—2010 c 106: See note following RCW 35.102.145.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Additional notes found at www.leg.wa.gov

82.04.066 "Engaging within this state," "engaging within the state." "Engaging within this state" and "engaging within this state," when used in connection with any apportionable activity as defined in RCW 82.04.460 or selling activity taxable under RCW 82.04.250(1), 82.04.257(1), or 82.04.270, means that a person generates gross income of the business from sources within this state, such as customers or intangible property located in this state, regardless of whether the person is physically present in this state. [2017 3rd sp.s. c 28 § 301; 2015 3rd sp.s. c 5 § 203; 2010 1st sp.s. c 23 § 103.]

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

Construction—2017 c 323: See note following RCW 82.08.052.

Effective dates—Finding—Intent—2015 3rd sp.s. c 5: See notes following RCW 82.08.052.

Contingency—Application—2010 1st sp.s. c 23 §§ 102-112: See notes following RCW 82.04.067.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

82.04.067 Substantial nexus—Engaging in business.

(1) A person engaging in business is deemed to have substantial nexus with this state if, in the current or immediately preceding calendar year, the person is:

- (a) An individual and is a resident or domiciliary of this state;
- (b) A business entity and is organized or commercially domiciled in this state; or
- (c) A nonresident individual or a business entity that is organized or commercially domiciled outside this state, and the person had:
 - (i) More than fifty-three thousand dollars of property in this state;
 - (ii) More than fifty-three thousand dollars of payroll in this state;
 - (iii) More than two hundred sixty-seven thousand dollars of receipts from this state; or
 - (iv) At least twenty-five percent of the person's total property, total payroll, or total receipts in this state.

(2)(a) Property counting toward the thresholds in subsection (1)(c)(i) and (iv) of this section is the average value of the taxpayer's property, including intangible property, owned or rented and used in this state during the current or immediately preceding calendar year.

(b)(i) Property owned by the taxpayer, other than loans and credit card receivables owned by the taxpayer, is valued at its original cost basis. Loans and credit card receivables owned by the taxpayer are valued at their outstanding principal balance, without regard to any reserve for bad debts. However, if a loan or credit card receivable is charged off in whole or in part for federal income tax purposes, the portion of the loan or credit card receivable charged off is deducted from the outstanding principal balance.

(ii) Property rented by the taxpayer is valued at eight times the net annual rental rate. For purposes of this subsection, "net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(c) The average value of property must be determined by averaging the values at the beginning and ending of the applicable calendar year; but the department may require the averaging of monthly values during the applicable calendar year if reasonably required to properly reflect the average value of the taxpayer's property.

(d)(i) For purposes of this subsection (2), loans and credit card receivables are deemed owned and used in this state as follows:

(A) Loans secured by real property, personal property, or both real and personal property are deemed owned and used in the state if the real property or personal property securing the loan is located within this state. If the property securing the loan is located both within this state and one or more other states, the loan is deemed owned and used in this state if more than fifty percent of the fair market value of the real or personal property is located within this state. If more than fifty percent of the fair market value of the real or personal property is not located within any one state, then the loan is deemed owned and used in this state if the borrower is located in this state. The determination of whether the real or personal property securing a loan is located within this state must be made, as of the time the original agreement was made, and any and all subsequent substitutions of collateral must be disregarded.

(B) Loans not secured by real or personal property are deemed owned and used in this state if the borrower is located in this state.

(C) Credit card receivables are deemed owned and used in this state if the billing address of the cardholder is in this state.

(ii)(A) Except as otherwise provided in (d)(ii)(B) of this subsection (2), the definitions in the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions as existing on June 1, 2010, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, apply to this section.

(B) "Credit card" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

(e) Notwithstanding anything else to the contrary in this subsection, property counting toward the thresholds in subsection (1)(c)(i) and (iv) of this section does not include a person's ownership of, or rights in, computer software as defined in RCW 82.04.215, including computer software used in providing a digital automated service; master copies of software; and digital goods and digital codes residing on servers located in this state.

(3)(a) Payroll counting toward the thresholds in subsection (1)(c)(ii) and (iv) of this section is the total amount paid by the taxpayer for compensation in this state during the current or immediately preceding calendar year plus nonemployee compensation paid to representative third parties in this state. Nonemployee compensation paid to representative third parties includes the gross amount paid to nonemployees who represent the taxpayer in interactions with the taxpayer's clients and includes sales commissions.

(b) Employee compensation is paid in this state if the compensation is properly reportable to this state for unem-

ployment compensation tax purposes, regardless of whether the compensation was actually reported to this state.

(c) Nonemployee compensation is paid in this state if the service performed by the representative third party occurs entirely or primarily within this state.

(d) For purposes of this subsection, "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees or nonemployees and defined as gross income under 26 U.S.C. Sec. 61 of the federal internal revenue code of 1986, as existing on June 1, 2010.

(4) Receipts counting toward the thresholds in subsection (1)(c)(iii) and (iv) of this section are:

(a) Those amounts included in the numerator of the receipts factor under RCW 82.04.462;

(b) For financial institutions, those amounts included in the numerator of the receipts factor under the rule adopted by the department as authorized in RCW 82.04.460(2); and

(c) For persons taxable under RCW 82.04.250(1), 82.04.257(1), or 82.04.270, the gross proceeds of sales taxable under those statutory provisions and sourced to this state in accordance with RCW 82.32.730.

(5)(a) Each December, the department must review the cumulative percentage change in the consumer price index. The department must adjust the thresholds in subsection (1)(c)(i) through (iii) of this section if the consumer price index has changed by five percent or more since the later of June 1, 2010, or the date that the thresholds were last adjusted under this subsection. For purposes of determining the cumulative percentage change in the consumer price index, the department must compare the consumer price index available as of December 1st of the current year with the consumer price index as of the later of June 1, 2010, or the date that the thresholds were last adjusted under this subsection. The thresholds must be adjusted to reflect that cumulative percentage change in the consumer price index. The adjusted thresholds must be rounded to the nearest one thousand dollars. Any adjustment will apply to tax periods that begin after the adjustment is made.

(b) As used in this subsection, "consumer price index" means the consumer price index for all urban consumers (CPI-U) available from the bureau of labor statistics of the United States department of labor.

(6)(a)(i) Except as provided in (a)(iii) of this subsection (6), subsections (1) through (5) of this section only apply with respect to the taxes on persons engaged in apportionable activities as defined in RCW 82.04.460 or making wholesale sales taxable under RCW 82.04.257(1) or 82.04.270.

(ii) Subject to the limitation in RCW 82.32.531, for purposes of the taxes imposed under this chapter on the business of making sales at retail or any other activity not included in the definition of apportionable activities in RCW 82.04.460, other than the business of making wholesale sales taxed under RCW 82.04.257(1) or 82.04.270, a person is deemed to have a substantial nexus with this state if the person has a physical presence in this state during the current or immediately preceding calendar year, which need only be demonstrably more than a slightest presence.

(iii) For purposes of the taxes imposed under this chapter on the business of making sales at retail taxable under RCW 82.04.250(1) or 82.04.257(1), a person is also deemed to

have a substantial nexus with this state if the person's receipts from this state, pursuant to subsection (4)(c) of this section, meet either criterion in subsection (1)(c)(iii) or (iv) of this section, as adjusted under subsection (5) of this section.

(b) For purposes of this subsection, a person is physically present in this state if the person has property or employees in this state.

(c)(i) A person is also physically present in this state for the purposes of this subsection if the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in this state.

(ii) A remote seller as defined in RCW 82.08.052 is presumed to be engaged in activities in this state that are significantly associated with the remote seller's ability to establish or maintain a market for its products in this state if the remote seller is presumed to have a substantial nexus with this state under RCW 82.08.052. The presumption in this subsection (6)(c)(ii) may be rebutted as provided in RCW 82.08.052. To the extent that the presumption in RCW 82.08.052 is no longer operative pursuant to RCW 82.32.762, the presumption in this subsection (6)(c)(ii) is no longer operative. [2017 3rd sp.s. c 28 § 302; 2016 c 137 § 2; 2015 3rd sp.s. c 5 § 204; 2010 1st sp.s. c 23 § 104.]

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

Construction—2017 c 323: See note following RCW 82.08.052.

Effective date—2016 c 137: "This act takes effect July 1, 2016." [2016 c 137 § 4.]

Effective dates—Finding—Intent—2015 3rd sp.s. c 5: See notes following RCW 82.08.052.

Contingency—2010 1st sp.s. c 23 §§ 102-112: "If a court of competent jurisdiction, in a final judgment not subject to appeal, adjudges any provision of section 104(1)(c) of this act unconstitutional or otherwise invalid, Part I of this act is null and void in its entirety." [2010 1st sp.s. c 23 § 1701.]

Application—2010 1st sp.s. c 23 §§ 102-112: "Part I of this act applies with respect to gross income of the business, as defined in RCW 82.04.080, including gross income from royalties as defined in RCW 82.04.2907, generated on and after June 1, 2010. For purposes of calculating the thresholds in section 104(1)(c) of this act for the 2010 tax year, property, payroll, and receipts are based on the entire 2010 tax year." [2010 1st sp.s. c 23 § 1702.]

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

82.04.190 "Consumer." "Consumer" means the following:

(1) Except as provided otherwise in this section, any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose of:

(a) Resale as tangible personal property in the regular course of business;

(b) Incorporating such property as an ingredient or component of real or personal property when installing, repairing,

cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers;

(c) Consuming such property in producing for sale as a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale;

(d) Consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7), if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or uses any competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065, other than for resale in the regular course of business; (c) any person who purchases, acquires, or uses any service defined in RCW 82.04.050(2) (a) or (g), other than for resale in the regular course of business or for the purpose of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7); (d) any person who makes a purchase meeting the definition of "sale at retail" and "retail sale" under RCW 82.04.050(15), other than for resale in the regular course of business; (e) any person who purchases or acquires an extended warranty as defined in RCW 82.04.050(7) other than for resale in the regular course of business; and (f) any person who is an end user of software. For purposes of this subsection (2)(f) and RCW 82.04.050(6), a person who purchases or otherwise acquires prewritten computer software, who provides services described in RCW 82.04.050(6)(c) and who will charge consumers for the right to access and use the prewritten computer software, is not an end user of the prewritten computer software;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right-of-way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is

being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition may be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person is a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person, except that consumer does not include any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, or any instrumentality thereof, if the investment project would qualify for sales and use tax deferral under chapter 82.63 RCW if undertaken by a private entity;

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year. Nothing contained in this or any other subsection of this section may be construed to modify any other definition of "consumer";

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development;

(9) Any person who is an owner, lessee, or has the right of possession of tangible personal property that, under the terms of an extended warranty as defined in RCW 82.04.050(7), has been repaired or is replacement property, but only with respect to the sale of or charge made for the repairing of the tangible personal property or the replacement property;

(10) Any person who purchases, acquires, or uses services described in RCW 82.04.050(6)(c) other than:

(a) For resale in the regular course of business; or

(b) For purposes of consuming the service described in RCW 82.04.050(6)(c) in producing for sale a new product, but only if such service becomes a component of the new product. For purposes of this subsection (10), "product" means a digital product, an article of tangible personal property, or the service described in RCW 82.04.050(6)(c);

(11)(a) Any end user of a digital product or digital code. "Consumer" does not include any person who is not an end user of a digital product or a digital code and purchases, acquires, owns, holds, or uses any digital product or digital code for purposes of consuming the digital product or digital code in producing for sale a new product, but only if the digital product or digital code becomes a component of the new product. A digital code becomes a component of a new product if the digital good or digital automated service acquired through the use of the digital code becomes incorporated into a new product. For purposes of this subsection, "product" has the same meaning as in subsection (10) of this section.

(b)(i) For purposes of this subsection, "end user" means any taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives by contract a digital product for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to others. A person that purchases digital products or digital codes for the purpose of giving away such products or codes will not be considered to have engaged in the distribution or redistribution of such products or codes and will be treated as an end user;

(ii) If a purchaser of a digital code does not receive the contractual right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates, then the purchaser of the digital code is an end user. If the purchaser of the digital code receives the contractual right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates, then the purchaser of the digital code is not an end user. A purchaser of a digital code who has the contractual right to further redistribute the digital code is an end user if that purchaser does not have the right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates;

(12) Any person who provides services described in RCW 82.04.050(9). Any such person is a consumer with respect to the purchase, acquisition, or use of the tangible personal property that the person provides along with an operator in rendering services defined as a retail sale in RCW 82.04.050(9). Any such person may also be a consumer under other provisions of this section;

(13) Any person who purchases, acquires, owns, holds, or uses chemical sprays or washes for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, or who purchases feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials, is not a consumer of such items, but only to the extent that the items:

(a) Are used in relation to the person's participation in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, the wildlife habitat incentives program, or their successors administered by the United States department of agriculture;

(b) Are for use by a farmer for the purpose of producing for sale any agricultural product; or

(c) Are for use by a farmer to produce or improve wild-life habitat on land the farmer owns or leases while acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or the Washington state department of fish and wildlife;

(14) A regional transit authority is not a consumer with respect to labor, services, or tangible personal property purchased pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a transit agency, as defined in RCW 81.104.015, performs the labor or services; and

(15) The term "consumer" does not include:

(a) An animal rescue organization with respect to animals under its care and control; and

(b) Any person with respect to an animal adopted by that person from an animal rescue organization. [2017 c 323 § 513; 2017 c 323 § 202; 2015 c 169 § 3; 2014 c 97 § 302. Prior: 2010 c 111 § 202; 2010 c 106 § 204; 2009 c 535 § 302; 2007 c 6 § 1008; 2005 c 514 § 103; prior: 2004 c 174 § 4; 2004 c 2 § 8; 2002 c 367 § 2; prior: 1998 c 332 § 6; 1998 c 308 § 2; prior: 1996 c 173 § 2; 1996 c 148 § 4; 1996 c 112 § 2; 1995 1st sp.s. c 3 § 4; 1986 c 231 § 2; 1985 c 134 § 1; 1983 2nd ex.s. c 3 § 27; 1975 1st ex.s. c 90 § 2; 1971 ex.s. c 299 § 4; 1969 ex.s. c 255 § 4; 1967 ex.s. c 149 § 6; 1965 ex.s. c 173 § 4; 1961 c 15 § 82.04.190; prior: 1959 ex.s. c 3 § 3; 1957 c 279 § 2; 1955 c 389 § 20; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

Reviser's note: This section was amended by 2017 c 323 § 202 and by 2017 c 323 § 513, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—2017 c 323 §§ 201 and 202: See note following RCW 82.04.040.

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2015 c 169: See note following RCW 82.04.050.

Purpose—Retroactive application—Effective date—2010 c 111: See notes following RCW 82.04.050.

Effective date—2010 c 106: See note following RCW 35.102.145.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Findings—Intent—1996 c 173: See note following RCW 82.08.02565.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Additional notes found at www.leg.wa.gov

82.04.192 Digital products definitions. (1) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones.

(2) "Digital audiovisual works" means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

(3)(a) "Digital automated service," except as provided in (b) of this subsection (3), means any service transferred electronically that uses one or more software applications.

(b) "Digital automated service" does not include:

(i) Any service that primarily involves the application of human effort by the seller, and the human effort originated after the customer requested the service;

(ii) The loaning or transferring of money or the purchase, sale, or transfer of financial instruments. For purposes of this subsection (3)(b)(ii), "financial instruments" include cash, accounts receivable and payable, loans and notes receivable and payable, debt securities, equity securities, as well as derivative contracts such as forward contracts, swap contracts, and options;

(iii) Dispensing cash or other physical items from a machine;

(iv) Payment processing services;

(v) Parimutuel wagering and handicapping contests as authorized by chapter 67.16 RCW;

(vi) Telecommunications services and ancillary services as those terms are defined in RCW 82.04.065;

(vii) The internet and internet access as those terms are defined in RCW 82.04.297;

(viii) The service described in RCW 82.04.050(6)(c);

(ix) Online educational programs provided by a:

(A) Public or private elementary or secondary school; or

(B) An institution of higher education as defined in sections 1001 or 1002 of the federal higher education act of 1965 (Title 20 U.S.C. Secs. 1001 and 1002), as existing on July 1, 2009. For purposes of this subsection (3)(b)(ix)(B), an online educational program must be encompassed within the institutional accreditation;

(x) Live presentations, such as lectures, seminars, workshops, or courses, where participants are connected to other participants via the internet or telecommunications equipment, which allows audience members and the presenter or instructor to give, receive, and discuss information with each other in real time;

(xi) Travel agent services, including online travel services, and automated systems used by travel agents to book reservations;

(xii)(A) A service that allows the person receiving the service to make online sales of products or services, digital or otherwise, using either: (I) The service provider's web site; or (II) the service recipient's web site, but only when the service provider's technology is used in creating or hosting the service recipient's web site or is used in processing orders from customers using the service recipient's web site.

(B) The service described in this subsection (3)(b)(xii) does not include the underlying sale of the products or services, digital or otherwise, by the person receiving the service;

(xiii) Advertising services. For purposes of this subsection (3)(b)(xiii), "advertising services" means all services directly related to the creation, preparation, production, or the dissemination of advertisements. Advertising services include layout, art direction, graphic design, mechanical preparation, production supervision, placement, and render-

ing advice to a client concerning the best methods of advertising that client's products or services. Advertising services also include online referrals, search engine marketing and lead generation optimization, web campaign planning, the acquisition of advertising space in the internet media, and the monitoring and evaluation of web site traffic for purposes of determining the effectiveness of an advertising campaign. Advertising services do not include web hosting services and domain name registration;

(xiv) The mere storage of digital products, digital codes, computer software, or master copies of software. This exclusion from the definition of digital automated services includes providing space on a server for web hosting or the backing up of data or other information;

(xv) Data processing services. For purposes of this subsection (3)(b)(xv), "data processing service" means a primarily automated service provided to a business or other organization where the primary object of the service is the systematic performance of operations by the service provider on data supplied in whole or in part by the customer to extract the required information in an appropriate form or to convert the data to usable information. Data processing services include check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities. Data processing does not include the service described in RCW 82.04.050(6)(c); and

(xvi) Digital goods.

(4) "Digital books" means works that are generally recognized in the ordinary and usual sense as books.

(5) "Digital code" means a code that provides a purchaser with the right to obtain one or more digital products, if all of the digital products to be obtained through the use of the code have the same sales and use tax treatment. "Digital code" does not include a code that represents a stored monetary value that is deducted from a total as it is used by the purchaser. "Digital code" also does not include a code that represents a redeemable card, gift card, or gift certificate that entitles the holder to select digital products of an indicated cash value. A digital code may be obtained by any means, including email or by tangible means regardless of its designation as song code, video code, book code, or some other term.

(6)(a) "Digital goods," except as provided in (b) of this subsection (6), means sounds, images, data, facts, or information, or any combination thereof, transferred electronically, including, but not limited to, specified digital products and other products transferred electronically not included within the definition of specified digital products.

(b) The term "digital goods" does not include:

(i) Telecommunications services and ancillary services as those terms are defined in RCW 82.04.065;

(ii) Computer software as defined in RCW 82.04.215;

(iii) The internet and internet access as those terms are defined in RCW 82.04.297;

(iv)(A) Except as provided in (b)(iv)(B) of this subsection (6), the representation of a personal or professional service in electronic form, such as an electronic copy of an engineering report prepared by an engineer, where the service primarily involves the application of human effort by the service provider, and the human effort originated after the customer requested the service.

(B) The exclusion in (b)(iv)(A) of this subsection (6) does not apply to photographers in respect to amounts received for the taking of photographs that are transferred electronically to the customer, but only if the customer is an end user, as defined in RCW 82.04.190(11), of the photographs. Such amounts are considered to be for the sale of digital goods; and

(v) Services and activities excluded from the definition of digital automated services in subsection (3)(b)(i) through (xv) of this section and not otherwise described in (b)(i) through (iv) of this subsection (6).

(7) "Digital products" means digital goods and digital automated services.

(8) "Electronically transferred" or "transferred electronically" means obtained by the purchaser by means other than tangible storage media. It is not necessary that a copy of the product be physically transferred to the purchaser. So long as the purchaser may access the product, it will be considered to have been electronically transferred to the purchaser.

(9) "Specified digital products" means electronically transferred digital audiovisual works, digital audio works, and digital books.

(10) "Subscription radio services" means the sale of audio programming by a radio broadcaster as defined in RCW 82.08.02081, except as otherwise provided in this subsection. "Subscription radio services" does not include audio programming that is sold on a pay-per-program basis or that allows the buyer to access a library of programs at any time for a specific charge for that service.

(11) "Subscription television services" means the sale of video programming by a television broadcaster as defined in RCW 82.08.02081, except as otherwise provided in this subsection. "Subscription television services" does not include video programming that is sold on a pay-per-program basis or that allows the buyer to access a library of programs at any time for a specific charge for that service, but only if the seller is not subject to a franchise fee in this state under the authority of Title 47 U.S.C. Sec. 542(a) on the gross revenue derived from the sale. [2017 c 323 § 514; 2010 c 111 § 203; 2009 c 535 § 201.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Purpose—Retrospective application—Effective date—2010 c 111: See notes following RCW 82.04.050.

Intent—2009 c 535: "(1) In 2007, the legislature directed the department of revenue (department) to conduct a study of the taxation of electronically delivered products (digital products). In conducting the study, the department was assisted by a committee comprised of legislators, academics, and individuals representing different segments of government and industry (the "study committee").

(2) At the conclusion of the study, the department issued its final report December 5, 2008. The final report noted that any recommendations to the legislature should promote the following goals: (a) Simplicity and fairness; (b) conformity with the streamlined sales and use tax agreement; (c) neutrality regardless of industry, content, and delivery method while taking the purchaser's underlying property rights into account; (d) consideration given to the revenue impact of potential changes to the tax base; (e) consideration given to the impact caused by the pyramiding of business inputs; (f) maintaining or enhancing the competitiveness of businesses located in Washington; and (g) maintaining certainty, consistency, durability, and equity despite changes in technology and business models.

(3) While the department's final report did not contain recommendations for the legislature, the report's conclusion notes that the study committee found that legislation implementing digital products tax policy is necessary

in 2009 to: (a) Protect the sales and use tax base; (b) establish certainty in our tax code; (c) maintain conformity with the streamlined sales and use tax agreement; and (d) encourage economic development.

(4) This act is the outgrowth of the work of the department and the study committee. The purpose of this act is to implement those findings of the study committee noted in subsection (3) of this section. This act also takes into account the goals noted in subsection (2) of this section. Moreover, this act contains specific provisions to: (a) Provide protections for taxpayers who failed to pay or collect tax on digital products for periods before July 26, 2009; and (b) promote the location of server farms and data centers in this state by preventing the department from considering a person's ownership of, or rights in, digital goods or digital codes residing on servers located in this state in determining whether the person has nexus with this state for purposes of the taxes imposed in Title 82 RCW." [2009 c 535 § 101.]

Construction—2009 c 535: "This act does not have any impact whatsoever on the characterization of digital goods and digital codes as tangible or intangible personal property for purposes of property taxation and may not be used in any way in construing any provision of Title 84 RCW." [2009 c 535 § 1201.]

Construction—2009 c 535: "The repeals in sections 515 and 623 of this act do not affect any existing right acquired or liability or obligation incurred under the statutes repealed or under any rule or order adopted under those statutes nor do they affect any proceedings instituted under them." [2009 c 535 § 1203.]

82.04.220 Business and occupation tax imposed. (1)

There is levied and collected from every person that has a substantial nexus with this state, as provided in RCW 82.04.067, a tax for the act or privilege of engaging in business activities. The tax is measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be.

(2)(a) A person who has a substantial nexus with this state in the current calendar year under the provisions of RCW 82.04.067, based solely on the person's property, payroll, or receipts in this state during the current calendar year, is subject to the tax imposed under this chapter for the current calendar year only on business activity occurring on and after the date that the person established a substantial nexus with this state in the current calendar year.

(b) This subsection (2) does not apply to any person who also had a substantial nexus with this state during:

(i) The immediately preceding calendar year under RCW 82.04.067; or

(ii) The current calendar year under RCW 82.04.067 (1)(a) or (b) or (6)(a)(ii) or (c). [2017 3rd sp.s. c 28 § 303; 2011 1st sp.s. c 20 § 101; 2010 1st sp.s. c 23 § 102; 1961 c 15 § 82.04.220. Prior: 1955 c 389 § 42; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

Intent—2010 1st sp.s. c 23: "In order to preserve funding for education, public safety, health care, environmental protection, and safety net services for children, elderly, disabled, and vulnerable people, it is the intent of the legislature to close obsolete tax preferences, clarify the legislature's intent regarding existing tax policy, and to ensure balanced tax policy while bolstering emerging industries." [2010 1st sp.s. c 23 § 1.]

Findings—Intent—2010 1st sp.s. c 23: "(1) The legislature finds that out-of-state businesses that do not have a physical presence in Washington earn significant income from Washington residents from providing services or collecting royalties on the use of intangible property in this state. The legislature further finds that these businesses receive significant benefits and opportunities provided by the state, such as: Laws providing protection of

business interests or regulating consumer credit; access to courts and judicial process to enforce business rights, including debt collection and intellectual property rights; an orderly and regulated marketplace; and police and fire protection and a transportation system benefiting in-state agents and other representatives of out-of-state businesses. Therefore, the legislature intends to extend the state's business and occupation tax to these companies to ensure that they pay their fair share of the cost of services that this state renders and the infrastructure it provides.

(2)(a) The legislature also finds that the current cost apportionment method in RCW 82.04.460(1) for apportioning most service income has been difficult for both taxpayers and the department to apply due in large part (i) to the difficulty in assigning certain costs of doing business inside or outside of this state, and (ii) to its dissimilarity with the apportionment methods used in other states for their business activity taxes.

(b) The legislature further finds that there is a trend among states to adopt a single factor apportionment formula based on sales. The legislature recognizes that adoption of a sales factor only apportionment method has the advantages of simplifying apportionment and making Washington a more attractive place for businesses to expand their property and payroll. For these reasons, the legislature adopts single factor sales apportionment for purposes of apportioning royalty income and certain service income for state business and occupation tax purposes.

(c) Nothing in this act may be construed, however, to authorize apportionment of the gross income or value of products taxable under the following business and occupation tax classifications: Retailing, wholesaling, manufacturing, processing for hire, extracting, extracting for hire, printing, government contracting, public road construction, the classifications in RCW 82.04.280(1) (b), (d), (f), and (g), and any other activity not specifically included in the definition of apportionable activities in RCW 82.04.460.

(d) Nothing in this part is intended to modify the nexus and apportionment requirements for local gross receipts business and occupation taxes." [2011 c 174 § 208; 2010 1st sp.s. c 23 § 101.]

Contingency—Application—2010 1st sp.s. c 23 §§ 102-112: See notes following RCW 82.04.067.

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

82.04.240 Tax on manufacturers. (Contingent expiration date.) Upon every person engaging within this state in business as a manufacturer, except persons taxable as manufacturers under other provisions of this chapter; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, manufactured, multiplied by the rate of 0.484 percent.

The measure of the tax is the value of the products, including byproducts, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state. [2004 c 24 § 4; 1998 c 312 § 3; 1993 sp.s. c 25 § 102; 1981 c 172 § 1; 1979 ex.s. c 196 § 1; 1971 ex.s. c 281 § 3; 1969 ex.s. c 262 § 34; 1967 ex.s. c 149 § 8; 1965 ex.s. c 173 § 5; 1961 c 15 § 82.04.240. Prior: 1959 c 211 § 1; 1955 c 389 § 44; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

Additional notes found at www.leg.wa.gov

82.04.240 Tax on manufacturers. (Effective until January 1, 2018; contingent effective date; contingent expiration date.) (1) Upon every person engaging within this state in business as a manufacturer, except persons taxable as manufacturers under other provisions of this chapter; as to such persons the amount of the tax with respect to such business is equal to the value of the products, including byproducts, manufactured, multiplied by the rate of 0.484 percent.

(2)(a) Upon every person engaging within this state in the business of manufacturing semiconductor materials, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or, in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.275 percent. For the purposes of this subsection "semiconductor materials" means silicon crystals, silicon ingots, raw polished semiconductor wafers, compound semiconductors, integrated circuits, and microchips.

(b) A person reporting under the tax rate provided in this subsection (2) must file a complete annual report with the department under RCW 82.32.534.

(3) The measure of the tax is the value of the products, including byproducts, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state.

(4) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 517; 2010 c 114 § 104; 2003 c 149 § 3; 1998 c 312 § 3; 1993 sp.s. c 25 § 102; 1981 c 172 § 1; 1979 ex.s. c 196 § 1; 1971 ex.s. c 281 § 3; 1969 ex.s. c 262 § 34; 1967 ex.s. c 149 § 8; 1965 ex.s. c 173 § 5; 1961 c 15 § 82.04.240. Prior: 1959 c 211 § 1; 1955 c 389 § 44; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

Contingent effective date—2010 c 114: See RCW 82.32.790.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

Additional notes found at www.leg.wa.gov

82.04.240 Tax on manufacturers. (Effective January 1, 2018; contingent effective date; contingent expiration date.) (1) Upon every person engaging within this state in business as a manufacturer, except persons taxable as manufacturers under other provisions of this chapter; as to such persons the amount of the tax with respect to such business is equal to the value of the products, including byproducts, manufactured, multiplied by the rate of 0.484 percent.

(2)(a) Upon every person engaging within this state in the business of manufacturing semiconductor materials, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or, in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.275 percent. For the purposes of this subsection "semiconductor materials" means silicon crystals, silicon ingots, raw polished semiconductor wafers, compound semiconductors, integrated circuits, and microchips.

(b) A person reporting under the tax rate provided in this subsection (2) must file a complete annual tax performance report with the department under RCW 82.32.534.

(3) The measure of the tax is the value of the products, including byproducts, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state.

(4) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 §

518; 2017 c 135 § 9; 2010 c 114 § 104; 2003 c 149 § 3; 1998 c 312 § 3; 1993 sp.s. c 25 § 102; 1981 c 172 § 1; 1979 ex.s. c 196 § 1; 1971 ex.s. c 281 § 3; 1969 ex.s. c 262 § 34; 1967 ex.s. c 149 § 8; 1965 ex.s. c 173 § 5; 1961 c 15 § 82.04.240. Prior: 1959 c 211 § 1; 1955 c 389 § 44; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Contingent effective date—2017 c 135; 2010 c 114: See RCW 82.32.790.

Effective date—2017 c 135: See note following RCW 82.32.534.

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

Additional notes found at www.leg.wa.gov

82.04.2404 Manufacturers—Processors for hire—Semiconductor materials. (Effective until January 1, 2018.) (1) Upon every person engaging within this state in the business of manufacturing or processing for hire semiconductor materials, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or, in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.275 percent.

(2) For the purposes of this section "semiconductor materials" means silicon crystals, silicon ingots, raw polished semiconductor wafers, and compound semiconductor wafers.

(3) A person reporting under the tax rate provided in this section must file a complete annual report with the department under RCW 82.32.534.

(4) Any person who has claimed the preferential tax rate under this section must reimburse the department for fifty percent of the amount of the tax preference under this section, if:

(a) The number of persons employed by the person claiming the tax preference is less than ninety percent of the person's three-year employment average for the three years immediately preceding the year in which the preferential tax rate is claimed; or

(b) The person is subject to a review under section 501(4)(a), chapter 37, Laws of 2017 3rd sp. sess. and such person does not meet performance criteria in section 501(4)(a), chapter 37, Laws of 2017 3rd sp. sess.

(5) This section expires December 1, 2028. [2017 3rd sp.s. c 37 § 502; 2010 c 114 § 105; 2006 c 84 § 2.]

Tax preference performance statement—2017 3rd sp.s. c 37 §§ 502 and 503: "(1) This section is the tax preference performance statement for the tax preferences contained in sections 502 and 503, chapter 37, Laws of 2017 3rd sp. sess. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these tax preferences as ones intended to induce certain designated behavior by taxpayers, improve industry competitiveness, and create or retain jobs, as indicated in RCW 82.32.808(2) (a) through (c).

(3) It is the legislature's specific public policy objective to maintain and expand business in the semiconductor cluster. It is the legislature's intent to extend by ten years the preferential tax rates for manufacturers and processors for hire of semiconductor materials in order to maintain and grow jobs in the semiconductor cluster.

(4) If a review finds that: (a) Since October 19, 2017, at least one project in the semiconductor cluster has located in Clark county, and that this project generates at least two thousand five hundred high-wage jobs, all of which pay twenty dollars per hour or more and at least eighty percent of which pay thirty-five dollars per hour or more; and (b) the number of jobs in the semiconductor cluster in Washington has increased since October 19, 2017, then the legislature intends to extend the expiration date of the tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to the department of revenue's annual survey data." [2017 3rd sp.s. c 37 § 501.]

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: "Sections 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525 of this act expire January 1, 2018." [2017 3rd sp.s. c 37 § 1405.]

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—2007 c 54 § 22; 2006 c 84 §§ 2-8: "(1)(a) Sections 2 through 8, chapter 84, Laws of 2006 and section 22, chapter 54, Laws of 2007 are contingent upon the siting, expansion, or renovation, and commercial operation of a significant semiconductor materials fabrication facility or facilities in the state of Washington.

(b) For the purposes of this section:

(i) "Commercial operation" means the equipment and process qualifications in the new, expanded, or renovated building are completed and production for sale has begun.

(ii) "Semiconductor materials fabrication" means the manufacturing of silicon crystals, silicon ingots that are at least three hundred millimeters in diameter, raw polished semiconductor wafers that are at least three hundred millimeters in diameter, and compound semiconductor wafers that are at least three hundred millimeters in diameter.

(iii) "Significant" means that the combined investment or investments by a single person, occurring at any time before December 1, 2006, of new buildings, expansion or renovation of existing buildings, tenant improvements to buildings, and machinery and equipment in the buildings, at the commencement of commercial production, is at least three hundred fifty million dollars based on actual expenditures by the person.

(2) Except for section 1 of this act and this section, this act takes effect the first day of the month immediately following the department's determination that the contingency in subsection (1) of this section has occurred. The department shall make its determination regarding the contingency in subsection (1) of this section based on information provided to the department by affected taxpayers or representatives of affected taxpayers.

(3) The department of revenue shall provide notice of the effective date of sections 2 through 8, chapter 84, Laws of 2006 [December 1, 2006] to affected taxpayers, the legislature, the office of the code reviser, and others as deemed appropriate by the department." [2007 c 54 § 29; 2006 c 84 § 9.]

Findings—Intent—2006 c 84: "The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of family wage employment in the state's manufacturing industries. The legislature further finds that targeting tax incentives to focus on key industry clusters is an important business climate strategy. Washington state has recognized the semiconductor industry, which includes the design and manufacture of semiconductor materials, as one of the state's existing key industry clusters. Businesses in this cluster in the state of Washington are facing increasing pressure to expand elsewhere. The sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature improved Washington's ability to compete with other states for manufacturing investment. In 2003 the legislature enacted comprehensive tax incentives for the semiconductor cluster that address activities of the lead product industry and its suppliers and customers. These tax incentives are contingent on the investment of at least one billion dollars in a new semiconductor microchip fabrication facility in this state, which has not occurred. This investment criteria failed to recognize the significance of potential investment in the advanced semiconductor materials sector. Therefore, the legislature intends to complement existing comprehensive tax incentives for the semiconductor cluster to address activities of the advanced semiconductor materials product industry and its suppliers and customers. Tax incentives for the semiconductor cluster are important in both retention and expansion of existing businesses and attraction of new businesses, all of which will strengthen this cluster. The legislature also recognizes that the semiconductor industry involves major investment that results in significant construction projects, which will create jobs and bring many indirect benefits to the state during the construction phase." [2006 c 84 § 1.]

82.04.2404 Manufacturers—Processors for hire—Semiconductor materials. (Effective January 1, 2018, until December 1, 2028.) (1) Upon every person engaging within this state in the business of manufacturing or processing for hire semiconductor materials, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or, in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.275 percent.

(2) For the purposes of this section "semiconductor materials" means silicon crystals, silicon ingots, raw polished semiconductor wafers, and compound semiconductor wafers.

(3) A person reporting under the tax rate provided in this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(4) Any person who has claimed the preferential tax rate under this section must reimburse the department for fifty percent of the amount of the tax preference under this section, if:

(a) The number of persons employed by the person claiming the tax preference is less than ninety percent of the person's three-year employment average for the three years immediately preceding the year in which the preferential tax rate is claimed; or

(b) The person is subject to a review under section 501(4)(a), chapter 37, Laws of 2017 3rd sp. sess. and such person does not meet performance criteria in section 501(4)(a), chapter 37, Laws of 2017 3rd sp. sess.

(5) This section expires December 1, 2028. [2017 3rd sp.s. c 37 § 503; 2017 c 135 § 10; 2010 c 114 § 105; 2006 c 84 § 2.]

Effective date—2017 3rd sp.s. c 37 §§ 102-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: "Sections 201, 203, 204, 205, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, and 707 of this act and parts I and VIII of this act take effect January 1, 2018." [2017 3rd sp.s. c 37 § 1404.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—2007 c 54 § 22; 2006 c 84 §§ 2-8: "(1)(a) Sections 2 through 8, chapter 84, Laws of 2006 and section 22, chapter 54, Laws of 2007 are contingent upon the siting, expansion, or renovation, and commercial operation of a significant semiconductor materials fabrication facility or facilities in the state of Washington.

(b) For the purposes of this section:

(i) "Commercial operation" means the equipment and process qualifications in the new, expanded, or renovated building are completed and production for sale has begun.

(ii) "Semiconductor materials fabrication" means the manufacturing of silicon crystals, silicon ingots that are at least three hundred millimeters in diameter, raw polished semiconductor wafers that are at least three hundred millimeters in diameter, and compound semiconductor wafers that are at least three hundred millimeters in diameter.

(iii) "Significant" means that the combined investment or investments by a single person, occurring at any time before December 1, 2006, of new buildings, expansion or renovation of existing buildings, tenant improvements to buildings, and machinery and equipment in the buildings, at the commencement of commercial production, is at least three hundred fifty million dollars based on actual expenditures by the person.

(2) Except for section 1 of this act and this section, this act takes effect the first day of the month immediately following the department's determination that the contingency in subsection (1) of this section has occurred. The department shall make its determination regarding the contingency in subsection (1) of this section based on information provided to the department by affected taxpayers or representatives of affected taxpayers.

(3) The department of revenue shall provide notice of the effective date of sections 2 through 8, chapter 84, Laws of 2006 [December 1, 2006] to

affected taxpayers, the legislature, the office of the code reviser, and others as deemed appropriate by the department." [2007 c 54 § 29; 2006 c 84 § 9.]

Findings—Intent—2006 c 84: "The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of family wage employment in the state's manufacturing industries. The legislature further finds that targeting tax incentives to focus on key industry clusters is an important business climate strategy. Washington state has recognized the semiconductor industry, which includes the design and manufacture of semiconductor materials, as one of the state's existing key industry clusters. Businesses in this cluster in the state of Washington are facing increasing pressure to expand elsewhere. The sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature improved Washington's ability to compete with other states for manufacturing investment. In 2003 the legislature enacted comprehensive tax incentives for the semiconductor cluster that address activities of the lead product industry and its suppliers and customers. These tax incentives are contingent on the investment of at least one billion dollars in a new semiconductor microchip fabrication facility in this state, which has not occurred. This investment criteria failed to recognize the significance of potential investment in the advanced semiconductor materials sector. Therefore, the legislature intends to complement existing comprehensive tax incentives for the semiconductor cluster to address activities of the advanced semiconductor materials product industry and its suppliers and customers. Tax incentives for the semiconductor cluster are important in both retention and expansion of existing businesses and attraction of new businesses, all of which will strengthen this cluster. The legislature also recognizes that the semiconductor industry involves major investment that results in significant construction projects, which will create jobs and bring many indirect benefits to the state during the construction phase." [2006 c 84 § 1.]

82.04.257 Tax on digital products and services. (1) Except as provided in subsection (2) of this section, upon every person engaging within this state in the business of making sales at retail or wholesale of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(c), as to such persons, the amount of tax with respect to such business is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent in the case of retail sales and by the rate of 0.484 percent in the case of wholesale sales.

(2) Persons providing subscription television services or subscription radio services are subject to tax under RCW 82.04.290(2) on the gross income of the business received from providing such services.

(3) For purposes of this section, a person is considered to be engaging within this state in the business of making sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(c), if the person makes sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(c) and the sales are sourced to this state under RCW 82.32.730 for sales tax purposes or would have been sourced to this state under RCW 82.32.730 if the sale had been taxable under chapter 82.08 RCW.

(4) A person subject to tax under this section is subject to the mandatory electronic filing and payment requirements in RCW 82.32.080. [2017 c 323 § 515; 2010 c 111 § 301; 2009 c 535 § 401.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Purpose—Retroactive application—Effective date—2010 c 111: See notes following RCW 82.04.050.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.04.258 Digital products—Apportionable income.

(1)(a) Any person subject to tax under RCW 82.04.257 engaging both within and outside this state in the business of making sales at retail or wholesale of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(c), must apportion to this state that portion of apportionable income derived from activity performed within this state as provided in subsection (2) of this section.

(b) For purposes of this subsection, a person is considered to be engaging outside this state in the business of making sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(c) if the person makes any sales of digital goods, digital codes, digital automated services, or services described in RCW 82.04.050 (2)(g) or (6)(c) that are sourced to a jurisdiction other than Washington under RCW 82.32.730 for sales tax purposes or would have been sourced to a jurisdiction other than Washington under RCW 82.32.730 if the sale had been a retail sale.

(2) Apportionable income must be apportioned to Washington by multiplying the apportionable income by the sales factor.

(3)(a) The sales factor is a fraction, the numerator of which is the total receipts of the taxpayer from making sales of digital goods, digital codes, digital automated services, and services described in RCW 82.04.050 (2)(g) or (6)(c) in this state during the tax period, and the denominator of which is the total receipts of the taxpayer derived from such activity everywhere during the tax period.

(b) For purposes of computing the sales factor, sales are considered in this state if the sale was sourced to this state under RCW 82.32.730 for sales tax purposes or would have been sourced to this state under RCW 82.32.730 if the sale had been taxable under chapter 82.08 RCW.

(4) For purposes of this section, "apportionable income" means the gross income of the business taxable under RCW 82.04.257, including income received from activities outside this state if the income would be taxable under RCW 82.04.257 if received from activities in this state. [2017 c 323 § 516; 2009 c 535 § 402.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.04.260 Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance producers, surplus line brokers, and title insurance agents—Hospitals—Commercial airplane activities—Timber product activities—Canned salmon processors. (Effective January 1, 2018.) (1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola by-products, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business is equal to the value of the flour, pearl barley, oil, canola

meal, or canola by-product manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2025, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c)(i) Except as provided otherwise in (c)(iii) of this subsection, from July 1, 2025, until January 1, 2036, dairy products; or selling dairy products that the person has manufactured to purchasers who either transport in the ordinary course of business the goods out of state or purchasers who use such dairy products as an ingredient or component in the manufacturing of a dairy product; as to such persons the tax imposed is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state or sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

(ii) For the purposes of this subsection (1)(c), "dairy products" means:

(A) Products, not including any marijuana-infused product, that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products, such as whey and casein; and

(B) Products comprised of not less than seventy percent dairy products that qualify under (c)(ii)(A) of this subsection, measured by weight or volume.

(iii) The preferential tax rate provided to taxpayers under this subsection (1)(c) does not apply to sales of dairy products on or after July 1, 2023, where a dairy product is used by the purchaser as an ingredient or component in the manufacturing in Washington of a dairy product;

(d)(i) Beginning July 1, 2025, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(ii) For purposes of this subsection (1)(d), "fruits" and "vegetables" do not include marijuana, useable marijuana, or marijuana-infused products;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Wood biomass fuel as defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business is equal to the value of wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business is equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business is equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection are exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be

stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8)(a) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business is equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

(b) If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state must be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as to such persons, the amount of the tax with respect to such licensed activities is equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities is equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through June 30, 2007; and

(ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection (11) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business is, in the case of manufac-

turers, equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(c) For the purposes of this subsection (11), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person reporting under the tax rate provided in this subsection (11) must file a complete annual tax performance report with the department under RCW 82.32.534.

(e)(i) Except as provided in (e)(ii) of this subsection (11), this subsection (11) does not apply on and after July 1, 2040.

(ii) With respect to the manufacturing of commercial airplanes or making sales, at retail or wholesale, of commercial airplanes, this subsection (11) does not apply on and after July 1st of the year in which the department makes a determination that any final assembly or wing assembly of any version or variant of a commercial airplane that is the basis of a siting of a significant commercial airplane manufacturing program in the state under RCW 82.32.850 has been sited outside the state of Washington. This subsection (11)(e)(ii) only applies to the manufacturing or sale of commercial airplanes that are the basis of a siting of a significant commercial airplane manufacturing program in the state under RCW 82.32.850.

(12)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business is, in the case of extractors, equal to the value of products, including by-products, extracted, or in the case of extractors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business is, in the case of manufacturers, equal to the value of products, including by-products, manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business is equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business is equal to the gross income of the business multiplied

by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

(f) Except for small harvesters as defined in RCW 84.33.035, a person reporting under the tax rate provided in this subsection (12) must file a complete annual tax performance report with the department under RCW 82.32.534.

(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(14)(a) Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.35 percent until July 1, 2024, and 0.484 percent thereafter.

(b) A person reporting under the tax rate provided in this subsection (14) must file a complete annual tax performance report with the department under RCW 82.32.534. [2017 c 135 § 11. Prior: 2015 3rd sp.s. c 6 § 602; 2015 3rd sp.s. c 6 § 205; prior: 2014 c 140 § 6; (2014 c 140 § 5 expired July 1, 2015); 2014 c 140 § 4; (2014 c 140 § 3 expired July 1, 2015); 2013 3rd sp.s. c 2 § 6; (2013 3rd sp.s. c 2 § 5 expired July 1, 2015); 2013 2nd sp.s. c 13 § 203; (2013 2nd sp.s. c 13 § 202 expired July 1, 2015); prior: (2012 2nd sp.s. c 6 § 602 expired July 1, 2015); 2012 2nd sp.s. c 6 § 204; 2011 c 2 § 203 (Initiative Measure No. 1107, approved November 2, 2010); 2010 1st sp.s. c 23 § 506; (2010 1st sp.s. c 23 § 505 expired June 10, 2010); 2010 c 114 § 107; prior: 2009 c 479 § 64; 2009 c 461 § 1; 2009 c 162 § 34; prior: 2008 c 296 § 1; 2008 c 217 § 100; 2008 c 81 § 4; prior: 2007 c 54 § 6; 2007 c 48 § 2; prior: 2006 c 354 § 4; 2006 c 300 § 1; prior: 2005 c 513 § 2; 2005 c 443 § 4; prior: 2003 2nd sp.s. c 1 § 4; 2003 2nd sp.s. c 1 § 3; 2003 c 339 § 11; 2003 c 261 § 11; 2001 2nd sp.s. c 25 § 2; prior: 1998 c 312 § 5; 1998 c 311 § 2; prior: 1998 c 170 § 4; 1996 c 148 § 2; 1996 c 115 § 1; prior: 1995 2nd sp.s. c 12 § 1; 1995 2nd sp.s. c 6 § 1; 1993 sp.s. c 25 § 104; 1993 c 492 § 304; 1991 c 272 § 15; 1990 c 21 § 2; 1987 c 139 § 1; prior: 1985 c 471 § 1; 1985 c 135 § 2; 1983 2nd ex.s. c 3 § 5; prior: 1983 1st ex.s. c 66 § 4; 1983 1st ex.s. c 55 § 4; 1982 2nd ex.s. c 13 § 1; 1982 c 10 § 16; prior: 1981 c 178 § 1; 1981 c 172 § 3; 1979 ex.s. c 196 § 2; 1975 1st ex.s. c 291 § 7; 1971 ex.s. c 281 § 5; 1971 ex.s. c 186 § 3; 1969 ex.s. c 262 § 36; 1967 ex.s. c 149 § 10; 1965 ex.s. c 173 § 6; 1961 c 15 § 82.04.260; prior: 1959 c 211 § 2; 1955 c 389 § 46; prior: 1953 c 91 § 4; 1951 2nd ex.s. c 28 § 4; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Expiration date—2015 3rd sp.s. c 6; 2012 2nd sp.s. c 6 § 602: "Section 602 of this act expires July 1, 2015." [2015 3rd sp.s. c 6 § 603; 2012 2nd sp.s. c 6 § 704.]

Findings—Intent—Tax preference performance statement—2015 3rd sp.s. c 6 § 602: "(1) The legislature finds that over the last fifteen years, technological transformation and other developments have radically changed the newspaper industry business model, which remains in transition. The legislature further finds that the economic hardship wrought by this digital transformation has been substantial. The legislature finds that a strong and vibrant newspaper industry in Washington is beneficial to the state's citizens and to the conduct of good government at every level. The legislature further finds that advertising revenue of all United States newspapers fell from 63.5 billion dollars in 2000 to about twenty-three billion dollars in 2013, and is still falling. The legislature further finds that traditional news organizations' ability to support high quality news gathering and reporting relied primarily on a model in which advertisers paid to reach mass audiences attracted by newspapers. The legislature further finds that advertisers found it advantageous to pay to reach a mass audience because other advertising mediums were limited and less effective. The digital era has greatly fractured traditional spending by advertisers and turned this model on its head such that newspapers continue to require time to adapt so they may continue their public service mission. The legislature also finds that the business and occupation tax rate for the newspaper industry was pegged to the general manufacturing and wholesaling rate from 1937 until 2009, when the legislature extended tax relief to the industry due to this shift. It is the legislature's intent to extend this tax relief to the industry until its revenues and business

model have stabilized. It is the legislature's further intent to provide a uniform tax rate for the industry to minimize the burden of reporting state business and occupation taxes for different types of revenue, which often times are impossible to account for separately by the taxpayer.

(2)(a) This subsection is the tax preference performance statement for the newspaper tax preferences in section 602 of this act. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes this tax preference as one intended to provide temporary tax relief as described in RCW 82.32.808(2)(e).

(c) It is the legislature's specific public policy objective to provide business and occupation tax relief to the newspaper industry as it continues to adjust to significant revenue shifts and technological changes. As a secondary public policy objective, it is the legislature's intent to provide a permanent uniform rate for the industry.

(d) To measure the effectiveness of the preference provided in this act in achieving the specific public policy objective described in (c) of this subsection, the joint legislative audit and review committee must evaluate year-to-year changes in gross revenue derived from all sources for newspaper firms claiming the preferential tax rate under RCW 82.04.260(14). If the average year-to-year change in gross revenue is positive, including the last three years included in the tax preference review by the joint legislative audit and review committee, it is the legislature's intent to allow the tax preference to expire and to reinstate the traditional rate of 0.484 percent.

(e)(i) The information provided in the annual tax preference accountability report submitted by taxpayers as required by the department of revenue and taxpayer data provided by the department of revenue is intended to provide the informational basis for the evaluation under (d) of this subsection.

(ii) In addition to the data source described under (e)(i) of this subsection, the joint legislative audit and review committee may use any other data it deems necessary in performing the evaluation under (d) of this subsection." [2015 3rd sp.s. c 6 § 601.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Tax preference performance statement—2015 3rd sp.s. c 6 §§ 202-205: See note following RCW 82.04.4266.

Contingent effective date—2014 c 140 § 6: "Section 6 of this act takes effect July 1, 2015, subject to the contingency stated in section 2, chapter 2, Laws of 2013 3rd sp. sess." [2014 c 140 § 39.]

Contingent expiration date—2014 c 140 § 5: "Section 5 of this act expires July 1, 2015, subject to the contingency stated in section 2, chapter 2, Laws of 2013 3rd sp. sess." [2014 c 140 § 38.]

Effective date—2014 c 140 § 4: "Section 4 of this act takes effect July 1, 2015." [2014 c 140 § 37.]

Expiration date—2014 c 140 § 3: "Section 3 of this act expires July 1, 2015." [2014 c 140 § 36.]

Effective date—2013 3rd sp.s. c 2 § 6: "Subject to section 2 of this act, section 6 of this act takes effect July 1, 2015." [2013 3rd sp.s. c 2 § 16.]

Expiration date—2013 3rd sp.s. c 2 § 5: "Subject to section 2 of this act, section 5 of this act expires July 1, 2015." [2013 3rd sp.s. c 2 § 15.]

Contingent effective date—2013 3rd sp.s. c 2: See RCW 82.32.850.

Findings—Intent—2013 3rd sp.s. c 2: See note following RCW 82.32.850.

Effective date—2013 2nd sp.s. c 13 § 203: "Section 203 of this act takes effect July 1, 2015." [2013 2nd sp.s. c 13 § 1902.]

Expiration date—2013 2nd sp.s. c 13 § 202: "Section 202 of this act expires July 1, 2015." [2013 2nd sp.s. c 13 § 1901.]

Intent—2013 2nd sp.s. c 13: "The intent of part II of this act is to incentivize the creation of additional jobs in Washington in the dairy industry and related industries that manufacture dairy-based products. More specifically, it is the intent of part II of this act to encourage infant formula producers to locate new facilities in Washington or expand existing facilities in Washington through an extension of a preferential business and occupation tax rate for dairy producers. It is the further intent of the legislature to provide this tax incentive in a fiscally responsible manner where the actual revenue impact of the legislation substantially conforms with the fiscal estimate provided in the legislation's fiscal note." [2013 2nd sp.s. c 13 § 201.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Existing rights, liabilities, or obligations—Effective dates—Contingent effective dates—2012 2nd sp.s. c 6: See notes following RCW 82.04.29005.

Findings—Construction—2011 c 2 (Initiative Measure No. 1107): See notes following RCW 82.08.0293.

Expiration date—2010 1st sp.s. c 23 §§ 503, 505, and 514: See note following RCW 82.04.4266.

Effective date—2010 1st sp.s. c 23 §§ 504, 506, and 515: See note following RCW 82.04.4266.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—2009 c 479: See note following RCW 2.56.030.

Effective date—Contingent effective date—2009 c 461: See note following RCW 82.04.280.

Effective date—2009 c 162: See note following RCW 48.03.020.

Retroactive application—2008 c 296: "Section 1 of this act applies retroactively to July 1, 2007, as well as prospectively." [2008 c 296 § 2.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Severability—2007 c 54: See note following RCW 82.04.050.

Effective date—2007 c 48: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 48 § 9.]

Finding—Intent—Effective date—2005 c 443: See notes following RCW 82.08.0255.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Purpose—Intent—2001 2nd sp.s. c 25: "The purpose of sections 2 and 3 of this act is to provide a tax rate for persons who manufacture dairy products that is commensurate to the rate imposed on certain other processors of agricultural commodities. This tax rate applies to persons who manufacture dairy products from raw materials such as fluid milk, dehydrated milk, or by-products of milk such as cream, buttermilk, whey, butter, or casein. It is not the intent of the legislature to provide this tax rate to persons who use dairy products as an ingredient or component of their manufactured product, such as milk-based soups or pizza. It is the intent that persons who manufacture products such as milk, cheese, yogurt, ice cream, whey, or whey products be subject to this rate." [2001 2nd sp.s. c 25 § 1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

82.04.261 Surcharge on timber and wood product manufacturers, extractors, and wholesalers. (Expires July 1, 2024.) (1) In addition to the taxes imposed under RCW 82.04.260(12), a surcharge is imposed on those persons who are subject to any of the taxes imposed under RCW 82.04.260(12). Except as otherwise provided in this section, the surcharge is equal to 0.052 percent. The surcharge is added to the rates provided in RCW 82.04.260(12) (a), (b), (c), and (d). The surcharge and this section expire July 1, 2024.

(2) All receipts from the surcharge imposed under this section must be deposited into the forest and fish support account created in RCW 76.09.405.

(3)(a) The surcharge imposed under this section is suspended if:

(i) Receipts from the surcharge total at least eight million dollars during any fiscal biennium; or

(ii) The office of financial management certifies to the department that the federal government has appropriated at least two million dollars for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington for any federal fiscal year.

(b)(i) The suspension of the surcharge under (a)(i) of this subsection (3) takes effect on the first day of the calendar month that is at least thirty days after the end of the month during which the department determines that receipts from the surcharge total at least eight million dollars during the fiscal biennium. The surcharge is imposed again at the beginning of the following fiscal biennium.

(ii) The suspension of the surcharge under (a)(ii) of this subsection (3) takes effect on the later of the first day of October of any federal fiscal year for which the federal government appropriates at least two million dollars for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington, or the first day of a calendar month that is at least thirty days following the date that the office of financial management makes a certification to the department under subsection (5) of this section. The surcharge is imposed again on the first day of the following July.

(4)(a) If, by October 1st of any federal fiscal year, the office of financial management certifies to the department that the federal government has appropriated funds for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington but the amount of the appropriation is less than two million dollars, the department must adjust the surcharge in accordance with this subsection.

(b) The department must adjust the surcharge by an amount that the department estimates will cause the amount of funds deposited into the forest and fish support account for the state fiscal year that begins July 1st and that includes the beginning of the federal fiscal year for which the federal appropriation is made, to be reduced by twice the amount of the federal appropriation for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington.

(c) Any adjustment in the surcharge takes effect at the beginning of a calendar month that is at least thirty days after the date that the office of financial management makes the certification under subsection (5) of this section.

(d) The surcharge is imposed again at the rate provided in subsection (1) of this section on the first day of the following state fiscal year unless the surcharge is suspended under subsection (3) of this section or adjusted for that fiscal year under this subsection.

(e) Adjustments of the amount of the surcharge by the department are final and may not be used to challenge the validity of the surcharge imposed under this section.

(f) The department must provide timely notice to affected taxpayers of the suspension of the surcharge or an adjustment of the surcharge.

(5) The office of financial management must make the certification to the department as to the status of federal appropriations for tribal participation in forest and fish

report-related activities. [2017 c 323 § 501; 2010 1st sp.s. c 23 § 510. Prior: 2007 c 54 § 7; 2007 c 48 § 4; 2006 c 300 § 2.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Severability—2007 c 54: See note following RCW 82.04.050.

Savings—2007 c 48: "The expiration of RCW 82.04.261 does not affect any existing right acquired or liability or obligation incurred under that section or under any rule or order adopted under that section, nor does it affect any proceeding instituted under that section." [2007 c 48 § 8.]

Effective date—2007 c 48: See note following RCW 82.04.260.

***Reviser's note:** See RCW 82.32.790.

Additional notes found at www.leg.wa.gov

82.04.280 Tax on printers, publishers, highway contractors, extracting or processing for hire, cold storage warehouse or storage warehouse operation, insurance general agents, radio and television broadcasting, government contractors—Cold storage warehouse defined—Storage warehouse defined—Periodical or magazine defined. (1) Upon every person engaging within this state in the business of: (a) Printing materials other than newspapers, and of publishing periodicals or magazines; (b) building, repairing or improving any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used, primarily for foot or vehicular traffic including mass transportation vehicles of any kind and including any readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of such building, repairing or improving, the cost of which readjustment, reconstruction, or relocation, is the responsibility of the public authority whose street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle is being built, repaired or improved; (c) extracting for hire or processing for hire, except persons taxable as extractors for hire or processors for hire under another section of this chapter; (d) operating a cold storage warehouse or storage warehouse, but not including the rental of cold storage lockers; (e) representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of chapter 48.17 RCW; (f) radio and television broadcasting, excluding network, national and regional advertising computed as a standard deduction based on the national average thereof as annually reported by the federal communications commission, or in lieu thereof by itemization by the individual broadcasting station, and excluding that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 micro-volt signal strength and delivery by wire, if any; (g) engaging in activities which bring a person within the definition of consumer contained in RCW 82.04.190(6); as to such persons, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.484 percent.

(2) For the purposes of this section, the following definitions apply unless the context clearly requires otherwise.

(a) "Cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing.

(b) "Storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini storage" facilities whereby customers have direct access to individual storage areas by separate entrance. "Storage warehouse" does not include a building or structure, or that part of such building or structure, in which an activity taxable under RCW 82.04.272 is conducted.

(c) "Periodical or magazine" means a printed publication, other than a newspaper, issued regularly at stated intervals at least once every three months, including any supplement or special edition of the publication. [2017 c 323 § 508. Prior: (2010 c 106 § 206 repealed by 2017 c 323 § 510); 2010 c 106 § 205; (2009 c 461 § 3 repealed by 2017 c 323 § 510); 2009 c 461 § 2; (2006 c 300 § 7 repealed by 2017 c 323 § 510); 2006 c 300 § 6; 2004 c 24 § 6; (2003 c 149 § 4 repealed by 2017 c 323 § 510); 1998 c 343 § 3; 1994 c 112 § 1; 1993 sp.s. c 25 § 303; 1993 sp.s. c 25 § 106; 1986 c 226 § 2; 1983 c 132 § 1; 1975 1st ex.s. c 90 § 3; 1971 ex.s. c 299 § 5; 1971 ex.s. c 281 § 7; 1970 ex.s. c 8 § 2; prior: 1969 ex.s. c 262 § 38; 1969 ex.s. c 255 § 5; 1967 ex.s. c 149 § 13; 1963 c 168 § 1; 1961 c 15 § 82.04.280; prior: 1959 ex.s. c 5 § 4; 1959 ex.s. c 3 § 4; 1955 c 389 § 48; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 228 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Contingent effective date—2010 c 106 §§ 205 and 206: "If section 206 of this act takes effect, section 205 of this act expires on the date section 206 of this act takes effect." [2010 c 106 § 413.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Effective date—Contingent effective date—2009 c 461: "(1) Except as provided in subsection (2) of this section, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009.

(2) Section 3 of this act takes effect if the contingency in *section 9 of this act occurs." [2009 c 461 § 10.]

*Reviser's note: See RCW 82.32.790.

Contingent expiration date—2009 c 461: "Section 2 of this act expires on the date that section 3 of this act takes effect." [2009 c 461 § 11.]

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

Additional notes found at www.leg.wa.gov

82.04.2909 Tax on aluminum smelters. (Effective January 1, 2018, until January 1, 2027.) (1) Upon every person who is an aluminum smelter engaging within this state in the business of manufacturing aluminum; as to such per-

sons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of .2904 percent.

(2) Upon every person who is an aluminum smelter engaging within this state in the business of making sales at wholesale of aluminum manufactured by that person, as to such persons the amount of tax with respect to such business is equal to the gross proceeds of sales of the aluminum multiplied by the rate of .2904 percent.

(3) A person reporting under the tax rate provided in this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(4) This section expires January 1, 2027. [2017 c 135 § 12; 2015 3rd sp.s. c 6 § 502; 2011 c 174 § 301. Prior: 2010 1st sp.s. c 2 § 1; 2010 c 114 § 108; 2006 c 182 § 1; 2004 c 24 § 3.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Findings—Tax preference performance statement—2015 3rd sp.s. c 6 §§ 502-506: "(1) The legislature finds that the aluminum industry in Washington employs over one thousand people. The legislature further finds that average annual wages and benefits for these employment positions exceed one hundred thousand dollars and that each of these employment positions indirectly generates an additional two to three jobs within the state. The legislature further finds that the aluminum industry generates substantial taxes for local jurisdictions. The legislature further finds that the aluminum industry was severely impacted by the global economic recession. The legislature further finds that the London metal exchange, where aluminum is traded as a commodity, is extremely volatile and substantially impacts the profitability of the aluminum industry. The legislature further finds that for the aforementioned reasons, the industry continues to struggle with profitability, putting the continued employment of its Washington workforce in jeopardy.

(2)(a) This subsection is the tax preference performance statement for the aluminum industry tax preferences in RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, and 82.12.022, as amended in this Part V. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes this tax preference as one intended to accomplish the general purposes indicated in RCW 82.32.808(2) (c) and (d).

(c) It is the legislature's specific public policy objective to promote the preservation of employment positions within the Washington aluminum manufacturing industry as the industry continues to grapple with the lingering effects of the economic recession and the volatility of the London metal exchange.

(d) To measure the effectiveness of the exemption provided in this Part V in achieving the specific public policy objective described in (c) of this subsection, the joint legislative audit and review committee must evaluate the changes in the number of statewide employment positions for the aluminum industry in Washington." [2015 3rd sp.s. c 6 § 501.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Intent—2004 c 24: "The legislature recognizes that the loss of domestic manufacturing jobs has become a national concern. Washington state has lost one out of every six manufacturing jobs since July 2000. The aluminum industry has long been an important component of Washington state's manufacturing base, providing family-wage jobs often in rural communities where unemployment rates are very high. The aluminum industry is electricity intensive and was greatly affected by the dramatic increase in electricity prices which began in 2000 and which continues to affect the Washington economy. Before the energy crisis, aluminum smelters provided about 5,000 direct jobs. Today they provide fewer than 1,000 direct jobs. For every job lost in that industry, almost three additional jobs are estimated to be lost elsewhere in the state's economy. It is the legislature's intent to preserve and restore family-wage jobs by providing tax relief to the state's aluminum industry.

The electric loads of aluminum smelters provide a unique benefit to the infrastructure of the electric power system. Under the transmission tariff of

the Bonneville Power Administration, aluminum smelter loads, whether served with federal or nonfederal power, are subject to short-term interruptions that allow a higher import capability on the transmission interconnection between the northwest and California. These stability reserves allow more power to be imported in winter months, reducing the need for additional generation in the northwest, and would be used to prevent a widespread transmission collapse and blackout if there were a failure in the transmission interconnection between California and the northwest. It is the legislature's intent to retain these benefits for the people of the state." [2004 c 24 § 1.]

Additional notes found at www.leg.wa.gov

82.04.294 Tax on manufacturers or wholesalers of solar energy systems. (Effective until January 1, 2018.) (1)

Upon every person engaging within this state in the business of manufacturing solar energy systems using photovoltaic modules or stirling converters, or of manufacturing solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems; as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.275 percent.

(2) Upon every person engaging within this state in the business of making sales at wholesale of solar energy systems using photovoltaic modules or stirling converters, or of solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems, manufactured by that person; as to such persons the amount of tax with respect to such business is equal to the gross proceeds of sales of the solar energy systems using photovoltaic modules or stirling converters, or of the solar grade silicon to be used exclusively in components of such systems, multiplied by the rate of 0.275 percent.

(3) Silicon solar wafers, silicon solar cells, thin film solar devices, solar grade silicon, or compound semiconductor solar wafers are "semiconductor materials" for the purposes of RCW 82.08.9651 and 82.12.9651.

(4) The definitions in this subsection apply throughout this section.

(a) "Compound semiconductor solar wafers" means a semiconductor solar wafer composed of elements from two or more different groups of the periodic table.

(b) "Module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(c) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(d) "Silicon solar cells" means a photovoltaic cell manufactured from a silicon solar wafer.

(e) "Silicon solar wafers" means a silicon wafer manufactured for solar conversion purposes.

(f) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(g) "Solar grade silicon" means high-purity silicon used exclusively in components of solar energy systems using photovoltaic modules to capture direct sunlight. "Solar grade silicon" does not include silicon used in semiconductors.

(h) "Stirling converter" means a device that produces electricity by converting heat from a solar source utilizing a stirling engine.

(i) "Thin film solar devices" means a nonparticipating substrate on which various semiconducting materials are deposited to produce a photovoltaic cell that is used to generate electricity.

(5) A person reporting under the tax rate provided in this section must file a complete annual survey with the department under RCW 82.32.585.

(6) This section expires July 1, 2027. [2017 3rd sp.s. c 37 § 402; 2013 2nd sp.s. c 13 § 902; 2011 c 179 § 1; 2010 c 114 § 109; 2009 c 469 § 501; 2007 c 54 § 8; 2005 c 301 § 2.]

Tax preference performance statement—2017 3rd sp.s. c 37 §§ 402 and 403: "(1) This section is the tax preference performance statement for the tax preferences contained in sections 402 and 403, chapter 37, Laws of 2017 3rd sp. sess. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these tax preferences as ones intended to improve industry competitiveness and to create and retain jobs as indicated in RCW 82.32.808(2) (b) and (c).

(3) It is the legislature's specific public policy objective to maintain and grow jobs in the solar silicon industry. Trade disputes currently threaten employment in this sector. It is the legislature's intent to extend by ten years the preferential tax rates for manufacturers and wholesalers of specific solar energy material and parts in order to maintain and grow jobs in the solar silicon industry.

(4) If a review finds that the number of people employed by the solar silicon industry in Washington is the same or more than in 2015, and that at least sixty percent of employees earn sixty thousand dollars a year or more, then the legislature intends to extend the expiration date of the tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to the department of revenue's annual survey data." [2017 3rd sp.s. c 37 § 401.]

Effective date—2017 3rd sp.s. c 37 §§ 401 and 402: "Sections 401 and 402 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 30, 2017." [2017 3rd sp.s. c 37 § 1403.]

Findings—Intent—2013 2nd sp.s. c 13: "(1) The legislature finds that to attract and maintain clean energy technology manufacturing businesses, a competitive business climate is crucial. The legislature further finds that specific tax preferences can facilitate a positive business climate in Washington. The legislature further finds that businesses in the solar silicon industry have had to reduce employment due to global conditions. Therefore, the legislature intends to extend a preferential business and occupation tax rate to manufacturers and wholesalers of specific solar energy material and parts to maintain and grow jobs in the solar silicon industry.

(2) The joint legislative audit and review committee, as part of its tax preference review process, must assess the actual fiscal impact of this tax preference in relation to the fiscal estimate for the tax preference and assess changes in employment for firms claiming the preferential tax rate." [2013 2nd sp.s. c 13 § 901.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—2009 c 469: See note following RCW 82.08.962.

Severability—2007 c 54: See note following RCW 82.04.050.

Findings—Intent—2005 c 301: "The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of key growth industries in the state. The legislature further finds that targeting tax incentives to focus on key growth industries is an important strategy to enhance the state's business climate.

A recent report by the Washington State University energy program recognized the solar electric industry as one of the state's important growth

industries. It is of great concern that businesses in this industry have been increasingly expanding and relocating their operations elsewhere. The report indicates that additional incentives for the solar electric industry are needed in recognition of the unique forces and issues involved in business decisions in this industry.

Therefore, the legislature intends to enact comprehensive tax incentives for the solar electric industry that address activities of the manufacture of these products and to encourage these industries to locate in Washington. Tax incentives for the solar electric industry are important in both retention and expansion of existing business and attraction of new businesses, all of which will strengthen this growth industry within our state, will create jobs, and will bring many indirect benefits to the state." [2005 c 301 § 1.]

Additional notes found at www.leg.wa.gov

82.04.294 Tax on manufacturers or wholesalers of solar energy systems. (Effective January 1, 2018, until July 1, 2027.)

(1) Upon every person engaging within this state in the business of manufacturing solar energy systems using photovoltaic modules or stirling converters, or of manufacturing solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems; as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.275 percent.

(2) Upon every person engaging within this state in the business of making sales at wholesale of solar energy systems using photovoltaic modules or stirling converters, or of solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems, manufactured by that person; as to such persons the amount of tax with respect to such business is equal to the gross proceeds of sales of the solar energy systems using photovoltaic modules or stirling converters, or of the solar grade silicon to be used exclusively in components of such systems, multiplied by the rate of 0.275 percent.

(3) Silicon solar wafers, silicon solar cells, thin film solar devices, solar grade silicon, or compound semiconductor solar wafers are "semiconductor materials" for the purposes of RCW 82.08.9651 and 82.12.9651.

(4) The definitions in this subsection apply throughout this section.

(a) "Compound semiconductor solar wafers" means a semiconductor solar wafer composed of elements from two or more different groups of the periodic table.

(b) "Module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(c) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(d) "Silicon solar cells" means a photovoltaic cell manufactured from a silicon solar wafer.

(e) "Silicon solar wafers" means a silicon wafer manufactured for solar conversion purposes.

(f) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(g) "Solar grade silicon" means high-purity silicon used exclusively in components of solar energy systems using

photovoltaic modules to capture direct sunlight. "Solar grade silicon" does not include silicon used in semiconductors.

(h) "Stirling converter" means a device that produces electricity by converting heat from a solar source utilizing a stirling engine.

(i) "Thin film solar devices" means a nonparticipating substrate on which various semiconducting materials are deposited to produce a photovoltaic cell that is used to generate electricity.

(5) A person reporting under the tax rate provided in this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(6) This section expires July 1, 2027. [2017 3rd sp.s. c 37 § 403; 2017 3rd sp.s. c 37 § 402; 2013 2nd sp.s. c 13 § 902; 2011 c 179 § 1; 2010 c 114 § 109; 2009 c 469 § 501; 2007 c 54 § 8; 2005 c 301 § 2.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Findings—Intent—2013 2nd sp.s. c 13: "(1) The legislature finds that to attract and maintain clean energy technology manufacturing businesses, a competitive business climate is crucial. The legislature further finds that specific tax preferences can facilitate a positive business climate in Washington. The legislature further finds that businesses in the solar silicon industry have had to reduce employment due to global conditions. Therefore, the legislature intends to extend a preferential business and occupation tax rate to manufacturers and wholesalers of specific solar energy material and parts to maintain and grow jobs in the solar silicon industry.

(2) The joint legislative audit and review committee, as part of its tax preference review process, must assess the actual fiscal impact of this tax preference in relation to the fiscal estimate for the tax preference and assess changes in employment for firms claiming the preferential tax rate." [2013 2nd sp.s. c 13 § 901.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—2009 c 469: See note following RCW 82.08.962.

Severability—2007 c 54: See note following RCW 82.04.050.

Findings—Intent—2005 c 301: "The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of key growth industries in the state. The legislature further finds that targeting tax incentives to focus on key growth industries is an important strategy to enhance the state's business climate.

A recent report by the Washington State University energy program recognized the solar electric industry as one of the state's important growth industries. It is of great concern that businesses in this industry have been increasingly expanding and relocating their operations elsewhere. The report indicates that additional incentives for the solar electric industry are needed in recognition of the unique forces and issues involved in business decisions in this industry.

Therefore, the legislature intends to enact comprehensive tax incentives for the solar electric industry that address activities of the manufacture of these products and to encourage these industries to locate in Washington. Tax incentives for the solar electric industry are important in both retention and expansion of existing business and attraction of new businesses, all of which will strengthen this growth industry within our state, will create jobs, and will bring many indirect benefits to the state." [2005 c 301 § 1.]

Additional notes found at www.leg.wa.gov

82.04.334 Exemptions—Standing timber. This chapter does not apply to any sale of standing timber excluded from the definition of "sale" in RCW 82.45.010(3). The definitions in RCW 82.04.260(12) apply to this section. [2017 c 323 § 502; 2010 1st sp.s. c 23 § 512; 2007 c 48 § 3.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Effective date—2007 c 48: See note following RCW 82.04.260.

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

82.04.426 Exemptions—Semiconductor microchips. (Effective until January 1, 2018; contingent effective date; contingent expiration date.) (1) The tax imposed by RCW 82.04.240(2) does not apply to any person in respect to the manufacturing of semiconductor microchips.

(2) For the purposes of this section:

(a) "Manufacturing semiconductor microchips" means taking raw polished semiconductor wafers and embedding integrated circuits on the wafers using processes such as masking, etching, and diffusion; and

(b) "Integrated circuit" means a set of microminiaturized, electronic circuits.

(3) A person reporting under the tax rate provided in this section must file a complete annual report with the department under RCW 82.32.534.

(4) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 523; 2010 c 114 § 110; 2003 c 149 § 2.]

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

Findings—Intent—2003 c 149: "The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of family wage employment in the state's manufacturing industries. The legislature further finds that targeting tax incentives to focus on key industry clusters is an important business climate strategy. The Washington competitiveness council has recognized the semiconductor industry, which includes the design and manufacture of semiconductor materials, as one of the state's existing key industry clusters. Businesses in this cluster in the state of Washington are facing increasing pressure to expand elsewhere. The sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature improved Washington's ability to compete with other states for manufacturing investment. However, additional incentives for the semiconductor cluster need to be put in place in recognition of the unique forces and global issues involved in business decisions that key businesses in this cluster face.

Therefore, the legislature intends to enact comprehensive tax incentives for the semiconductor cluster that address activities of the lead product industry and its suppliers and customers. Tax incentives for the semiconductor cluster are important in both retention and expansion of existing business and attraction of new businesses, all of which will strengthen this cluster. The legislature also recognizes that the semiconductor industry involves major investment that results in significant construction projects, which will create jobs and bring many indirect benefits to the state during the construction phase." [2003 c 149 § 1.]

82.04.426 Exemptions—Semiconductor microchips. (Effective January 1, 2018; contingent effective date; contingent expiration date.) (1) The tax imposed by RCW 82.04.240(2) does not apply to any person in respect to the manufacturing of semiconductor microchips.

(2) For the purposes of this section:

(a) "Manufacturing semiconductor microchips" means taking raw polished semiconductor wafers and embedding

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integrated circuits on the wafers using processes such as masking, etching, and diffusion; and

(b) "Integrated circuit" means a set of microminiaturized, electronic circuits.

(3) A person reporting under the tax rate provided in this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(4) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 524; 2017 c 135 § 13; 2010 c 114 § 110; 2003 c 149 § 2.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Effective date—2017 c 135: See note following RCW 82.32.534.

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

Findings—Intent—2003 c 149: "The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of family wage employment in the state's manufacturing industries. The legislature further finds that targeting tax incentives to focus on key industry clusters is an important business climate strategy. The Washington competitiveness council has recognized the semiconductor industry, which includes the design and manufacture of semiconductor materials, as one of the state's existing key industry clusters. Businesses in this cluster in the state of Washington are facing increasing pressure to expand elsewhere. The sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature improved Washington's ability to compete with other states for manufacturing investment. However, additional incentives for the semiconductor cluster need to be put in place in recognition of the unique forces and global issues involved in business decisions that key businesses in this cluster face.

Therefore, the legislature intends to enact comprehensive tax incentives for the semiconductor cluster that address activities of the lead product industry and its suppliers and customers. Tax incentives for the semiconductor cluster are important in both retention and expansion of existing business and attraction of new businesses, all of which will strengthen this cluster. The legislature also recognizes that the semiconductor industry involves major investment that results in significant construction projects, which will create jobs and bring many indirect benefits to the state during the construction phase." [2003 c 149 § 1.]

82.04.4266 Exemptions—Fruit and vegetable businesses. (Expires July 1, 2025.) (1) This chapter does not apply to the value of products or the gross proceeds of sales derived from:

(a) Manufacturing fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables; or

(b) Selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state. A person taking an exemption under this subsection (1)(b) must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(2) For purposes of this section, "fruits" and "vegetables" do not include marijuana, useable marijuana, or marijuana-infused products.

(3) A person claiming the exemption provided in this section must file a complete annual survey with the department under *RCW 82.32.585.

(4) This section expires July 1, 2025. [2015 3rd sp.s. c 6 § 202; 2014 c 140 § 9; 2012 2nd sp.s. c 6 § 201; 2011 c 2 § 202 (Initiative Measure No. 1107, approved November 2,

2010); 2010 1st sp.s. c 23 § 504; (2010 1st sp.s. c 23 § 503 expired June 10, 2010); 2010 c 114 § 111; 2006 c 354 § 3; 2005 c 513 § 1.]

***Reviser's note:** RCW 82.32.585 was repealed by 2017 c 135 § 2, effective January 1, 2018.

Effective dates—2017 c 323; 2015 3rd sp.s. c 6: "(1) Except as provided otherwise in this part, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2015.

(2) Parts IV, VI, VIII, and XIX of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect September 1, 2015.

(3) Part X of this act takes effect October 1, 2016.

(4) Section 1105 of this act takes effect January 1, 2016.

(5) Except for section 2004 of this act, Part XX of this act takes effect January 1, 2019.

(6) Section 2004 of this act takes effect January 1, 2022." [2017 c 323 § 301; 2015 3rd sp.s. c 6 § 2301.]

Tax preference performance statement—2015 3rd sp.s. c 6 §§ 202-205: "This section is the tax preference performance statement for the agricultural processor tax exemptions in sections 202 through 205 of this act. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to accomplish the general purposes indicated in RCW 82.32.808(2) (c) and (e).

(2) It is the legislature's specific public policy objective to create and retain jobs and continue providing tax relief to the food processing industry.

(3) To measure the effectiveness of the exemptions in sections 202 through 205 of this act in achieving the public policy objectives described in subsection (2) of this section, the joint legislative audit and review committee must evaluate the following:

(a) The number of businesses that claim the exemptions in sections 202 through 205 of this act;

(b) The change in total taxable income for taxpayers claiming the exemptions under sections 202 through 205 of this act;

(c) The change in total employment for taxpayers claiming the exemptions under sections 202 through 205 of this act; and

(d) For each calendar year, the total amount of exemptions claimed under sections 202 through 205 of this act as a percentage of total taxable income for taxpayers within taxable income categories.

(4) The information provided in the annual survey submitted by the taxpayers under *RCW 82.32.585, tax data collected by the department of revenue, and data collected by the employment security department is intended to provide the informational basis for the evaluation under subsection (3) of this section.

(5) In addition to the data sources described under subsection (4) of this section, the joint legislative audit and review committee may use any other data it deems necessary in performing the evaluation under subsection (3) of this section." [2015 3rd sp.s. c 6 § 201.]

***Reviser's note:** RCW 82.32.585 was repealed by 2017 c 135 § 2, effective January 1, 2018.

Existing rights, liabilities, or obligations—Effective dates—Continued effective dates—2012 2nd sp.s. c 6: See notes following RCW 82.04.29005.

Findings—Construction—2011 c 2 (Initiative Measure No. 1107): See notes following RCW 82.08.0293.

Expiration date—2010 1st sp.s. c 23 §§ 503, 505, and 514: "Sections 503, 505, and 514 of this act expire June 10, 2010." [2010 1st sp.s. c 23 § 1711.]

Effective date—2010 1st sp.s. c 23 §§ 504, 506, and 515: "Sections 504, 506, and 515 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 10, 2010." [2010 1st sp.s. c 23 § 1712.]

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Additional notes found at www.leg.wa.gov

82.04.4277 Deductions—Health and social welfare organizations—Mental health or chemical dependency services. (Effective until January 1, 2018.) (1) A health or social welfare organization may deduct from the measure of tax amounts received as compensation for providing mental health services or chemical dependency services under a government-funded program.

(2) A behavioral health organization may deduct from the measure of tax amounts received from the state of Washington for distribution to a health or social welfare organization that is eligible to deduct the distribution under subsection (1) of this section.

(3) A person claiming a deduction under this section must file a complete annual report with the department under RCW 82.32.534.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Chemical dependency" has the same meaning as provided in *RCW 70.96A.020 through March 31, 2018, and the same meaning as provided in RCW 71.05.020 beginning April 1, 2018.

(b) "Health or social welfare organization" has the meaning provided in RCW 82.04.431.

(c) "Mental health services" and "behavioral health organization" have the meanings provided in RCW 71.24.025.

(5) This section expires January 1, 2020. [2017 c 323 § 528; 2016 sp.s. c 29 § 532; 2014 c 225 § 104; 2011 1st sp.s. c 19 § 1.]

***Reviser's note:** RCW 70.96A.020 was repealed by 2016 sp.s. c 29 § 301, effective April 1, 2018.

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Effective date—2014 c 225: See note following RCW 71.24.016.

Application—2011 1st sp.s. c 19: "This act applies to amounts received by a taxpayer on or after August 1, 2011." [2011 1st sp.s. c 19 § 4.]

82.04.4277 Deductions—Health and social welfare organizations—Mental health or chemical dependency services. (Effective January 1, 2018, until January 1, 2020.) (1) A health or social welfare organization may deduct from the measure of tax amounts received as compensation for providing mental health services or chemical dependency services under a government-funded program.

(2) A behavioral health organization may deduct from the measure of tax amounts received from the state of Washington for distribution to a health or social welfare organization that is eligible to deduct the distribution under subsection (1) of this section.

(3) A person claiming a deduction under this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Chemical dependency" has the same meaning as provided in *RCW 70.96A.020 through March 31, 2018, and the same meaning as provided in RCW 71.05.020 beginning April 1, 2018.

(b) "Health or social welfare organization" has the meaning provided in RCW 82.04.431.

(c) "Mental health services" and "behavioral health organization" have the meanings provided in RCW 71.24.025.

(5) This section expires January 1, 2020. [2017 c 323 § 528; 2017 c 135 § 14; 2016 sp.s. c 29 § 532; 2014 c 225 § 104; 2011 1st sp.s. c 19 § 1.]

Reviser's note: *(1) RCW 70.96A.020 was repealed by 2016 sp.s. c 29 § 301, effective April 1, 2018.

(2) This section was amended by 2017 c 135 § 14 and by 2017 c 323 § 528, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2017 c 135: See note following RCW 82.32.534.

Effective dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Effective date—2014 c 225: See note following RCW 71.24.016.

Application—2011 1st sp.s. c 19: "This act applies to amounts received by a taxpayer on or after August 1, 2011." [2011 1st sp.s. c 19 § 4.]

82.04.43391 Deductions—Commercial aircraft loan interest and fees. (1) In computing tax there may be deducted from the measure of tax interest and fees on loans secured by commercial aircraft primarily used to provide routine air service and owned by:

(a) An air carrier, as defined in RCW 82.42.010, which is primarily engaged in the business of providing passenger air service;

(b) An affiliate of such air carrier; or

(c) A parent entity for which such air carrier is an affiliate.

(2) The deduction authorized under this section is not available to any person who is physically present in this state as determined under RCW 82.04.067(6).

(3) For purposes of this section, the following definitions apply:

(a) "Affiliate" means a person is "affiliated," as defined in RCW 82.04.645, with another person; and

(b) "Commercial aircraft" means a commercial airplane as defined in RCW 82.32.550. [2017 c 323 § 503; 2010 1st sp.s. c 23 § 112.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Contingency—Application—2010 1st sp.s. c 23 §§ 102-112: See notes following RCW 82.04.067.

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

82.04.4461 Credit—Preproduction development expenditures. (Effective January 1, 2018, until July 1, 2040.) (1)(a)(i) In computing the tax imposed under this chapter, a credit is allowed for each person for qualified aero-

space product development. For a person who is a manufacturer or processor for hire of commercial airplanes or components of such airplanes, credit may be earned for expenditures occurring after December 1, 2003. For all other persons, credit may be earned only for expenditures occurring after June 30, 2008.

(ii) For purposes of this subsection, "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(b) Before July 1, 2005, any credits earned under this section must be accrued and carried forward and may not be used until July 1, 2005. These carryover credits may be used at any time thereafter, and may be carried over until used. Refunds may not be granted in the place of a credit.

(2) The credit is equal to the amount of qualified aerospace product development expenditures of a person, multiplied by the rate of 1.5 percent.

(3) Except as provided in subsection (1)(b) of this section the credit must be claimed against taxes due for the same calendar year in which the qualified aerospace product development expenditures are incurred. Credit earned on or after July 1, 2005, may not be carried over. The credit for each calendar year may not exceed the amount of tax otherwise due under this chapter for the calendar year. Refunds may not be granted in the place of a credit.

(4) Any person claiming the credit must file a form prescribed by the department that must include the amount of the credit claimed, an estimate of the anticipated aerospace product development expenditures during the calendar year for which the credit is claimed, an estimate of the taxable amount during the calendar year for which the credit is claimed, and such additional information as the department may prescribe.

(5) The definitions in this subsection apply throughout this section.

(a) "Aerospace product" has the meaning given in RCW 82.08.975.

(b) "Aerospace product development" means research, design, and engineering activities performed in relation to the development of an aerospace product or of a product line, model, or model derivative of an aerospace product, including prototype development, testing, and certification. The term includes the discovery of technological information, the translating of technological information into new or improved products, processes, techniques, formulas, or inventions, and the adaptation of existing products and models into new products or new models, or derivatives of products or models. The term does not include manufacturing activities or other production-oriented activities, however the term does include tool design and engineering design for the manufacturing process. The term does not include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(c) "Qualified aerospace product development" means aerospace product development performed within this state.

(d) "Qualified aerospace product development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership as determined by the department, benefits, supplies, and computer

expenses, directly incurred in qualified aerospace product development by a person claiming the credit provided in this section. The term does not include amounts paid to a person or to the state and any of its departments and institutions, other than a public educational or research institution to conduct qualified aerospace product development. The term does not include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(e) "Taxable amount" means the taxable amount subject to the tax imposed in this chapter required to be reported on the person's tax returns during the year in which the credit is claimed, less any taxable amount for which a credit is allowed under RCW 82.04.440.

(6) In addition to all other requirements under this title, a person claiming the credit under this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(7) Credit may not be claimed for expenditures for which a credit is claimed under *RCW 82.04.4452.

(8) This section expires July 1, 2040. [2017 c 135 § 15; 2013 3rd sp.s. c 2 § 9; 2010 c 114 § 115; 2008 c 81 § 7; 2007 c 54 § 11; 2003 2nd sp.s. c 1 § 7.]

*Reviser's note: RCW 82.04.4452 expired January 1, 2015.

Effective date—2017 c 135: See note following RCW 82.32.534.

Contingent effective date—2013 3rd sp.s. c 2: See RCW 82.32.850.

Findings—Intent—2013 3rd sp.s. c 2: See note following RCW 82.32.850.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Severability—2007 c 54: See note following RCW 82.04.050.

Finding—2003 2nd sp.s. c 1: "The legislature finds that the people of the state have benefited from the presence of the aerospace industry in Washington state. The aerospace industry provides good wages and benefits for the thousands of engineers, mechanics, and support staff working directly in the industry throughout the state. The suppliers and vendors that support the aerospace industry in turn provide a range of jobs. The legislature declares that it is in the public interest to encourage the continued presence of this industry through the provision of tax incentives. The comprehensive tax incentives in this act address the cost of doing business in Washington state compared to locations in other states." [2003 2nd sp.s. c 1 § 1.]

82.04.4463 Credit—Property and leasehold taxes paid on property used for manufacture of commercial airplanes. (Effective January 1, 2018, until July 1, 2040.)

(1) In computing the tax imposed under this chapter, a credit is allowed for property taxes and leasehold excise taxes paid during the calendar year.

(2) The credit is equal to:

(a)(i)(A) Property taxes paid on buildings, and land upon which the buildings are located, constructed after December 1, 2003, and used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(B) Leasehold excise taxes paid with respect to buildings constructed after January 1, 2006, the land upon which the buildings are located, or both, if the buildings are used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(C) Property taxes or leasehold excise taxes paid on, or with respect to, buildings constructed after June 30, 2008, the land upon which the buildings are located, or both, and used exclusively for aerospace product development, manufactur-

ing tooling specifically designed for use in manufacturing commercial airplanes or their components, or in providing aerospace services, by persons not within the scope of (a)(i)(A) and (B) of this subsection (2) and are taxable under RCW 82.04.290(3), 82.04.260(11)(b), or 82.04.250(3); or

(ii) Property taxes attributable to an increase in assessed value due to the renovation or expansion, after: (A) December 1, 2003, of a building used exclusively in manufacturing commercial airplanes or components of such airplanes; and (B) June 30, 2008, of buildings used exclusively for aerospace product development, manufacturing tooling specifically designed for use in manufacturing commercial airplanes or their components, or in providing aerospace services, by persons not within the scope of (a)(ii)(A) of this subsection (2) and are taxable under RCW 82.04.290(3), 82.04.260(11)(b), or 82.04.250(3); and

(b) An amount equal to:

(i)(A) Property taxes paid, by persons taxable under RCW 82.04.260(11)(a), on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;

(B) Property taxes paid, by persons taxable under RCW 82.04.260(11)(b), on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or

(C) Property taxes paid, by persons taxable under RCW 82.04.250(3) or 82.04.290(3), on computer hardware, computer peripherals, and software exempt under RCW 82.08.975 or 82.12.975 and acquired after June 30, 2008.

(ii) For purposes of determining the amount eligible for credit under (i)(A) and (B) of this subsection (2)(b), the amount of property taxes paid is multiplied by a fraction.

(A) The numerator of the fraction is the total taxable amount subject to the tax imposed under RCW 82.04.260(11)(a) or (b) on the applicable business activities of manufacturing commercial airplanes, components of such airplanes, or tooling specifically designed for use in the manufacturing of commercial airplanes or components of such airplanes.

(B) The denominator of the fraction is the total taxable amount subject to the tax imposed under all manufacturing classifications in chapter 82.04 RCW.

(C) For purposes of both the numerator and denominator of the fraction, the total taxable amount refers to the total taxable amount required to be reported on the person's returns for the calendar year before the calendar year in which the credit under this section is earned. The department may provide for an alternative method for calculating the numerator in cases where the tax rate provided in RCW 82.04.260(11) for manufacturing was not in effect during the full calendar year before the calendar year in which the credit under this section is earned.

(D) No credit is available under (b)(i)(A) or (B) of this subsection (2) if either the numerator or the denominator of the fraction is zero. If the fraction is greater than or equal to nine-tenths, then the fraction is rounded to one.

(E) As used in (b)(ii)(C) of this subsection (2), "returns" means the tax returns for which the tax imposed under this chapter is reported to the department.

(3) The definitions in this subsection apply throughout this section, unless the context clearly indicates otherwise.

(a) "Aerospace product development" has the same meaning as provided in RCW 82.04.4461.

(b) "Aerospace services" has the same meaning given in RCW 82.08.975.

(c) "Commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(4) A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year, but may not be carried over a second year. No refunds may be granted for credits under this section.

(5) In addition to all other requirements under this title, a person claiming the credit under this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(6) This section expires July 1, 2040. [2017 c 135 § 16; 2013 3rd sp.s. c 2 § 10; 2010 1st sp.s. c 23 § 515; (2010 1st sp.s. c 23 § 514 expired June 10, 2010); 2010 c 114 § 116; 2008 c 81 § 8; 2006 c 177 § 10; 2005 c 514 § 501; 2003 2nd sp.s. c 1 § 15.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Contingent effective date—2013 3rd sp.s. c 2: See RCW 82.32.850.

Findings—Intent—2013 3rd sp.s. c 2: See note following RCW 82.32.850.

Expiration date—2010 1st sp.s. c 23 §§ 503, 505, and 514: See note following RCW 82.04.4266.

Effective date—2010 1st sp.s. c 23 §§ 504, 506, and 515: See note following RCW 82.04.4266.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Additional notes found at www.leg.wa.gov

82.04.448 Credit—Manufacturing semiconductor materials. (Effective until January 1, 2018; contingent effective date; contingent expiration date.) (1) Subject to the limits and provisions of this section, a credit is authorized against the tax otherwise due under RCW 82.04.240(2) for persons engaged in the business of manufacturing semiconductor materials. For the purposes of this section "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2)(a) The credit under this section equals three thousand dollars for each employment position used in manufacturing production that takes place in a new building exempt from sales and use tax under RCW 82.08.965 and 82.12.965. A credit is earned for the calendar year a person fills a position. Additionally a credit is earned for each year the position is maintained over the subsequent consecutive years, up to eight years. Those positions that are not filled for the entire year are eligible for fifty percent of the credit if filled less than six months, and the entire credit if filled more than six months.

(b) To qualify for the credit, the manufacturing activity of the person must be conducted at a new building that qualifies for the exemption from sales and use tax under RCW 82.08.965 and 82.12.965.

(c) In those situations where a production building in existence on *the effective date of this section will be phased out of operation, during which time employment at the new building at the same site is increased, the person is eligible for credit for employment at the existing building and new building, with the limitation that the combined eligible employment not exceed full employment at the new building. "Full employment" has the same meaning as in RCW 82.08.965. The credit may not be earned until the commencement of commercial production, as that term is used in RCW 82.08.965.

(3) No application is necessary for the tax credit. The person is subject to all of the requirements of chapter 82.32 RCW. In no case may a credit earned during one calendar year be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds may be granted for credits under this section.

(4) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been claimed is immediately due. The department must assess interest, but not penalties, on the taxes for which the person is not eligible. The interest must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, is retroactive to the date the tax credit was taken, and accrues until the taxes for which a credit has been used are repaid.

(5) A person claiming the credit under this section must file a complete annual report with the department under RCW 82.32.534.

(6) Credits may be claimed after the expiration date of this section, for those buildings at which commercial production began before the expiration date of this section, subject to all of the eligibility criteria and limitations of this section.

(7) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 515; 2010 c 114 § 117; 2003 c 149 § 9.]

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

***Contingent effective date—2010 c 114:** See RCW 82.32.790.

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

82.04.448 Credit—Manufacturing semiconductor materials. (Effective January 1, 2018; contingent effective date; contingent expiration date.) (1) Subject to the limits and provisions of this section, a credit is authorized against the tax otherwise due under RCW 82.04.240(2) for persons engaged in the business of manufacturing semiconductor materials. For the purposes of this section "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2)(a) The credit under this section equals three thousand dollars for each employment position used in manufacturing production that takes place in a new building exempt from sales and use tax under RCW 82.08.965 and 82.12.965. A credit is earned for the calendar year a person fills a position. Additionally a credit is earned for each year the position is maintained over the subsequent consecutive years, up to eight years. Those positions that are not filled for the entire year are eligible for fifty percent of the credit if filled less than six months, and the entire credit if filled more than six months.

(b) To qualify for the credit, the manufacturing activity of the person must be conducted at a new building that qualifies for the exemption from sales and use tax under RCW 82.08.965 and 82.12.965.

(c) In those situations where a production building in existence on *the effective date of this section will be phased out of operation, during which time employment at the new building at the same site is increased, the person is eligible for credit for employment at the existing building and new building, with the limitation that the combined eligible employment not exceed full employment at the new building. "Full employment" has the same meaning as in RCW 82.08.965. The credit may not be earned until the commencement of commercial production, as that term is used in RCW 82.08.965.

(3) No application is necessary for the tax credit. The person is subject to all of the requirements of chapter 82.32 RCW. In no case may a credit earned during one calendar year be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds may be granted for credits under this section.

(4) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been claimed is immediately due. The department must assess interest, but not penalties, on the taxes for which the person is not eligible. The interest must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, is retroactive to the date the tax credit was taken, and accrues until the taxes for which a credit has been used are repaid.

(5) A person claiming the credit under this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(6) Credits may be claimed after the expiration date of this section, for those buildings at which commercial production began before the expiration date of this section, subject to all of the eligibility criteria and limitations of this section.

(7) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 516; 2017 c 135 § 17; 2010 c 114 § 117; 2003 c 149 § 9.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

***Contingent effective date—2017 c 135; 2010 c 114:** See RCW 82.32.790.

Effective date—2017 c 135: See note following RCW 82.32.534.

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

82.04.4481 Credit—Property taxes paid by aluminum smelter. (Effective January 1, 2018.) (1) In computing the tax imposed under this chapter, a credit is allowed for all property taxes paid during the calendar year on property owned by a direct service industrial customer and reasonably necessary for the purposes of an aluminum smelter.

(2) A person claiming the credit under this section is subject to all the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in the subsequent calendar year, but may not be carried over a second year. Credits car-

ried over must be applied to tax liability before new credits. No refunds may be granted for credits under this section.

(3) Credits may not be claimed under this section for property taxes levied for collection in 2027 and thereafter.

(4) A person claiming the credit provided in this section must file a complete annual tax performance report with the department under RCW 82.32.534. [2017 c 135 § 18; 2015 3rd sp.s. c 6 § 503; 2011 c 174 § 302. Prior: 2010 1st sp.s. c 2 § 2; 2010 c 114 § 118; 2006 c 182 § 2; 2004 c 24 § 8.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Findings—Tax preference performance statement—2015 3rd sp.s. c 6 §§ 502-506: See note following RCW 82.04.2909.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

82.04.4483 Credit—Programming or manufacturing software in rural counties. (Effective January 1, 2018.) (1) Subject to the limits and provisions of this section, a credit is authorized against the tax otherwise due under this chapter for persons engaged in a rural county in the business of manufacturing computer software or programming, as those terms are defined in this section.

(2) A person who partially or totally relocates a business from one rural county to another rural county is eligible for any new qualifying employment positions created as a result of the relocation but is not eligible to receive credit for the jobs moved from one county to the other.

(3)(a) To qualify for the credit, the qualifying activity of the person must be conducted in a rural county and the new qualified employment position must be located in the rural county.

(b) If an activity is conducted both from a rural county and outside of a rural county, the credit is available if at least ninety percent of the qualifying activity is conducted within a rural county. If the qualifying activity is a service taxable activity, the place where the work is performed is the place at which the activity is conducted.

(4)(a) The credit under this section equals one thousand dollars for each new qualified employment position created after January 1, 2004, in an eligible area. A credit is earned for the calendar year the person is hired to fill the position. Additionally a credit is earned for each year the position is maintained over the subsequent consecutive years, up to four years. The county must meet the definition of a rural county at the time the position is filled. If the county does not have a rural county status the following year or years, the position is still eligible for the remaining years if all other conditions are met.

(b) Participants who claimed credit under *RCW 82.04.4456 for qualified employment positions created before December 31, 2003, are eligible to earn credit for each year the position is maintained over the subsequent consecutive years, for up to four years, which four years include any years claimed under *RCW 82.04.4456. Those persons who did not receive a credit under *RCW 82.04.4456 before December 31, 2003, are not eligible to earn credit for qualified employment positions created before December 31, 2003.

(c) Credit is authorized for new employees hired for new qualified employment positions created on or after January 1, 2004. New qualified employment positions filled by existing employees are eligible for the credit under this section only if the position vacated by the existing employee is filled by a new hire. A business that is a sole proprietorship without any employees is equivalent to one employee position and this type of business is eligible to receive credit for one position.

(d) If a position is filled before July 1st, the position is eligible for the full yearly credit for that calendar year. If it is filled after June 30th, the position is eligible for half of the credit for that calendar year.

(5) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section. This information includes information relating to description of qualifying activity conducted in the rural county and outside the rural county by the person as well as detailed records on positions and employees.

(6) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been claimed is immediately due. The department must assess interest, but not

penalties, on the taxes for which the person is not eligible. The interest must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, applies retroactively to the date the tax credit was taken, and accrues until the taxes for which a credit has been used are repaid.

(7) The credit under this section may be used against any tax due under this chapter, but in no case may a credit earned during one calendar year be carried over to be credited against taxes incurred in a subsequent calendar year. A person is not eligible to receive a credit under this section if the person is receiving credit for the same position under chapter 82.62 RCW or RCW 82.04.44525 or is taking a credit under this chapter for information technology help desk services conducted from a rural county. No refunds may be granted for credits under this section.

(8) Transfer of ownership does not affect credit eligibility. However, the successive credits are available to the successor for remaining periods in the five years only if the eligibility conditions of this section are met.

(9) A person claiming a tax credit under this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(10) As used in this section:

(a) "Computer software" has the meaning as defined in RCW 82.04.215 after June 30, 2004, and includes "software" as defined in RCW 82.04.215 before July 1, 2004.

(b) "Manufacturing" means the same as "to manufacture" under RCW 82.04.120. Manufacturing includes the activities of both manufacturers and processors for hire.

(c) "Programming" means the activities that involve the creation or modification of computer software, as that term is defined in this chapter, and that are taxable as a service under RCW 82.04.290(2) or as a retail sale under RCW 82.04.050.

(d) "Qualifying activity" means manufacturing of computer software or programming.

(e) "Qualified employment position" means a permanent full-time position doing programming of computer software or manufacturing of computer software. This excludes administrative, professional, service, executive, and other similar positions. If an employee is either voluntarily or involuntarily separated from employment, the employment position is considered filled on a full-time basis if the employer is either training or actively recruiting a replacement employee. Full-time means a position for at least thirty-five hours a week.

(f) "Rural county" means the same as in RCW 82.14.370.

(11) No credit may be taken or accrued under this section on or after January 1, 2011. [2017 c 135 § 19; 2010 c 114 § 119; 2004 c 25 § 1.]

Reviser's note: *(1) RCW 82.04.4456 expired December 31, 2003.

(2) RCW 82.04.4483 was amended by 2017 c 135 § 19 without cognizance of its repeal by 2017 c 323 § 504. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Additional notes found at www.leg.wa.gov

82.04.4483 Credit—Programming or manufacturing software in rural counties.

Reviser's note: RCW 82.04.4483 was amended by 2017 c 135 § 19 without cognizance of its repeal by 2017 c 323 § 504. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

82.04.4489 Credit—Motion picture competitiveness program. (1) Subject to the limitations in this section, a credit is allowed against the tax imposed under this chapter for contributions made by a person to a Washington motion picture competitiveness program.

(2) The person must make the contribution before claiming a credit authorized under this section. Credits earned under this section may be claimed against taxes due for the calendar year in which the contribution is made. The amount of credit claimed for a reporting period may not exceed the tax otherwise due under this chapter for that reporting period. No person may claim more than seven hundred fifty thousand

dollars of credit in any calendar year, including credit carried over from a previous calendar year. No refunds may be granted for any unused credits.

(3) The maximum credit that may be earned for each calendar year under this section for a person is limited to the lesser of seven hundred fifty thousand dollars or an amount equal to one hundred percent of the contributions made by the person to a program during the calendar year.

(4) Except as provided under subsection (5) of this section, a tax credit claimed under this section may not be carried over to another year.

(5) Any amount of tax credit otherwise allowable under this section not claimed by the person in any calendar year may be carried over and claimed against the person's tax liability for the next succeeding calendar year. Any credit remaining unused in the next succeeding calendar year may be carried forward and claimed against the person's tax liability for the second succeeding calendar year; and any credit not used in that second succeeding calendar year may be carried over and claimed against the person's tax liability for the third succeeding calendar year, but may not be carried over for any calendar year thereafter.

(6) Credits are available on a first in-time basis. The department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed under this section during any calendar year to exceed three million five hundred thousand dollars. If this limitation is reached, the department must notify all Washington motion picture competitiveness programs that the annual statewide limit has been met. In addition, the department must provide written notice to any person who has claimed tax credits in excess of the limitation in this subsection. The notice must indicate the amount of tax due and provide that the tax be paid within thirty days from the date of the notice. The department may not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(7) To claim a credit under this section, a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format under this section is not filed until received by the department in an electronic format. As used in this subsection, "returns" has the same meaning as "return" in RCW 82.32.050.

(8) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section.

(9) A Washington motion picture competitiveness program must provide to the department, upon request, such information needed to verify eligibility for credit under this section, including information regarding contributions received by the program.

(10) The department may not allow any credit under this section before July 1, 2006.

(11) For the purposes of this section, "Washington motion picture competitiveness program" or "program" means an organization established pursuant to chapter 43.365 RCW.

(12) No credit may be earned for contributions made on or after July 1, 2027. [2017 3rd sp.s. c 37 § 1102; 2012 c 189 § 4; 2008 c 85 § 3; 2006 c 247 § 5.]

Tax preference performance statement—2017 3rd sp.s. c 37 § 1102:

"(1) This section is the tax preference performance statement for the tax preferences contained in section 1102, chapter 37, Laws of 2017 3rd sp. sess. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these tax preferences as ones intended to create or retain jobs as indicated in RCW 82.32.808(2)(c).

(3) It is the legislature's specific public policy objective to increase the viability of the motion picture and film industry and associated creative industries in Washington state. It is the legislature's intent to increase the credit available to qualifying activities in order to attract additional motion picture and film projects, thereby increasing family-wage jobs.

(4) If a review finds that the jobs attributable to these projects increase by at least ten percent over the jobs in the state since 2016, then the legislature intends to extend the expiration date of the tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to data provided to the department of revenue pursuant to RCW 82.04.4489(9) and the annual survey required under RCW 43.365.040." [2017 3rd sp.s. c 37 § 1101.]

82.04.449 Credit—Washington customized employment training program. (Effective January 1, 2018.) (1) In computing the tax imposed under this chapter, a credit is allowed for participants in the Washington customized employment training program created in RCW 28B.67.020. The credit allowed under this section is equal to fifty percent of the value of a participant's payments to the employment training finance account created in RCW 28B.67.030. If a

participant in the program does not meet the requirements of RCW 28B.67.020(2)(b)(ii), the participant must remit to the department the value of any credits taken plus interest. The credit earned by a participant in one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year. No credit may be allowed for repayment of training allowances received from the Washington customized employment training program on or after July 1, 2021.

(2) A person claiming the credit provided in this section must file a complete annual tax performance report with the department under RCW 82.32.534. [2017 c 135 § 20; 2012 c 46 § 3; 2010 c 114 § 121; 2009 c 296 § 3; 2006 c 112 § 5.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

82.04.4496 Credit—Clean alternative fuel commercial vehicles. (Effective January 1, 2018, until January 1, 2022.) (1)(a) A person who is taxable under this chapter is allowed a credit against the tax imposed in this chapter according to the gross vehicle weight rating of the vehicle and the incremental cost of the vehicle purchased above the purchase price of a comparable conventionally fueled vehicle. The credit is limited, as set forth in the table below, to the lesser of the incremental cost amount or the maximum credit amount per vehicle purchased, and subject to a maximum annual credit amount per vehicle class.

Gross Vehicle Weight	Incremental Cost Amount	Maximum Credit Amount Per Vehicle	Maximum Annual Credit Per Vehicle Class
Up to 14,000 pounds	50% of incremental cost	\$25,000	\$2,000,000
14,001 to 26,500 pounds	50% of incremental cost	\$50,000	\$2,000,000
Above 26,500 pounds	50% of incremental cost	\$100,000	\$2,000,000

(b) On September 1st of each year any unused credits from any weight class identified in the table in (a) of this subsection must be made available to applicants applying for credits under any other weight class listed.

(c) The credit provided in this subsection (1) is available for the lease of a vehicle. The credit amount for a leased vehicle is equal to the credit in this subsection (1) multiplied by the lease reduction factor. The person claiming the credit for a leased vehicle must be the lessee as identified in the lease contract.

(2) A person who is taxable under this chapter is allowed, subject to the maximum annual credit per vehicle class in subsection (1)(a) of this section, a credit against the tax imposed in this chapter for the lesser of twenty-five thousand dollars or thirty percent of the costs of converting a commercial vehicle to be principally powered by a clean alternative fuel with a United States environmental protection agency certified conversion.

(3) The total credits under this section may not exceed the lesser of two hundred fifty thousand dollars or twenty-five vehicles per person per calendar year.

(4) A person may not receive credit under this section for amounts claimed as credits under chapter 82.16 RCW.

(5) Credits are available on a first-in-time basis. The department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed under this section, and RCW 82.16.0496, during any calendar year to exceed six million dollars. The department must provide notification on its web site monthly on the amount of credits that have been applied for, the amount issued, and the amount remaining before the statewide annual limit is reached. In addition, the department must provide written notice to any person who has applied to claim tax credits in excess of the limitation in this subsection.

(6) For the purposes of the limits provided in this section, a credit must be counted against such limits for the calendar year in which the credit is earned.

(7) To claim a credit under this section a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. No refunds may be granted for credits under this section.

(8) To claim a credit under this section, the person applying must:

(a) Complete an application for the credit which must include:

(i) The name, business address, and tax identification number of the applicant;

(ii) A quote or unexecuted copy of the purchase requisition or order for the vehicle;

(iii) The type of alternative fuel to be used by the vehicle;

(iv) The incremental cost of the alternative fuel system;

(v) The anticipated delivery date of the vehicle;

(vi) The estimated annual fuel use of the vehicle in the anticipated duties;

(vii) The gross weight of each vehicle;

(viii) For leased vehicles, a copy of the lease contract that includes the gross capitalized cost, residual value, and name of the lessee; and

(ix) Any other information deemed necessary by the department to support administration or reporting of the program.

(b) Within fifteen days of notice of credit availability from the department, provide notice of intent to claim the credit including:

(i) A copy of the order for the vehicle, including the total cost for the vehicle;

(ii) The anticipated delivery date of the vehicle, which must be within one year of acceptance of the credit; and

(iii) Any other information deemed necessary by the department to support administration or reporting of the program.

(c) Provide final documentation within fifteen days of receipt of the vehicle, including:

(i) A copy of the final invoice for the vehicle;

(ii) A copy of the factory build sheet or equivalent documentation;

(iii) The vehicle identification number of each vehicle;

(iv) The incremental cost of the alternative fuel system;

(v) Attestations signed by both the seller and purchaser of each vehicle attesting that the incremental cost of the alternative fuel system includes only the costs necessary for the vehicle to run on alternative fuel and no other vehicle options, equipment, or costs; and

(vi) Any other information deemed necessary by the department to support administration or reporting of the program.

(9) A person applying for credit under subsection (8) of this section may apply for multiple vehicles on the same application, but the application must include the required information for each vehicle included in the application.

(10) To administer the credits, the department must, at a minimum:

(a) Provide notification on its web site monthly of the amount of credits that have been applied for, claimed, and the amount remaining before the statewide annual limit is reached;

(b) Within fifteen days of receipt of the application, notify persons applying of the availability of tax credits in the year in which the vehicles applied for are anticipated to be delivered;

(c) Within fifteen days of receipt of the notice of intent to claim the tax credit, notify the applicant of the approval, denial, or missing information in their notice; and

(d) Within fifteen days of receipt of final documentation, review the documentation and notify the person applying of the acceptance of their final documentation.

(11) If a person fails to supply the information as required in subsection (8) of this section, the department must deny the application.

(12)(a) Taxpayers are only eligible for a credit under this section based on:

(i) Sales or leases of new commercial vehicles and qualifying used commercial vehicles with propulsion units that are principally powered by a clean alternative fuel; or

(ii) Costs to modify a commercial vehicle, including sales of tangible personal property incorporated into the vehicle and labor or service expenses incurred in modifying the vehicle, to be principally powered by a clean alternative fuel.

(b) A credit is earned when the purchaser or the lessee takes receipt of the qualifying commercial vehicle or the conversion is complete.

(13) A credit earned during one calendar year may be carried over to be credited against taxes incurred in the subsequent calendar year, but may not be carried over a second year.

(14)(a) Beginning November 25, 2015, and on the 25th of February, May, August, and November of each year thereafter, the department must notify the state treasurer of the amount of credits taken under this section as reported on returns filed with the department during the preceding calendar quarter ending on the last day of December, March, June, and September, respectively.

(b) On the last day of March, June, September, and December of each year, the state treasurer, based upon information provided by the department, must transfer a sum equal to the dollar amount of the credit provided under this section from the multimodal transportation account to the general fund.

(15) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Auto transportation company" means any corporation or person owning, controlling, operating, or managing any motor propelled vehicle, used in the business of transporting persons for compensation over public highways within the state of Washington, between fixed points or over a regular route.

(b) "Clean alternative fuel" means electricity, dimethyl ether, hydrogen, methane, natural gas, liquefied natural gas, compressed natural gas, or propane.

(c) "Commercial vehicle" means any commercial vehicle that is purchased by a private business and that is used exclusively in the provision of commercial services or the transportation of commodities, merchandise, produce, refuse, freight, animals, or passengers, and that is displaying a Washington state license plate. All commercial vehicles that provide transportation to passengers must be operated by an auto transportation company.

(d) "Gross capitalized cost" means the agreed upon value of the commercial vehicle and including any other items a person pays over the lease term that are included in such cost.

(e) "Lease reduction factor" means the vehicle gross capitalized cost less the residual value, divided by the gross capitalized cost.

(f) "Qualifying used commercial vehicle" means vehicles that:

(i) Have an odometer reading of less than four hundred fifty thousand miles;

(ii) Are less than ten years past their original date of manufacture;

(iii) Were modified after the initial purchase with a United States environmental protection agency certified conversion that would allow the propulsion units to be principally powered by a clean alternative fuel; and

(iv) Are being sold for the first time after modification.

(g) "Residual value" means the lease-end value of the vehicle as determined by the lessor, at the end of the lease term included in the lease contract.

(16) Credits may be earned under this section from January 1, 2016, through January 1, 2021, except for credits for leased vehicles, which may be earned from July 1, 2016, through January 1, 2021.

(17) Credits earned under this section may not be used after January 1, 2022.

(18) This section expires January 1, 2022. [2017 c 116 § 1. Prior: 2016 c 29 § 1; 2015 3rd sp.s. c 44 § 411.]

Effective date—2017 c 116: "This act takes effect January 1, 2018." [2017 c 116 § 4.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Short title—Findings—Tax preference performance statement—2015 3rd sp.s. c 44 §§ 411 and 412: "(1) This section and sections 411 and 412 of this act may be known and cited as the clean fuel vehicle incentives act.

(2) The legislature finds that cleaner fuels reduce greenhouse gas emissions in the transportation sector and lead to a more sustainable environment. The legislature further finds that alternative fuel vehicles cost more than comparable models of conventional fuel vehicles, particularly in the commercial market. The legislature further finds the higher cost of alternative fuel vehicles incentivize companies to purchase comparable models of conventional fuel vehicles. The legislature further finds that other states provide various tax credits and exemptions. The legislature further finds incentivizing businesses to purchase cleaner, alternative fuel vehicles is a collaborative step toward meeting the state's climate and environmental goals.

(3)(a) This subsection is the tax preference performance statement for the clean alternative fuel vehicle tax credits provided in section 1, chapter 116, Laws of 2017, sections 1 and 2, chapter 29, Laws of 2016, and sections 411 and 412, chapter 44, Laws of 2015 3rd sp. sess. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes the tax preference as one intended to induce certain designated behavior by taxpayers.

(c) It is the legislature's specific public policy objective to provide a credit against business and occupation and public utility taxes to increase sales of commercial vehicles that use clean alternative fuel to ten percent of commercial vehicle sales by 2021.

(d) To measure the effectiveness of the credit provided in section 1, chapter 116, Laws of 2017, sections 1 and 2, chapter 29, Laws of 2016, and sections 411 and 412, chapter 44, Laws of 2015 3rd sp. sess. in achieving the specific public policy objective described in (c) of this subsection, the joint legislative audit and review committee must, at minimum, evaluate the changes in the number of commercial vehicles that are powered by clean alternative fuel that are registered in Washington state.

(e)(i) The department of licensing must provide data needed for the joint legislative audit and review committee's analysis in (d) of this subsection.

(ii) In addition to the data source described under (e)(i) of this subsection, the joint legislative audit and review committee may use any other data it deems necessary in performing the evaluation under (d) of this subsection." [2017 c 116 § 3; 2016 c 29 § 3; 2015 3rd sp.s. c 44 § 410.]

82.04.545 Exemptions—Sales of electricity or gas to silicon smelters. (Effective until January 1, 2018; contingent expiration date.) (1) A person who is subject to tax under this chapter on gross income from sales of electricity, natural gas, or manufactured gas made to a silicon smelter is eligible for an exemption from the tax in the form of a credit,

if the contract for sale of electricity or gas to the silicon smelter specifies that the price charged for the electricity or gas will be reduced by an amount equal to the credit.

(2) The credit is equal to the gross income from the sale of the electricity or gas to a silicon smelter multiplied by the corresponding rate in effect at the time of the sale under this chapter.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process.

(4) The department must provide a separate tax reporting line for reporting credits under this section by sellers of electricity, natural gas, or manufactured gas.

(5) For purposes of the annual survey required by RCW 82.32.585:

(a) The silicon smelter receiving the benefit of the credit under this section is deemed to be the taxpayer claiming the credit and is required to file the annual survey; and

(b) The person selling the electricity, natural gas, or manufactured gas to the silicon smelter is not required to file the annual survey.

(6) For the purposes of this section, "silicon smelter" has the same meaning as provided in RCW 82.16.315. [2017 3rd sp.s. c 37 § 704.]

Contingent expiration date—2017 3rd sp.s. c 37 §§ 701-708: See note following RCW 82.32.537.

Findings—Intent—Tax preference performance statement—2017 3rd sp.s. c 37 §§ 701-708: See note following RCW 82.16.315.

82.04.545 Exemptions—Sales of electricity or gas to silicon smelters. (Effective January 1, 2018; contingent expiration date.) (1) A person who is subject to tax under this chapter on gross income from sales of electricity, natural gas, or manufactured gas made to a silicon smelter is eligible for an exemption from the tax in the form of a credit, if the contract for sale of electricity or gas to the silicon smelter specifies that the price charged for the electricity or gas will be reduced by an amount equal to the credit.

(2) The credit is equal to the gross income from the sale of the electricity or gas to a silicon smelter multiplied by the corresponding rate in effect at the time of the sale under this chapter.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process.

(4) The department must provide a separate tax reporting line for reporting credits under this section by sellers of electricity, natural gas, or manufactured gas.

(5) For purposes of the annual tax performance report required by RCW 82.32.534:

(a) The silicon smelter receiving the benefit of the credit under this section is deemed to be the taxpayer claiming the credit and is required to file the annual tax performance report; and

(b) The person selling the electricity, natural gas, or manufactured gas to the silicon smelter is not required to file the annual tax performance report.

(6) For the purposes of this section, "silicon smelter" has the same meaning as provided in RCW 82.16.315. [2017 3rd sp.s. c 37 § 705; 2017 3rd sp.s. c 37 § 704.]

Contingent expiration date—2017 3rd sp.s. c 37 §§ 701-708: See note following RCW 82.32.537.

Findings—Intent—Tax preference performance statement—2017 3rd sp.s. c 37 §§ 701-708: See note following RCW 82.16.315.

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

82.04.628 Exemptions—Commercial fertilizer, agricultural crop protection products, and seed. (1) This chapter does not apply to wholesale sales of commercial fertilizer, agricultural crop protection products, and seed, by an eligible distributor to an eligible retailer.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Affiliated persons" means persons who have any ownership interest, whether direct or indirect, in each other, or where any ownership interest, whether direct or indirect, is held in each of the persons by another person or by a group of other persons that are affiliated with respect to each other.

(b) "Agricultural crop protection products" has the same meaning as provided in RCW 82.21.040.

(c) "Commercial fertilizer" has the same meaning as provided in RCW 15.54.270.

(d) "Seed" means seed potatoes and all other "agricultural seed" as defined in RCW 15.49.011 and conditioned for use in planting.

(e) "Eligible distributor" means a wholesaler who purchases commercial fertilizer, agricultural crop protection products, and seed from the manufacturer and resells those products only to eligible retailers who are not affiliated persons and who have an ownership interest in an entity that has at least a fifty percent ownership interest in the wholesaler.

(f) "Eligible retailer" means a person engaged in the business of making retail sales of commercial fertilizer, agricultural crop protection products, and seed, that also holds at least a five percent ownership interest in an entity that holds at least a fifty percent ownership interest in an eligible distributor.

(3) This section is exempt from the provisions of RCW 82.32.805 and 82.32.808. [2017 3rd sp.s. c 37 § 302.]

Tax preference performance statement—2017 3rd sp.s. c 37 § 302: "(1) This section is the tax preference performance statement for the tax preferences contained in section 302, chapter 37, Laws of 2017 3rd sp. sess. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these tax preferences as ones intended to reduce structural inefficiencies, as indicated in RCW 82.32.808(2)(d).

(3) It is the legislature's specific public policy objective to provide tax relief to certain distributors of commercial fertilizer, agricultural crop protection products, and seeds. If a review finds that the number of wholesalers of agricultural crop protection products, seed, and fertilizer qualifying for the exemption has increased or stayed the same, then the legislature intends to extend the expiration date of the tax preferences.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee may refer to the department of revenue's data." [2017 3rd sp.s. c 37 § 301.]

Effective date—2017 3rd sp.s. c 37 §§ 301, 302, and 1001-1003: "Parts III and X of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its

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existing public institutions, and take effect July 1, 2017." [2017 3rd sp.s. c 37 § 1402.]

Chapter 82.08 RCW RETAIL SALES TAX

Sections

- 82.08.0207 Exemptions—Adapted housing—Disabled veterans—Construction.
- 82.08.02082 Exemptions—Digital products or services—Ingredient or component—Made available for free.
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- 82.08.805 Exemptions—Personal property used at an aluminum smelter. (*Effective January 1, 2018.*)
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- 82.08.965 Exemptions—Semiconductor materials manufacturing. (*Effective until January 1, 2018; contingent effective date; contingent expiration date.*)
- 82.08.965 Exemptions—Semiconductor materials manufacturing. (*Effective January 1, 2018; contingent effective date; contingent expiration date.*)
- 82.08.9651 Exemptions—Gases and chemicals used in production of semiconductor materials. (*Effective until January 1, 2018.*)
- 82.08.9651 Exemptions—Gases and chemicals used in production of semiconductor materials. (*Effective January 1, 2018, until December 1, 2028.*)
- 82.08.970 Exemptions—Gases and chemicals used to manufacture semiconductor materials. (*Effective until January 1, 2018; contingent effective date; contingent expiration date.*)
- 82.08.970 Exemptions—Gases and chemicals used to manufacture semiconductor materials. (*Effective January 1, 2018; contingent effective date; contingent expiration date.*)
- 82.08.980 Exemptions—Labor, services, and personal property related to the manufacture of commercial airplanes. (*Effective January 1, 2018, until July 1, 2040.*)
- 82.08.986 Exemptions—Eligible server equipment. (*Effective January 1, 2018.*)
- 82.08.9994 Exemptions—Bottled water—Prescription use.
- 82.08.99941 Exemptions—Bottled water—Primary water source unsafe.

82.08.0207 Exemptions—Adapted housing—Disabled veterans—Construction. (1) An eligible purchaser who has paid the tax levied by RCW 82.08.020 on materials incorporated into, and labor and services rendered in respect to, adapted housing is eligible for an exemption from all or a portion of those taxes in the form of a remittance. The total amount of a remittance that an eligible purchaser may receive under this section and/or RCW 82.12.0207 is limited to two thousand five hundred dollars for each adapted housing project. The remittance under this section is for the state portion of the sales tax only.

(2)(a) An eligible purchaser claiming an exemption from tax in the form of a remittance under this section must pay the tax imposed by RCW 82.08.020 on such purchases eligible for the remittance. The eligible purchaser may then apply to the department for remittance of all or part of the tax paid under RCW 82.08.020 on such purchases, subject to the limits in subsections (1) and (3) of this section. As part of the application, the eligible purchaser must provide proof of eligibility for the remittance in the form of a copy of the grant

award letter from the United States department of veterans affairs, construction contracts for adapted housing, and invoices for purchases qualifying for a remittance under this section.

(b) An eligible purchaser may not apply for more than one remittance under this section per calendar quarter.

(c) The department must on a quarterly basis remit exempted amounts to eligible purchasers whose applications were approved by the department during the previous quarter.

(3)(a) The remittance under this section is only available on a first-in-time basis. The department must keep a running total of all approved remittances under this section and/or RCW 82.12.0207 during each fiscal year. The department may not allow any remittance that would cause the total amount of remittances allowed under this section and/or RCW 82.12.0207 to exceed one hundred twenty-five thousand dollars in any fiscal year, unless additional amounts are appropriated for this specific purpose.

(b) The department must provide notification on its web site monthly of the amount remaining before the statewide annual limit in this subsection is reached.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Adapted housing" means a construction project that has been approved by the United States department of veterans affairs as part of the specially adapted housing grant program or the special housing adaptation grant program to modify or construct a home so that it can accommodate the needs of a disabled or severely disabled veteran.

(b) "Eligible purchaser" means a disabled or severely disabled veteran who has received either a specially adapted housing grant or a special housing adaptation grant from the United States department of veterans affairs.

(c) "Special housing adaptation" has the same meaning, eligibility requirements, and restrictions as "special home adaptation grant" in 38 C.F.R. 3.809a, as of July 1, 2016.

(d) "Specially adapted housing" has the same meaning, eligibility requirements, and restrictions as in 38 C.F.R. 3.809, as of July 1, 2016. [2017 c 176 § 2.]

Findings—Intent—2017 c 176: "(1)(a) The legislature finds that it is important to recognize the service of veterans and to acknowledge the continued sacrifice of those veterans who have service-connected physical disabilities. The legislature further finds that many disabled veterans often need customized, accessible housing in order to be self-sufficient and to maintain a high quality of life. The legislature further finds that disabled veterans have higher poverty rates than disabled nonveterans. The legislature further finds that the federal government provides a grant to assist disabled veterans with the costs of constructing, modifying, or adapting their homes, but that thousands of these dollars end up covering the sales or use tax owed on these construction projects. The legislature further finds that this results in a shift of cost to the same population of disabled veterans whose burden the federal grant program is intended to ease.

(b) It is the legislature's intent to provide specific financial relief for disabled veterans by providing a sales and use tax exemption in the form of a remittance for the construction of adapted housing for disabled veterans who have been awarded a federal grant to modify their homes.

(2)(a) This section is the tax preference performance statement for the tax preferences contained in this act. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes the tax preference in section 2 of this act as one intended to provide tax relief for certain businesses or individuals, as indicated in RCW 82.32.808(2)(e).

(c) To measure the effectiveness of this act in achieving the specific public policy objective described in subsection (1) of this section, the joint

legislative audit and review committee must, at minimum, evaluate the following:

(i) The number of qualifying adapted housing projects, as reported to the department of revenue through the remittance application process on an annual basis; and

(ii) The total amount of adapted housing grants awarded to veterans, as reported by the United States department of veterans affairs.

(d) In addition to the data sources described under this section, the joint legislative audit and review committee may use any other data it deems necessary in performing the evaluation under this subsection.

(e) The joint legislative audit and review committee must review the tax preferences provided in this act as part of its normal review process of tax preferences." [2017 c 176 § 1.]

Application—2017 c 176: "This act applies to sales or uses that occur on or after August 1, 2017." [2017 c 176 § 5.]

82.08.02082 Exemptions—Digital products or services—Ingredient or component—Made available for free.

(1) The tax imposed by RCW 82.08.020 does not apply to a business or other organization for the purpose of making the digital good or digital automated service, including a digital good or digital automated service acquired through the use of a digital code, or service defined as a retail sale in RCW 82.04.050(6)(c) available free of charge for the use or enjoyment of the general public. The exemption provided in this section does not apply unless the purchaser has the legal right to broadcast, rebroadcast, transmit, retransmit, license, relicense, distribute, redistribute, or exhibit the product, in whole or in part, to the general public.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) For purposes of this section, "general public" means all persons and not limited or restricted to a particular class of persons, except that the general public includes:

(a) A class of persons that is defined as all persons residing or owning property within the boundaries of a state, political subdivision of a state, or a municipal corporation; and

(b) With respect to libraries, authorized library patrons. [2017 c 323 § 517; 2010 c 111 § 401; 2009 c 535 § 503.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Purpose—Retroactive application—Effective date—2010 c 111: See notes following RCW 82.04.050.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.08.02088 Exemptions—Digital products—Business buyers—Concurrently available for use within and outside state.

(1) The tax imposed by RCW 82.08.020 does not apply to the sale of digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c) to a buyer that provides the seller with an exemption certificate claiming multiple points of use. An exemption certificate claiming multiple points of use must be in a form and contain such information as required by the department.

(2) A buyer is entitled to use an exemption certificate claiming multiple points of use only if the buyer is a business or other organization and the digital goods or digital automated services purchased, or the digital goods or digital automated services to be obtained by the digital code purchased,

or the prewritten computer software or services defined as a retail sale in RCW 82.04.050(6)(c) purchased will be concurrently available for use within and outside this state. A buyer is not entitled to use an exemption certificate claiming multiple points of use for digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c) purchased for personal use.

(3) A buyer claiming an exemption under this section must report and pay the tax imposed in RCW 82.12.020 and any local use taxes imposed under the authority of chapter 82.14 RCW and RCW 81.104.170 directly to the department in accordance with RCW 82.12.02088 and 82.14.457.

(4) For purposes of this section, "concurrently available for use within and outside this state" means that employees or other agents of the buyer may use the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c) simultaneously from one or more locations within this state and one or more locations outside this state. A digital code is concurrently available for use within and outside this state if employees or other agents of the buyer may use the digital goods or digital automated services to be obtained by the code simultaneously at one or more locations within this state and one or more locations outside this state. [2017 c 323 § 518; 2009 c 535 § 701.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.08.0293 Exemptions—Sales of food and food ingredients. (1) The tax levied by RCW 82.08.020 does not apply to sales of food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include:

(a) "Alcoholic beverages," which means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume;

(b) "Tobacco," which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco; and

(c) Marijuana, useable marijuana, or marijuana-infused products.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, bottled water, or dietary supplements. The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Bottled water" means water that is placed in a safety sealed container or package for human consumption. Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts, or essences derived from a spice or fruit. "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.

(b) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients:

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection;

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

(c)(i) "Prepared food" means:

(A) Food sold in a heated state or heated by the seller;

(B) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; or

(C) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:

(I) Food that is only cut, repackaged, or pasteurized by the seller; or

(II) Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal food and drug administration in chapter 3, part 401.11 of The Food Code, published by the food and drug administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness.

(ii) "Prepared food" does not include the following food or food ingredients, if the food or food ingredients are sold without eating utensils provided by the seller:

(A) Food sold by a seller whose proper primary North American industry classification system (NAICS) classification is manufacturing in sector 311, except subsector 3118 (bakeries), as provided in the "North American industry classification system—United States, 2002";

(B) Food sold in an unheated state by weight or volume as a single item; or

(C) Bakery items. The term "bakery items" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.

(d) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain: Milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section applies to food and food ingredients that are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the older Americans act (P.L. 95-478 Title III) and RCW 74.38.040(6);

(b) That are provided to senior citizens, individuals with disabilities, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" means a facility:

(i) That meets the definition of a qualified low-income housing project under 26 U.S.C. Sec. 42 of the federal internal revenue code, as existing on August 1, 2009;

(ii) That has been partially funded under 42 U.S.C. Sec. 1485; and

(iii) For which the lessor or operator has at any time been entitled to claim a federal income tax credit under 26 U.S.C. Sec. 42 of the federal internal revenue code.

(4)(a) Subsection (1) of this section notwithstanding, the retail sale of food and food ingredients is subject to sales tax under RCW 82.08.020 if the food and food ingredients are sold through a vending machine. Except as provided in (b) of this subsection, the selling price of food and food ingredients sold through a vending machine for purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

(b) For soft drinks, bottled water, and hot prepared food and food ingredients, other than food and food ingredients which are heated after they have been dispensed from the vending machine, the selling price is the total gross receipts of such sales divided by the sum of one plus the sales tax rate expressed as a decimal.

(c) For tax collected under this subsection (4), the requirements that the tax be collected from the buyer and that the amount of tax be stated as a separate item are waived. [2017 3rd sp.s. c 28 § 101; 2014 c 140 § 22; 2011 c 2 § 301 (Initiative Measure No. 1107, approved November 2, 2010); 2010 1st sp.s. c 23 § 902; (2010 1st sp.s. c 23 § 901 expired July 1, 2010); 2010 c 106 § 216; 2009 c 483 § 2; 2004 c 153 § 201; 2003 c 168 § 301; 1988 c 103 § 1; 1986 c 182 § 1; 1985 c 104 § 1; 1982 1st ex.s. c 35 § 33.]

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

Findings—2011 c 2 (Initiative Measure No. 1107): "The people of the state of Washington in enacting this initiative measure find:

(1) The 2010 legislature adopted legislation that imposed new or higher taxes on many common food and beverage products, increasing the tax burden on Washington consumers and businesses by hundreds of millions of dollars;

(2) Taxes on food and beverages hurt all Washington consumers, and especially hurt lower and middle income taxpayers who can least afford it;

(3) The legislature's tax increases on food and beverages come at a time when Washington residents and businesses already face an economic crisis;

(4) The process the legislature used to increase taxes on food and beverages did not provide adequate public input on or scrutiny of the proposed tax increases;

(5) Washington residents already pay among the highest sales taxes in the country;

(6) The legislature's tax increases on food and beverages hurt Washington food and beverage producers and retail businesses by making their products more costly and less competitive;

(7) The legislature's tax increases on food and beverages will hurt Washington's economy and cause the loss of many local jobs; and

(8) The legislature's tax increases on food and beverages arbitrarily and unfairly impose higher taxes on some food and beverage products but not on others that are similar or essentially the same.

For these reasons, the people repeal the food and beverage taxes imposed by the 2010 legislature." [2011 c 2 § 101 (Initiative Measure No. 1107, approved November 2, 2010).]

Construction—2011 c 2 (Initiative Measure No. 1107): "The provisions of this act are to be construed liberally so as to effectuate its intent." [2011 c 2 § 501 (Initiative Measure No. 1107, approved November 2, 2010).]

Expiration date—2010 1st sp.s. c 23 §§ 106, 901, and 1201: See note following RCW 82.04.2907.

Effective date—2010 1st sp.s. c 23 §§ 107, 601, 602, 702, 902, 1202, and 1401-1405: See note following RCW 82.04.2907.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

Effective date—2010 c 106: See note following RCW 35.102.145.

Finding—Intent—2009 c 483: "The legislature finds that low-income senior citizens are one of the most vulnerable segments of our population who often find it difficult to find safe and clean housing that is also affordable. The federal government has identified this population as being at risk. The federal government provides income tax credits and favorable financing to encourage developers and operators to provide safe and clean housing for our low-income senior citizens. There are only four such facilities in the state, and it is doubtful that any new ones will be built in the future. These four facilities offer "service packages" to their residents, which may include meals, housekeeping, recreation, laundry, and transportation. Washington's sales and use tax law provides generally that when multiple goods and services are offered for one nonitemized price, the entire transaction is subject to sales or use tax if any of the component goods or services are subject to sales tax. Consequently, in order to provide tax relief to these vulnerable tenants, the legislature intends to establish sales and use tax exemptions for the sale of service packages and to meals sold outside of a service package when provided by the lessor or operator of these senior housing facilities to tenants who are at least sixty-two years old." [2009 c 483 § 1.]

Effective date—2009 c 483: "This act takes effect August 1, 2009." [2009 c 483 § 6.]

Additional notes found at www.leg.wa.gov

82.08.050 Buyer to pay, seller to collect tax—Statement of tax—Exception—Penalties—Contingent expiration of subsection. (1) The tax imposed in this chapter must be paid by the buyer to the seller. Each seller must collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department under the provisions of RCW 82.08.060.

(2) The tax required by this chapter, to be collected by the seller, is deemed to be held in trust by the seller until paid to the department. Any seller who appropriates or converts the tax collected to the seller's own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(3) Except as otherwise provided in this section, if any seller fails to collect the tax imposed in this chapter or, having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of the seller's own acts or the result of acts or condi-

tions beyond the seller's control, the seller is, nevertheless, personally liable to the state for the amount of the tax.

(4) Sellers are not relieved from personal liability for the amount of the tax unless they maintain proper records of exempt or nontaxable transactions and provide them to the department when requested.

(5) Sellers are not relieved from personal liability for the amount of tax if they fraudulently fail to collect the tax or if they solicit purchasers to participate in an unlawful claim of exemption.

(6) Sellers are not relieved from personal liability for the amount of tax if they accept an exemption certificate from a purchaser claiming an entity-based exemption if:

(a) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller in Washington; and

(b) Washington provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in Washington. Graying out exemption reason types on a uniform form and posting it on the department's web site is a clear and affirmative indication that the grayed out exemptions are not available.

(7)(a) Sellers are relieved from personal liability for the amount of tax if they obtain a fully completed exemption certificate or capture the relevant data elements required under the streamlined sales and use tax agreement within ninety days, or a longer period as may be provided by rule by the department, subsequent to the date of sale.

(b) If the seller has not obtained an exemption certificate or all relevant data elements required under the streamlined sales and use tax agreement within the period allowed subsequent to the date of sale, the seller may, within one hundred twenty days, or a longer period as may be provided by rule by the department, subsequent to a request for substantiation by the department, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.

(c) Sellers are relieved from personal liability for the amount of tax if they obtain a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The department may not request from a seller renewal of blanket exemption certificates or updates of exemption certificate information or data elements if there is a recurring business relationship between the buyer and seller. For purposes of this subsection (7)(c), a "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

(d) Sellers are relieved from personal liability for the amount of tax if they obtain a copy of a direct pay permit issued under RCW 82.32.087.

(8) The amount of tax, until paid by the buyer to the seller or to the department, constitutes a debt from the buyer to the seller. Any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter is guilty of a misdemeanor.

(9) Except as otherwise provided in this subsection, the tax required by this chapter to be collected by the seller must be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vend-

ing machines, the tax need not be stated separately from the selling price or collected separately from the buyer. Except as otherwise provided in this subsection, for purposes of determining the tax due from the buyer to the seller and from the seller to the department it must be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter. But if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price may not be considered the selling price.

(10) Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax. If the department proceeds directly against the buyer for collection of the tax as authorized in this subsection, the department may add a penalty of ten percent of the unpaid tax to the amount of the tax due for failure of the buyer to pay the tax to the seller, regardless of when the tax may be collected by the department. In addition to the penalty authorized in this subsection, all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, apply. For the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made will be considered as the due date of the tax.

(11) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Exemption certificate" means documentation furnished by a buyer to a seller to claim an exemption from sales tax. An exemption certificate includes a reseller permit or other documentation authorized in RCW 82.04.470 furnished by a buyer to a seller to substantiate a wholesale sale.

(b) "Seller" includes a certified service provider, as defined in RCW 82.32.020, acting as agent for the seller. [2017 3rd sp.s. c 28 § 211; 2010 c 112 § 8; 2010 c 106 § 217. Prior: 2009 c 563 § 206; 2009 c 289 § 2; 2007 c 6 § 1202; prior: 2003 c 168 § 203; 2003 c 76 § 3; 2003 c 53 § 400; 2001 c 188 § 4; 1993 sp.s. c 25 § 704; 1992 c 206 § 2; 1986 c 36 § 1; 1985 c 38 § 1; 1971 ex.s. c 299 § 7; 1965 ex.s. c 173 § 15; 1961 c 15 § 82.08.050; prior: 1951 c 44 § 1; 1949 c 228 § 6; 1941 c 71 § 3; 1939 c 225 § 11; 1937 c 227 § 7; 1935 c 180 § 21; Rem. Supp. 1949 § 8370-21.]

Findings—Intent—2017 3rd sp.s. c 28 §§ 201-214: See note following RCW 82.08.053.

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

Retroactive application—2010 c 112: See note following RCW 82.32.780.

Effective date—2010 c 106: See note following RCW 35.102.145.

Finding—Intent—Construction—Effective date—Reports and recommendations—2009 c 563: See notes following RCW 82.32.780.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Intent—2003 c 76: "It is the intent of the legislature to exempt from business and occupation tax and to relieve from the obligation to collect sales and use tax from certain sellers with very limited connections to Washington. These sellers are currently relieved from the obligation to collect sales

and use tax because of the provisions of the federal internet tax freedom act. The legislature intends to continue to relieve these particular sellers from that obligation in the event that the federal internet tax freedom act is not extended. The legislature further intends that any relief from tax obligations provided by this act expire at such time as the United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers, or a court of competent jurisdiction, in a judgment not subject to review, determines that a state can impose sales and use tax collection duties on remote sellers." [2003 c 76 § 1.]

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

Finding—Intent—Effective date—2001 c 188: See notes following RCW 82.32.087.

Project on exemption reporting requirements: RCW 82.32.440.

Additional notes found at www.leg.wa.gov

82.08.052 Remote seller—Nexus. (1) For purposes of this chapter, a remote seller is presumed to have a substantial nexus with this state and is obligated to collect retail sales tax if the remote seller enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an internet web site or otherwise, to the remote seller, if the cumulative gross receipts from sales by the remote seller to customers in this state who are referred to the remote seller by all residents with this type of an agreement with the remote seller exceed ten thousand dollars during the preceding calendar year. This presumption may be rebutted by proof that the resident with whom the remote seller has an agreement did not engage in any solicitation in this state on behalf of the remote seller that would satisfy the nexus requirement of the United States Constitution during the calendar year in question. Proof may be shown by (a) establishing, in a manner acceptable to the department, that (i) each in-state person with whom the remote seller has an agreement is prohibited from engaging in any solicitation activities in this state that refer potential customers to the remote seller, and (ii) such in-state person or persons have complied with that prohibition; or (b) any other means as may be approved by the department.

(2) "Remote seller" means a seller that makes retail sales in this state through one or more agreements described in subsection (1) of this section, and the seller's other physical presence in this state, if any, is not sufficient to establish a retail sales or use tax collection obligation under the commerce clause of the United States Constitution.

(3) Nothing in this section may be construed to affect in any way RCW *82.04.424, **82.08.050(11), or ***82.12.040(5).

(4) This section is subject to RCW 82.32.762. [2015 3rd sp.s. c 5 § 202.]

Reviser's note: *(1) RCW 82.04.424 was repealed by 2017 3rd sp.s. c 28 § 304.

** (2) RCW 82.08.050 was amended by 2017 3rd sp.s. c 28 § 211, deleting subsection (11).

*** (3) RCW 82.12.040 was amended by 2017 3rd sp.s. c 28 § 213, deleting subsection (5).

Application—2017 c 323 § 305: "Section 305 of this act applies retroactively for the period January 1, 2015, through December 31, 2015." [2017 c 323 § 306.]

Construction—2017 c 323: "Nothing in section 204, chapter 5, Laws of 2015 3rd sp. sess. may be construed as affecting the taxable status in calendar year 2015 of any person with a substantial nexus with this state under RCW 82.04.067 any time on or after January 1, 2015, and before September 1,

2015, with respect to business and occupation taxes on apportionable activities as defined in RCW 82.04.460." [2017 c 323 § 305.]

Effective dates—2015 3rd sp.s. c 5: "(1) Except as provided otherwise in this section, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect August 1, 2015.

(2) Part II of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect September 1, 2015." [2015 3rd sp.s. c 5 § 501.]

Finding—Intent—2015 3rd sp.s. c 5: "(1) The commerce clause of the United States Constitution as currently interpreted by the United States supreme court prohibits states from imposing sales or use tax collection obligations on out-of-state businesses unless the business has a substantial nexus with the taxing state.

(2) The legislature recognizes that under the United States supreme court's decision in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), a substantial nexus for sales and use tax collection purposes requires that the taxpayer have a physical presence in the taxing state.

(3) The legislature further recognizes that the requisite physical presence can be established directly through a taxpayer's own activities in the taxing state, or indirectly, through independent contractors, agents, or other representatives who act on behalf of the taxpayer in the taxing state.

(4) However, the legislature finds that because the United States supreme court has not clearly defined the circumstances under which a physical presence is sufficient to establish a substantial nexus for tax purposes, frequent conflicts have arisen throughout the country among state taxing authorities, taxpayers, tax practitioners, and courts.

(5) Therefore, the legislature intends to provide more clarity for out-of-state sellers that compensate Washington residents for referring customers to the out-of-state seller by providing clear statutory guidelines for determining when these out-of-state sellers are required to collect Washington's retail sales tax." [2015 3rd sp.s. c 5 § 201.]

82.08.053 Remote sellers, referrers, and marketplace facilitators—Tax collection and remittance. (1)(a)(i) Except as provided in (a)(ii) of this subsection, beginning January 1, 2018, and for any calendar year thereafter, remote sellers, referrers, and marketplace facilitators meeting the criteria in subsection (2) of this section or that have a physical presence in this state, must elect to either collect and remit retail sales or use tax on all taxable retail sales into this state pursuant to this chapter and chapters 82.12 and 82.32 RCW or comply with RCW 82.13.020.

(ii) Until January 1, 2020, the requirement under (a)(i) of this subsection (1) to collect and remit tax or comply with RCW 82.13.020 does not apply with respect to the retail sale of digital products and digital codes, other than (A) specified digital products and digital games and (B) digital codes used to redeem specified digital products and digital games, by a marketplace seller through a marketplace facilitator or directly resulting from a referral.

(b) For marketplace facilitators, the election provided in (a) of this subsection (1) applies only with respect to:

(i) Retail sales through the marketplace facilitator's marketplace by or on behalf of marketplace sellers who do not have a physical presence in this state; and

(ii) A marketplace facilitator's own retail sales, if the marketplace facilitator does not have a physical presence in this state.

(c)(i) For referrers, the election provided in (a) of this subsection (1) applies only with respect to:

(A) Retail sales directly resulting from a referral of the purchaser to a marketplace seller who does not have a physical presence in this state; and

(B) A referrer's own retail sales, if the referrer does not have a physical presence in this state.

(ii) A referrer may make different elections with respect to retail sales described in (c)(i)(A) and (B) of this subsection.

(d) An election under (a) of this subsection (1) to collect retail sales or use tax is binding on the remote seller, referrer, or marketplace facilitator until January 1st of the calendar year that is at least twelve consecutive months after the remote seller, referrer, or marketplace facilitator began collecting retail sales or use tax under such election. A remote seller, referrer, or marketplace facilitator who has made an election under this subsection to collect retail sales or use tax may change its election and comply with RCW 82.13.020 by providing written notice to the department in a form and manner required by the department. Such an election change may take effect only on the first day of the calendar year that is at least thirty days following the date that the department received written notice from the remote seller, referrer, or marketplace facilitator of its change in election.

(e)(i) Remote sellers, referrers, and marketplace facilitators complying with RCW 82.13.020 may change their election under this subsection (1) at any time by collecting and remitting retail sales or use taxes under this chapter or chapter 82.12 RCW on taxable retail sales sourced to this state. Such an election is binding as provided in (d) of this subsection (1).

(ii) Remote sellers, referrers, and marketplace facilitators electing for the first time to collect retail sales or use tax on taxable retail sales sourced to this state beginning on the first day of the calendar month that is at least thirty days from the date that the remote seller, referrer, or marketplace facilitator met either threshold described in subsection (2) of this section.

(f) If the department discovers that any remote seller, referrer, or marketplace facilitator required to make an election under this subsection (1) is not registered with the department and collecting retail sales or use tax, the remote seller, referrer, or marketplace facilitator is conclusively presumed to have elected to comply with the notice and reporting requirements of RCW 82.13.020.

(2)(a) A remote seller is subject to subsection (1) of this section if, during the current or immediately preceding calendar year, its gross receipts from retail sales sourced to this state under RCW 82.32.730 are at least ten thousand dollars.

(b) A marketplace facilitator is subject to subsection (1) of this section if, during the current or immediately preceding calendar year, the gross receipts from retail sales sourced to this state under RCW 82.32.730 by the marketplace facilitator, whether in its own name or as an agent of a marketplace seller, total at least ten thousand dollars.

(c) A referrer is subject to subsection (1) of this section if, during the current or immediately preceding calendar year, the gross income of the business received from the referrer's referral services apportioned to Washington under RCW 82.04.462, whether or not subject to tax under chapter 82.04 RCW, and from retail sales sourced to this state under RCW 82.32.730, if any, is at least two hundred sixty-seven thousand dollars.

(3) This section is subject to the provisions of RCW 82.32.733.

(4) For the purposes of this section, "marketplace facilitator," "referral," "referrer," and "remote seller" have the

same meaning as provided in RCW 82.13.010. [2017 3rd sp.s. c 28 § 202.]

Findings—Intent—2017 3rd sp.s. c 28 §§ 201-214: "(1) The legislature finds that states fail to collect more than twenty-three billion dollars annually in sales taxes from remote sales over the internet and through catalogs. The legislature further finds that Washington and its local governments will lose out on an estimated three hundred fifty-three million dollars in sales and use taxes in fiscal year 2018 from remote sales, reducing funds that would otherwise be available for the public education system, health care services, infrastructure, and other vital public services.

(2) The legislature finds that Colorado adopted a law requiring out-of-state retailers that do not collect Colorado's sales tax to report tax-related information to their Colorado customers and the Colorado department of revenue. The legislature further finds that in 2016 the United States court of appeals for the tenth circuit upheld that law.

(3) The legislature intends by this act to address the significant harm and unfairness brought about by the physical presence nexus rule. To achieve this objective, this act adopts a new program. Under the new program, remote sellers meeting a specified threshold of gross receipts from retail sales into this state would have the option to either collect retail sales or use tax on taxable retail sales into this state or comply with certain sales and use tax notice and reporting provisions. This option is also available to other persons such as marketplace facilitators for facilitated sales on behalf of third-party remote sellers. The sales and use tax notice and reporting provisions in this act are similar to the multistate tax commission's draft model sales and use tax notice and reporting statute and Colorado's sales and use tax notice and reporting law." [2017 3rd sp.s. c 28 § 201.]

Existing rights and liability—2017 3rd sp.s. c 28: "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2017 3rd sp.s. c 28 § 602.]

Severability—2017 3rd sp.s. c 28: "(1) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

(2) If the department of revenue is prevented from enforcing chapter 82.08 or 82.12 RCW against persons without a physical presence in this state because any provision of this act or its application to any person or circumstance is held invalid, the department of revenue must impose such provisions to the fullest extent allowed under the Constitution and laws of the United States." [2017 3rd sp.s. c 28 § 603.]

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

82.08.0531 Marketplace facilitators and referrers—When deemed seller agents—Recordkeeping—Liability.

(1)(a) For purposes of this chapter and chapter 82.12 RCW, a marketplace facilitator or referrer is deemed to be an agent of any marketplace seller making retail sales through the marketplace facilitator's physical or electronic marketplace or directly resulting from a referral of the purchaser by the referrer.

(b) In addition to other applicable recordkeeping requirements, the department may require a marketplace facilitator or referrer to provide or make available to the department any information the department determines is reasonably necessary to enforce the provisions of this chapter and chapter 82.13 RCW. Such information may include documentation of sales made by marketplace sellers through the marketplace facilitator's physical or electronic marketplace or directly resulting from a referral by the referrer. The department may prescribe by rule the form and manner for providing this information.

(2) A marketplace facilitator or referrer is relieved of liability under this chapter and chapter 82.12 RCW for failure to collect the correct amount of tax to the extent that the marketplace facilitator or referrer can show to the department's sat-

isfaction that the error was due to incorrect information given to the marketplace facilitator or referrer by the marketplace seller, unless the marketplace facilitator, or referrer, and marketplace seller are affiliated persons. Where the marketplace facilitator or referrer is relieved of liability under this subsection (2), the marketplace seller is solely liable for the amount of uncollected tax due.

(3)(a) Subject to the limits in (b) and (c) of this subsection (3), a marketplace facilitator or referrer is relieved of liability under this chapter and chapter 82.12 RCW for the failure to collect tax on taxable retail sales to the extent that the marketplace facilitator or referrer can show to the department's satisfaction that:

(i) The taxable retail sale was made through the marketplace facilitator's marketplace or directly resulting from a referral of the purchaser by the referrer;

(ii) The taxable retail sale was made solely as the agent of a marketplace seller, and the marketplace facilitator, or referrer, and marketplace seller are not affiliated persons; and

(iii) The failure to collect sales tax was not due to an error in sourcing the sale under RCW 82.32.730.

(b) Liability relief for a marketplace facilitator under (a) of this subsection (3) for a calendar year is limited as follows:

(i) For calendar year 2018, the liability relief may not exceed ten percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales by the marketplace facilitator as agent of a marketplace seller and sourced to this state under RCW 82.32.730 during the same calendar year.

(ii) For calendar years 2019, 2020, 2021, 2022, and 2023, the liability relief may not exceed five percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales by the marketplace facilitator as agent of a marketplace seller and sourced to this state under RCW 82.32.730 during the same calendar year.

(iii) Beginning in calendar year 2024, the liability relief may not exceed three percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales by the marketplace facilitator as agent of a marketplace seller and sourced to this state under RCW 82.32.730 during the same calendar year.

(c) Liability relief for a referrer under (a) of this subsection (3) for a calendar year is limited as follows:

(i) For calendar year 2018, the liability relief may not exceed ten percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales directly resulting from a referral of the purchaser to the marketplace seller by the referrer and sourced to this state under RCW 82.32.730 during the same calendar year.

(ii) For calendar years 2019, 2020, 2021, 2022, and 2023, the liability relief may not exceed five percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales directly resulting from a referral of the purchaser to the marketplace seller by the referrer and sourced to this state under RCW 82.32.730 during the same calendar year.

(iii) Beginning in calendar year 2024, the liability relief may not exceed three percent of the total tax due under this chapter and chapter 82.12 RCW on taxable retail sales directly resulting from a referral of the purchaser to the marketplace seller by the referrer and sourced to this state under RCW 82.32.730 during the same calendar year.

(d) Where the marketplace facilitator or referrer is relieved of liability under this subsection (3), the marketplace seller is also relieved of liability for the amount of uncollected tax due, subject to the limitations in subsection (4) of this section.

(e) The department may by rule determine the manner in which a taxpayer may claim the liability relief provided under this subsection.

(4) Except as otherwise provided in this section, a marketplace seller obligated or electing to collect the taxes imposed under this chapter and chapter 82.12 RCW is not required to collect such taxes on all taxable retail sales through a marketplace operated by a marketplace facilitator or directly resulting from a referral of the purchaser to the marketplace seller by the referrer if the marketplace seller has obtained documentation from the marketplace facilitator or referrer indicating that the marketplace facilitator or referrer is registered with the department and will collect all applicable taxes due under this chapter and chapter 82.12 RCW on all taxable retail sales made on behalf of the marketplace seller through the marketplace operated by the marketplace facilitator or taxable retail sales directly resulting from a referral of the purchaser to the marketplace seller by the referrer. The documentation required by this subsection (4) must be provided in a form and manner prescribed by or acceptable to the department. This subsection (4) does not relieve a marketplace seller from liability for uncollected taxes due under this chapter or chapter 82.12 RCW resulting from a marketplace facilitator's or referrer's failure to collect the proper amount of tax due when the error was due to incorrect information given to the marketplace facilitator or referrer by the marketplace seller.

(5) Except as otherwise provided in this section, a marketplace seller that is also a remote seller subject to RCW 82.08.053(1) is relieved of its obligation to collect sales or use taxes imposed under RCW 82.08.053 with respect to all taxable retail sales through a marketplace operated by a marketplace facilitator that provides the marketplace seller with written confirmation that the marketplace facilitator has elected to comply with the notice and reporting requirements of RCW 82.13.020 in lieu of collecting sales and use taxes.

(6) Notwithstanding subsections (4) and (5) of this section, a marketplace seller is not relieved of the obligation to collect taxes imposed under this chapter and chapter 82.12 RCW or comply with RCW 82.08.053 with respect to retail sales of digital products and digital codes, other than (a) specified digital products and digital games and (b) digital codes used to redeem specified digital products and digital games, until January 1, 2020.

(7) No class action may be brought against a marketplace facilitator or referrer in any court of this state on behalf of purchasers arising from or in any way related to an overpayment of sales or use tax collected by the marketplace facilitator or referrer, regardless of whether that claim is characterized as a tax refund claim. Nothing in this subsection affects a purchaser's right to seek a refund from the department as provided under chapter 82.32 RCW.

(8) Nothing in this section affects the obligation of any purchaser to remit sales or use tax as to any applicable taxable transaction in which the seller or the seller's agent does not collect and remit sales tax.

(9) This section is subject to the provisions of RCW 82.32.733.

(10) The definitions in RCW 82.13.010 apply to this section. [2017 3rd sp.s. c 28 § 203.]

Findings—Intent—2017 3rd sp.s. c 28 §§ 201-214: See note following RCW 82.08.053.

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

82.08.805 Exemptions—Personal property used at an aluminum smelter. (Effective January 1, 2018.) (1) A person who has paid tax under RCW 82.08.020 for personal property used at an aluminum smelter, tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. A person claiming an exemption must pay the tax and may then take a credit equal to the state share of retail sales tax paid under RCW 82.08.020. The person must submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) A person claiming the tax preference provided in this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(4) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2027. [2017 c 135 § 21; 2015 3rd sp.s. c 6 § 504; 2011 c 174 § 303. Prior: 2010 1st sp.s. c 2 § 3; 2010 c 114 § 122; 2009 c 535 § 513; 2006 c 182 § 3; 2004 c 24 § 10.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Findings—Tax preference performance statement—2015 3rd sp.s. c 6 §§ 502-506: See note following RCW 82.04.2909.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

82.08.962 Exemptions—Sales of machinery and equipment used in generating electricity. (Expires January 1, 2020.) (1)(a) Except as provided in RCW 82.08.963, purchasers who have paid the tax imposed by RCW 82.08.020 on machinery and equipment used directly in generating electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, are eligible for an exemption as provided in this section, but only if the purchaser develops with such machinery, equipment, and

labor a facility capable of generating not less than one thousand watts of electricity.

(b) Beginning on July 1, 2009, through June 30, 2011, the tax levied by RCW 82.08.020 does not apply to the sale of machinery and equipment described in (a) of this subsection that are used directly in generating electricity or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment.

(c) Beginning on July 1, 2011, through January 1, 2020, the amount of the exemption under this subsection (1) is equal to seventy-five percent of the state and local sales tax paid. The purchaser is eligible for an exemption under this subsection (1)(c) in the form of a remittance.

(2) For purposes of this section and RCW 82.12.962, the following definitions apply:

(a) "Biomass energy" includes: (i) By-products of pulping and wood manufacturing process; (ii) animal waste; (iii) solid organic fuels from wood; (iv) forest or field residues; (v) wooden demolition or construction debris; (vi) food waste; (vii) liquors derived from algae and other sources; (viii) dedicated energy crops; (ix) biosolids; and (x) yard waste. "Biomass energy" does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old growth forests; or municipal solid waste.

(b) "Fuel cell" means an electrochemical reaction that generates electricity by combining atoms of hydrogen and oxygen in the presence of a catalyst.

(c) "Landfill gas" means biomass fuel, of the type qualified for federal tax credits under Title 26 U.S.C. Sec. 29 of the federal internal revenue code, collected from a "landfill" as defined under RCW 70.95.030.

(d)(i) "Machinery and equipment" means fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas as the principal source of power.

(ii) "Machinery and equipment" does not include: (A) Hand-powered tools; (B) property with a useful life of less than one year; (C) repair parts required to restore machinery and equipment to normal working order; (D) replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (E) buildings; or (F) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.

(3)(a) Machinery and equipment is "used directly" in generating electricity by wind energy, solar energy, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas power if it provides any part of the process that captures the energy of the wind, sun, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(b) Machinery and equipment is "used directly" in generating electricity by fuel cells if it provides any part of the process that captures the energy of the fuel, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(4)(a) A purchaser claiming an exemption in the form of a remittance under subsection (1)(c) of this section must pay the tax imposed by RCW 82.08.020 and all applicable local sales taxes imposed under the authority of chapters 82.14 and 81.104 RCW. The purchaser may then apply to the department for remittance in a form and manner prescribed by the department. A purchaser may not apply for a remittance under this section more frequently than once per quarter. The purchaser must specify the amount of exempted tax claimed and the qualifying purchases for which the exemption is claimed. The purchaser must retain, in adequate detail, records to enable the department to determine whether the purchaser is entitled to an exemption under this section, including: Invoices; proof of tax paid; and documents describing the machinery and equipment.

(b) The department must determine eligibility under this section based on the information provided by the purchaser, which is subject to audit verification by the department. The department must on a quarterly basis remit exempted amounts to qualifying purchasers who submitted applications during the previous quarter.

(5) The exemption provided by this section expires September 30, 2017, as it applies to: (a) Machinery and equipment that is used directly in the generation of electricity using solar energy and capable of generating no more than five hundred kilowatts of electricity; or (b) sales of or charges made for labor and services rendered in respect to installing such machinery and equipment.

(6) This section expires January 1, 2020. [2017 3rd sp.s. c 36 § 14; 2013 2nd sp.s. c 13 § 1502; 2009 c 469 § 101.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

Intent—2013 2nd sp.s. c 13: "It is the intent of the legislature to help promote energy independence in the state of Washington and to better position Washington to attract a vibrant clean energy technology manufacturing sector to the state. The purpose of the tax preference created in part XV of this act is to incentivize electricity generation from renewable energy sources, reducing the costs of transitioning to these sources and technologies by exempting machinery, equipment, and labor and service charges associated with such electricity generation from the retail sales and use tax. This tax preference makes the most of the local renewable resources, protects us from the price volatility of certain fossil fuel sources, and helps the state achieve its greenhouse gas emissions targets. In addition, promoting manufacture and installation of facilities capable of generating power from renewable sources can create economic benefits in both rural and urban counties, creating high-quality jobs and developing a skilled workforce in an industry sector in which significant job growth is anticipated over the coming decades." [2013 2nd sp.s. c 13 § 1501.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.956.

Effective date—2009 c 469: "Except for sections 801 and 802 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 469 § 902.]

82.08.963 Exemptions—Sales of machinery and equipment using solar energy to generate electricity or produce thermal heat. (Expires June 30, 2018.) (1) The tax

levied by RCW 82.08.020 does not apply to sales of machinery and equipment used directly in generating electricity or producing thermal heat using solar energy, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not more than ten kilowatts of electricity or producing not more than three million British thermal units per day and provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files. For sellers who electronically file their taxes, the department must provide a separate tax reporting line for exemption amounts claimed by a buyer under this section.

(2) For purposes of this section and RCW 82.12.963:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity or production and use of thermal heat using solar energy;

(b) "Machinery and equipment" does not include: (i) Hand-powered tools; (ii) property with a useful life of less than one year; (iii) repair parts required to restore machinery and equipment to normal working order; (iv) replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (v) buildings; or (vi) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building;

(c) Machinery and equipment is "used directly" in generating electricity with solar energy if it provides any part of the process that captures the energy of the sun, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems; and

(d) Machinery and equipment is "used directly" in producing thermal heat with solar energy if it uses a solar collector or a solar hot water system that (i) meets the certification standards for solar collectors and solar hot water systems developed by the solar rating and certification corporation; or (ii) is determined by the Washington State University extension whether a solar collector or solar hot water system is an equivalent collector or system.

(3) The exemption provided by this section for the sales of machinery and equipment that is used directly in the generation of electricity using solar energy, or for sales of or charges made for labor or services rendered in respect to installing such machinery and equipment, expires September 30, 2017.

(4) This section expires June 30, 2018. [2017 3rd sp.s. c 36 § 15; 2013 2nd sp.s. c 13 § 1602; 2009 c 469 § 103.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

Intent—2013 2nd sp.s. c 13: "It is the intent of the legislature to help promote energy independence in the state of Washington. The purpose of the tax preference created in part XVI of this act is to incentivize electricity generation from solar energy, reducing the costs of transitioning to solar energy by exempting machinery, equipment, and labor and service charges from the retail sales and use tax to increase affordability for Washington residents. It is also the intent of the legislature to provide this tax preference in a fiscally responsible manner where the actual revenue impact of the legislation substantially conforms with the fiscal estimate provided in the legislation's fiscal note. Therefore, the legislature intends for this tax preference to be tempo-

rary so the legislature can assess the actual fiscal impact of the tax preference." [2013 2nd sp.s. c 13 § 1601.]

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.956.

Effective date—2009 c 469: See note following RCW 82.08.962.

82.08.965 Exemptions—Semiconductor materials manufacturing. (*Effective until January 1, 2018; contingent effective date; contingent expiration date.*) (1) The tax levied by RCW 82.08.020 does not apply to charges made for labor and services rendered in respect to the constructing of new buildings used for the manufacturing of semiconductor materials, to sales of tangible personal property that will be incorporated as an ingredient or component of such buildings during the course of the constructing, or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b). The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(2) To be eligible under this section the manufacturer or processor for hire must meet the following requirements for an eight-year period, such period beginning the day the new building commences commercial production, or a portion of tax otherwise due will be immediately due and payable pursuant to subsection (3) of this section:

(a) The manufacturer or processor for hire must maintain at least seventy-five percent of full employment at the new building for which the exemption under this section is claimed.

(b) Before commencing commercial production at a new facility the manufacturer or processor for hire must meet with the department to review projected employment levels in the new buildings. The department, using information provided by the taxpayer, must make a determination of the number of positions that would be filled at full employment. This number must be used throughout the eight-year period to determine whether any tax is to be repaid. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(c) In those situations where a production building in existence on *the effective date of this section will be phased out of operation during which time employment at the new building at the same site is increased, the manufacturer or processor for hire must maintain seventy-five percent of full employment at the manufacturing site overall.

(d) No application is necessary for the tax exemption. The person is subject to all the requirements of chapter 82.32 RCW. A person claiming the exemption under this section must file a complete annual report with the department under RCW 82.32.534.

(3) If the employment requirement is not met for any one calendar year, one-eighth of the exempt sales and use taxes will be due and payable by April 1st of the following year. The department must assess interest to the date the tax was imposed, but not penalties, on the taxes for which the person is not eligible.

(4) The exemption applies to new buildings, or parts of buildings, that are used exclusively in the manufacturing of

semiconductor materials, including the storage of raw materials and finished product.

(5) For the purposes of this section:

(a) "Commencement of commercial production" is deemed to have occurred when the equipment and process qualifications in the new building are completed and production for sale has begun.

(b) "Full employment" is the number of positions required for full capacity production at the new building, for positions such as line workers, engineers, and technicians.

(c) "Semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(6) No exemption may be taken after the expiration date of this section, however all of the eligibility criteria and limitations are applicable to any exemptions claimed before that date.

(7) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 509; 2010 c 114 § 123; 2003 c 149 § 5.]

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

***Contingent effective date—2010 c 114:** See RCW 82.32.790.

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

82.08.965 Exemptions—Semiconductor materials manufacturing. (*Effective January 1, 2018; contingent effective date; contingent expiration date.*) (1) The tax levied by RCW 82.08.020 does not apply to charges made for labor and services rendered in respect to the constructing of new buildings used for the manufacturing of semiconductor materials, to sales of tangible personal property that will be incorporated as an ingredient or component of such buildings during the course of the constructing, or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b). The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(2) To be eligible under this section the manufacturer or processor for hire must meet the following requirements for an eight-year period, such period beginning the day the new building commences commercial production, or a portion of tax otherwise due will be immediately due and payable pursuant to subsection (3) of this section:

(a) The manufacturer or processor for hire must maintain at least seventy-five percent of full employment at the new building for which the exemption under this section is claimed.

(b) Before commencing commercial production at a new facility the manufacturer or processor for hire must meet with the department to review projected employment levels in the new buildings. The department, using information provided by the taxpayer, must make a determination of the number of positions that would be filled at full employment. This number must be used throughout the eight-year period to determine whether any tax is to be repaid. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(c) In those situations where a production building in existence on *the effective date of this section will be phased out of operation during which time employment at the new building at the same site is increased, the manufacturer or processor for hire must maintain seventy-five percent of full employment at the manufacturing site overall.

(d) No application is necessary for the tax exemption. The person is subject to all the requirements of chapter 82.32 RCW. A person claiming the exemption under this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(3) If the employment requirement is not met for any one calendar year, one-eighth of the exempt sales and use taxes will be due and payable by April 1st of the following year. The department must assess interest to the date the tax was imposed, but not penalties, on the taxes for which the person is not eligible.

(4) The exemption applies to new buildings, or parts of buildings, that are used exclusively in the manufacturing of semiconductor materials, including the storage of raw materials and finished product.

(5) For the purposes of this section:

(a) "Commencement of commercial production" is deemed to have occurred when the equipment and process qualifications in the new building are completed and production for sale has begun.

(b) "Full employment" is the number of positions required for full capacity production at the new building, for positions such as line workers, engineers, and technicians.

(c) "Semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(6) No exemption may be taken after the expiration date of this section, however all of the eligibility criteria and limitations are applicable to any exemptions claimed before that date.

(7) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 510; 2017 c 135 § 22; 2010 c 114 § 123; 2003 c 149 § 5.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

***Contingent effective date—2017 c 135; 2010 c 114:** See RCW 82.32.790.

Effective date—2017 c 135: See note following RCW 82.32.534.

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

82.08.9651 Exemptions—Gases and chemicals used in production of semiconductor materials. (Effective until January 1, 2018.) (1) The tax levied by RCW 82.08.020 does not apply to sales of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. This exemption is limited to gases and chemicals used in the production process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the production process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place.

For the purposes of this section, "semiconductor materials" has the meaning provided in RCW 82.04.2404 and 82.04.294(3).

(2)(a) Except as provided under (b) of this subsection (2), a person claiming the exemption under this section must file a complete annual survey with the department under RCW 82.32.585.

(b) A person claiming the exemption under this section and who is required to file a complete annual report with the department under RCW 82.32.534 as a result of claiming the tax preference provided by RCW 82.04.2404 is not also required to file a complete annual survey under RCW 82.32.585.

(3) No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(4) Any person who has claimed the preferential tax rate under this section must reimburse the department for fifty percent of the amount of the tax preference under this section, if:

(a) The number of persons employed by the person claiming the tax preference is less than ninety percent of the person's three-year employment average for the three years immediately preceding the year in which the preferential tax rate is claimed; or

(b) The person is subject to a review under section 501(4)(a), chapter 37, Laws of 2017 3rd sp. sess. and such person does not meet performance criteria in section 501(4)(a), chapter 37, Laws of 2017 3rd sp. sess.

(5) This section expires December 1, 2028. [2017 3rd sp.s. c 37 § 505; 2014 c 97 § 405; 2010 c 114 § 124; 2009 c 469 § 502; 2006 c 84 § 3.]

Tax preference performance statement—2017 3rd sp.s. c 37 §§ 505-508: "(1) This section is the tax preference performance statement for the tax preferences contained in sections 505 through 508, chapter 37, Laws of 2017 3rd sp. sess. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these tax preferences as ones intended to induce certain designated behavior by taxpayers, improve industry competitiveness, and create or retain jobs, as indicated in RCW 82.32.808(2) (a) through (c).

(3) It is the legislature's specific public policy objective to encourage significant construction projects; retain, expand, and attract semiconductor business; and encourage and expand family-wage jobs. It is the legislature's intent to extend by ten years the preferential tax rates for sales and use of gases and chemicals used in the production of semiconductor materials, in order to encourage the growth and retention of the semiconductor business in Washington, thereby strengthening Washington's competitiveness with other states for manufacturing investment.

(4) If a review finds that the number of construction projects in the industry has increased, and that [the] number of people employed by the solar silicon, silicon manufacturing, and semiconductor fabrication industry in Washington is the same or more than in 2015, and that at least sixty percent of employees earn sixty thousand dollars a year, then the legislature intends to extend the expiration date of the tax preferences.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to the department of revenue's annual survey data." [2017 3rd sp.s. c 37 § 504.]

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—2009 c 469: See note following RCW 82.08.962.

Findings—Intent—2006 c 84: See note following RCW 82.04.2404.

Additional notes found at www.leg.wa.gov

82.08.9651 Exemptions—Gases and chemicals used in production of semiconductor materials. (Effective January 1, 2018, until December 1, 2028.) (1) The tax levied by RCW 82.08.020 does not apply to sales of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. This exemption is limited to gases and chemicals used in the production process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the production process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For the purposes of this section, "semiconductor materials" has the meaning provided in RCW 82.04.2404 and 82.04.294(3).

(2) A person claiming the exemption under this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(3) No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(4) Any person who has claimed the preferential tax rate under this section must reimburse the department for fifty percent of the amount of the tax preference under this section, if:

(a) The number of persons employed by the person claiming the tax preference is less than ninety percent of the person's three-year employment average for the three years immediately preceding the year in which the preferential tax rate is claimed; or

(b) The person is subject to a review under section 501(4)(a), chapter 37, Laws of 2017 3rd sp. sess. and such person does not meet performance criteria in section 501(4)(a), chapter 37, Laws of 2017 3rd sp. sess.

(5) This section expires December 1, 2028. [2017 3rd sp.s. c 37 § 506; 2017 c 135 § 23; 2014 c 97 § 405; 2010 c 114 § 124; 2009 c 469 § 502; 2006 c 84 § 3.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—2009 c 469: See note following RCW 82.08.962.

Findings—Intent—2006 c 84: See note following RCW 82.04.2404.

Additional notes found at www.leg.wa.gov

82.08.970 Exemptions—Gases and chemicals used to manufacture semiconductor materials. (Effective until January 1, 2018; contingent effective date; contingent expiration date.) (1) The tax levied by RCW 82.08.020 does not apply to sales of gases and chemicals used by a manufacturer or processor for hire in the manufacturing of semiconductor materials. This exemption is limited to gases and chemicals used in the manufacturing process to grow the product, deposit or grow permanent or sacrificial layers on the prod-

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uct, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the manufacturing process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For the purposes of this section, "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person claiming the exemption under this section must file a complete annual report with the department under RCW 82.32.534. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 519; 2010 c 114 § 125; 2003 c 149 § 7.]

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

Contingent effective date—2010 c 114: See RCW 82.32.790.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

82.08.970 Exemptions—Gases and chemicals used to manufacture semiconductor materials. (Effective January 1, 2018; contingent effective date; contingent expiration date.) (1) The tax levied by RCW 82.08.020 does not apply to sales of gases and chemicals used by a manufacturer or processor for hire in the manufacturing of semiconductor materials. This exemption is limited to gases and chemicals used in the manufacturing process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the manufacturing process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For the purposes of this section, "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person claiming the exemption under this section must file a complete annual tax performance report with the department under RCW 82.32.534. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 520; 2017 c 135 § 24; 2010 c 114 § 125; 2003 c 149 § 7.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Contingent effective date—2017 c 135; 2010 c 114: See RCW 82.32.790.

Effective date—2017 c 135: See note following RCW 82.32.534.

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

82.08.980 Exemptions—Labor, services, and personal property related to the manufacture of commercial

airplanes. (Effective January 1, 2018, until July 1, 2040.)

(1) The tax levied by RCW 82.08.020 does not apply to:

(a) Charges, for labor and services rendered in respect to the constructing of new buildings, made to (i) a manufacturer engaged in the manufacturing of commercial airplanes or the fuselages or wings of commercial airplanes or (ii) a port district, political subdivision, or municipal corporation, to be leased to a manufacturer engaged in the manufacturing of commercial airplanes or the fuselages or wings of commercial airplanes;

(b) Sales of tangible personal property that will be incorporated as an ingredient or component of such buildings during the course of the constructing; or

(c) Charges made for labor and services rendered in respect to installing, during the course of constructing such buildings, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b).

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) No application is necessary for the tax exemption in this section. However, in order to qualify under this section before starting construction, the port district, political subdivision, or municipal corporation must have entered into an agreement with the manufacturer to build such a facility. A person claiming the exemption under this section is subject to all the requirements of chapter 82.32 RCW. In addition, the person must file a complete annual tax performance report with the department under RCW 82.32.534.

(4) The exemption in this section applies to buildings or parts of buildings, including buildings or parts of buildings used for the storage of raw materials or finished product, that are used primarily in the manufacturing of any one or more of the following products:

- (a) Commercial airplanes;
- (b) Fuselages of commercial airplanes; or
- (c) Wings of commercial airplanes.

(5) For the purposes of this section, "commercial airplane" has the meaning given in RCW 82.32.550.

(6) This section expires July 1, 2040. [2017 c 135 § 25; 2013 3rd sp.s. c 2 § 3; 2010 c 114 § 126; 2003 2nd sp.s. c 1 § 11.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Contingent effective date—2013 3rd sp.s. c 2: See RCW 82.32.850.

Findings—Intent—2013 3rd sp.s. c 2: See note following RCW 82.32.850.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

82.08.986 Exemptions—Eligible server equipment. (Effective January 1, 2018.) (1) An exemption from the tax imposed by RCW 82.08.020 is provided for sales to qualifying businesses and to qualifying tenants of eligible server equipment to be installed, without intervening use, in an eligible computer data center, and to charges made for labor and services rendered in respect to installing eligible server equipment. Until January 1, 2026, the exemption also applies to sales to qualifying businesses and to qualifying tenants of eligible power infrastructure, including labor and services

rendered in respect to constructing, installing, repairing, altering, or improving eligible power infrastructure.

(2)(a) In order to claim the exemption under this section, a qualifying business or a qualifying tenant must submit an application to the department for an exemption certificate. The application must include the information necessary, as required by the department, to determine that a business or tenant qualifies for the exemption under this section. The department must issue exemption certificates to qualifying businesses and qualifying tenants. The department may assign a unique identification number to each exemption certificate issued under this section.

(b) A qualifying business or a qualifying tenant claiming the exemption under this section must present the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(c) With respect to computer data centers for which the commencement of construction occurs after July 1, 2015, but before July 1, 2019, the exemption provided in this section is limited to no more than eight computer data centers, with total eligible data centers provided under this section limited to twelve from July 1, 2015, through July 1, 2025. Tenants of qualified data centers do not constitute additional data centers under the limit. The exemption is available on a first-in-time basis based on the date the application required under this section is received by the department. Exemption certificates expire two years after the date of issuance, unless construction has been commenced.

(3)(a) Within six years of the date that the department issued an exemption certificate under this section to a qualifying business or a qualifying tenant with respect to an eligible computer data center, the qualifying business or qualifying tenant must establish that net employment at the eligible computer data center has increased by a minimum of:

- (i) Thirty-five family wage employment positions; or
- (ii) Three family wage employment positions for each twenty thousand square feet of space or less that is newly dedicated to housing working servers at the eligible computer data center.

For qualifying tenants, the number of family wage employment positions that must be increased under this subsection (3)(a)(ii) is based only on the space occupied by the qualifying tenant in the eligible computer data center.

(b) In calculating the net increase in family wage employment positions:

(i) The owner of an eligible computer data center, in addition to its own net increase in family wage employment positions, may include:

(A) The net increase in family wage employment positions employed by qualifying tenants; and

(B) The net increase in family wage employment positions described in (c)(ii)(B) of this subsection (3).

(ii)(A) Qualifying tenants, in addition to their own net increase in family wage employment positions, may include:

(I) A portion of the net increase in family wage employment positions employed by the owner; and

(II) A portion of the net increase in family wage employment positions described in (c)(ii)(B) of this subsection (3).

(B) The portion of the net increase in family wage employment positions to be counted under this subsection (3)(b)(ii) by each qualifying tenant must be in proportion to

the amount of space in the eligible computer data center occupied by the qualifying tenant compared to the total amount of space in the eligible computer data center occupied by all qualifying tenants.

(c)(i) For purposes of this subsection, family wage employment positions are new permanent employment positions requiring forty hours of weekly work, or their equivalent, on a full-time basis at the eligible computer data center and receiving a wage equivalent to or greater than one hundred fifty percent of the per capita personal income of the county in which the qualified project is located. An employment position may not be counted as a family wage employment position unless the employment position is entitled to health insurance coverage provided by the employer of the employment position. For purposes of this subsection (3)(c), "new permanent employment position" means an employment position that did not exist or that had not previously been filled as of the date that the department issued an exemption certificate to the owner or qualifying tenant of an eligible computer data center, as the case may be.

(ii)(A) Family wage employment positions include positions filled by employees of the owner of the eligible computer data center and by employees of qualifying tenants.

(B) Family wage employment positions also include individuals performing work at an eligible computer data center as an independent contractor hired by the owner of the eligible computer data center or as an employee of an independent contractor hired by the owner of the eligible computer data center, if the work is necessary for the operation of the computer data center, such as security and building maintenance, and provided that all of the requirements in (c)(i) of this subsection (3) are met.

(d) All previously exempted sales and use taxes are immediately due and payable for a qualifying business or qualifying tenant that does not meet the requirements of this subsection.

(4) A qualifying business or a qualifying tenant claiming an exemption under this section or RCW 82.12.986 must complete an annual tax performance report with the department as required under RCW 82.32.534.

(5)(a) The exemption provided in this section does not apply to:

(i) Any person who has received the benefit of the deferral program under chapter 82.60 RCW on: (A) The construction, renovation, or expansion of a structure or structures used as a computer data center; or (B) machinery or equipment used in a computer data center; and

(ii) Any person affiliated with a person within the scope of (a)(i) of this subsection (5).

(b) If a person claims an exemption under this section and subsequently receives the benefit of the deferral program under chapter 82.60 RCW on either the construction, renovation, or expansion of a structure or structures used as a computer data center or machinery or equipment used in a computer data center, the person must repay the amount of taxes exempted under this section. Interest as provided in chapter 82.32 RCW applies to amounts due under this section until paid in full.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Affiliated" means that one person has a direct or indirect ownership interest of at least twenty percent in another person.

(b) "Building" means a fully enclosed structure with a weather resistant exterior wall envelope or concrete or masonry walls designed in accordance with the requirements for structures under chapter 19.27 RCW. This definition of "building" only applies to computer data centers for which commencement of construction occurs on or after July 1, 2015.

(c)(i) "Computer data center" means a facility comprised of one or more buildings, which may be comprised of multiple businesses, constructed or refurbished specifically, and used primarily, to house working servers, where the facility has the following characteristics: (A) Uninterruptible power supplies, generator backup power, or both; (B) sophisticated fire suppression and prevention systems; and (C) enhanced physical security, such as: Restricted access to the facility to selected personnel; permanent security guards; video camera surveillance; an electronic system requiring passcodes, keycards, or biometric scans, such as hand scans and retinal or fingerprint recognition; or similar security features.

(ii) For a computer data center comprised of multiple buildings, each separate building constructed or refurbished specifically, and used primarily, to house working servers is considered a computer data center if it has all of the characteristics listed in (c)(i)(A) through (C) of this subsection (6).

(iii) A facility comprised of one building or more than one building must have a combined square footage of at least one hundred thousand square feet.

(d) "Electronic data storage and data management services" include, but are not limited to: Providing data storage and backup services, providing computer processing power, hosting enterprise software applications, and hosting web sites. The term also includes providing services such as email, web browsing and searching, media applications, and other online services, regardless of whether a charge is made for such services.

(e)(i) "Eligible computer data center" means a computer data center:

(A) Located in a rural county as defined in RCW 82.14.370;

(B) Having at least twenty thousand square feet dedicated to housing working servers, where the server space has not previously been dedicated to housing working servers; and

(C) For which the commencement of construction occurs:

(I) After March 31, 2010, and before July 1, 2011;

(II) After March 31, 2012, and before July 1, 2015; or

(III) After June 30, 2015, and before July 1, 2025.

(ii) For purposes of this section, "commencement of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for construction of the computer data center. The construction of a computer data center includes the expansion, renovation, or other improvements made to existing facilities, including leased or rented space. "Commencement of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated

before the issuance of a building permit for the construction of the foundation of a computer data center.

(iii) With respect to facilities in existence on April 1, 2010, that are expanded, renovated, or otherwise improved after March 31, 2010, or facilities in existence on April 1, 2012, that are expanded, renovated, or otherwise improved after March 31, 2012, or facilities in existence on July 1, 2015, that are expanded, renovated, or otherwise improved after June 30, 2015, an eligible computer data center includes only the portion of the computer data center meeting the requirements in (e)(i)(B) of this subsection (6).

(f) "Eligible power infrastructure" means all fixtures and equipment owned by a qualifying business or qualifying tenant and necessary for the transformation, distribution, or management of electricity that is required to operate eligible server equipment within an eligible computer data center. The term includes generators; wiring; cogeneration equipment; and associated fixtures and equipment, such as electrical switches, batteries, and distribution, testing, and monitoring equipment. The term does not include substations.

(g) "Eligible server equipment" means:

(i) For a qualifying business whose computer data center qualifies as an eligible computer data center under (e)(i)(C)(I) of this subsection (6), the original server equipment installed in an eligible computer data center on or after April 1, 2010, and before January 1, 2026, and replacement server equipment. For purposes of this subsection (6)(g)(i), "replacement server equipment" means server equipment that:

(A) Replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or RCW 82.12.986; and

(B) Is installed and put into regular use before April 1, 2018.

(ii) For a qualifying business whose computer data center qualifies as an eligible computer data center under (e)(i)(C)(II) of this subsection (6), "eligible server equipment" means the original server equipment installed in an eligible computer data center on or after April 1, 2012, and before January 1, 2026, and replacement server equipment. For purposes of this subsection (6)(g)(ii), "replacement server equipment" means server equipment that:

(A) Replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or RCW 82.12.986; and

(B) Is installed and put into regular use before April 1, 2024.

(iii)(A) For a qualifying business whose computer data center qualifies as an eligible computer data center under (e)(i)(C)(III) of this subsection (6), "eligible server equipment" means the original server equipment installed in a building within an eligible computer data center on or after July 1, 2015, and replacement server equipment. Server equipment installed in movable or fixed stand-alone, prefabricated, or modular units, including intermodal shipping containers, is not "directly installed in a building." For purposes of this subsection (6)(g)(iii)(A), "replacement server equipment" means server equipment that replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or RCW 82.12.986; and

(B) Is installed and put into regular use no later than twelve years after the date of the certificate of occupancy.

(iv) For a qualifying tenant who leases space within an eligible computer data center, "eligible server equipment" means the original server equipment installed within the space it leases from an eligible computer data center on or after April 1, 2010, and before January 1, 2026, and replacement server equipment. For purposes of this subsection (6)(g)(iv), "replacement server equipment" means server equipment that:

(A) Replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or RCW 82.12.986;

(B) Is installed and put into regular use before April 1, 2024; and

(C) For tenants leasing space in an eligible computer data center built after July 1, 2015, is installed and put into regular use no later than twelve years after the date of the certificate of occupancy.

(h) "Qualifying business" means a business entity that exists for the primary purpose of engaging in commercial activity for profit and that is the owner of an eligible computer data center. The term does not include the state or federal government or any of their departments, agencies, and institutions; tribal governments; political subdivisions of this state; or any municipal, quasi-municipal, public, or other corporation created by the state or federal government, tribal government, municipality, or political subdivision of the state.

(i) "Qualifying tenant" means a business entity that exists for the primary purpose of engaging in commercial activity for profit and that leases space from a qualifying business within an eligible computer data center. The term does not include the state or federal government or any of their departments, agencies, and institutions; tribal governments; political subdivisions of this state; or any municipal, quasi-municipal, public, or other corporation created by the state or federal government, tribal government, municipality, or political subdivision of the state. The term also does not include a lessee of space in an eligible computer data center under (e)(i)(C)(I) of this subsection (6), if the lessee and lessor are affiliated and:

(i) That space will be used by the lessee to house server equipment that replaces server equipment previously installed and operated in that eligible computer data center by the lessor or another person affiliated with the lessee; or

(ii) Prior to May 2, 2012, the primary use of the server equipment installed in that eligible computer data center was to provide electronic data storage and data management services for the business purposes of either the lessor, persons affiliated with the lessor, or both.

(j) "Server equipment" means the computer hardware located in an eligible computer data center and used exclusively to provide electronic data storage and data management services for internal use by the owner or lessee of the computer data center, for clients of the owner or lessee of the computer data center, or both. "Server equipment" also includes computer software necessary to operate the computer hardware. "Server equipment" does not include personal computers, the racks upon which the server equipment is installed, and computer peripherals such as keyboards,

monitors, printers, and mice. [2017 c 135 § 26; 2015 3rd sp.s. c 6 § 302; 2012 2nd sp.s. c 6 § 302; 2010 1st sp.s. c 23 § 1601; 2010 1st sp.s. c 1 § 2.]

Reviser's note: Pursuant to RCW 43.135.041, chapter 6, Laws of 2012 2nd special session was subject to an advisory vote of the people in the November 2012 general election on whether the tax increase in such session law should be maintained or repealed. The advisory vote was in favor of repeal.

Effective date—2017 c 135: See note following RCW 82.32.534.

Tax preference performance statement—2015 3rd sp.s. c 6 §§ 302 and 303: "This section is the tax preference performance statement for the sales and use tax exemption contained in sections 302 and 303 of this act. This performance statement is only intended to be used for subsequent evaluation of the tax preferences in sections 302 and 303 of this act. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this sales and use tax exemption as one intended to improve industry competitiveness, as indicated in RCW 82.32.808(2)(b).

(2) It is the legislature's specific public policy objective to improve industry competitiveness. It is the legislature's intent to provide a sales and use tax exemption on eligible server equipment and power infrastructure installed in eligible computer data centers, charges made for labor and services rendered in respect to installing eligible server equipment, and for construction, installation, repair, alteration, or improvement of eligible power infrastructures in order to increase investment in data center construction in rural Washington counties, thereby adding real and personal property to state and local property tax rolls, thereby increasing the rural county tax base.

(3) If a review finds that the rural county tax base is increased as a result of the construction of computer data centers eligible for the sales and use tax exemption in sections 302 and 303 of this act, then the legislature intends to extend the expiration date of the tax preference.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee may refer to data available from the department of revenue regarding rural county property tax assessments." [2015 3rd sp.s. c 6 § 301.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Intent—Finding—2012 2nd sp.s. c 6: "(1) It is the legislature's intent to encourage immediate investments in technology facilities that can provide an economic stimulus, sustain long-term jobs that provide living wages, and help build the digital infrastructure that can enable the state to be competitive for additional technology investment and jobs.

(2) There is currently an intense competition for data center construction and operation in many states including: Oregon, Arizona, North and South Carolina, North Dakota, Iowa, Virginia, Texas, and Illinois. Unprecedented incentives are available as a result of the desire of these states to attract investments that will serve as a catalyst for additional clusters of economic activity.

(3) Data center technology has advanced rapidly, with marked increases in energy efficiency. Large, commercial-grade data centers leverage the economies of scale to reduce energy consumption. Combining digitized processes with the economies of scale recognized at these data centers, today's enterprises can materially reduce the energy they consume and greatly improve their efficiency.

(4) The legislature finds that offering an exemption for server and related electrical equipment and installation will act as a stimulus to incent immediate investment. This investment will bring jobs, tax revenues, and economic growth to some of our state's rural areas." [2012 2nd sp.s. c 6 § 301.]

Existing rights, liabilities, or obligations—Effective dates—Continuing effective dates—2012 2nd sp.s. c 6: See notes following RCW 82.04.29005.

Effective date—2010 1st sp.s. c 23: See note following RCW 82.32.655.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Intent—Finding—2010 1st sp.s. c 1: "(1) It is the legislature's intent to encourage immediate investments in technology facilities that can provide an economic stimulus, sustain long-term jobs that provide living wages, and help build the digital infrastructure that can enable the state to be competitive for additional technology investment and jobs.

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(2) There is currently an intense competition for data center construction and operation in many states including: Oregon, Arizona, North and South Carolina, North Dakota, Iowa, Virginia, Texas, and Illinois. Unprecedented incentives are available as a result of the desire of these states to attract investments that will serve as a catalyst for additional clusters of economic activity.

(3) Since the economic downturn, Washington has not succeeded in attracting any private investments in these centers after siting six major data centers between 2004 and 2007.

(4) Data center technology has advanced rapidly, with marked increases in energy efficiency. Large, commercial-grade data centers leverage the economies of scale to reduce energy consumption. Combining digitized processes with the economies of scale recognized at these data centers, today's enterprises can materially reduce the energy they consume and greatly improve their efficiency.

(5) The legislature finds that a fifteen-month window that offers an exemption for server and related electrical equipment and installation will act as a stimulus to incent immediate investment. This investment will bring jobs, tax revenues, and economic growth to some of our state's rural areas." [2010 1st sp.s. c 1 § 1.]

Effective date—2010 1st sp.s. c 1: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 1, 2010." [2010 1st sp.s. c 1 § 4.]

82.08.9994 Exemptions—Bottled water—Prescription use. (1) Subject to the conditions in this section, the tax levied by RCW 82.08.020 does not apply to sales of bottled water dispensed or to be dispensed to patients pursuant to a prescription for use in the cure, mitigation, treatment, or prevention of disease or medical condition.

(2) For purposes of this section, "prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to prescribe.

(3) Except for sales of bottled water delivered to the buyer in a reusable container that is not sold with the water, sellers must collect tax on sales subject to this exemption. Any buyer that has paid at least twenty-five dollars in state and local sales taxes on purchases of bottled water subject to this exemption may apply for a refund of the taxes directly from the department in a form and manner prescribed by the department. The department must deny any refund application if the amount of the refund requested is less than twenty-five dollars. No refund may be made for taxes paid more than four years after the end of the calendar year in which the tax was paid to the seller.

(4) With respect to sales of bottled water delivered to the buyer in a reusable container that is not sold with the water, buyers claiming the exemption provided in this section must provide the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files. [2017 3rd sp.s. c 28 § 103.]

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

82.08.99941 Exemptions—Bottled water—Primary water source unsafe. (1)(a) Subject to the conditions in this section, the tax levied by RCW 82.08.020 does not apply to sales of bottled water to persons whose primary source of drinking water is unsafe.

(b) For purposes of this subsection and RCW 82.12.99941, a person's primary source of drinking water is unsafe if:

(i) The public water system providing the drinking water has issued a public notification that the drinking water may pose a health risk, and the notification is still in effect on the date that the bottled water was purchased;

(ii) Test results on the person's drinking water, which are no more than twelve months old, from a laboratory certified to perform drinking water testing show that the person's drinking water does not meet safe drinking water standards applicable to public water systems; or

(iii) The person otherwise establishes, to the department's satisfaction, that the person's drinking water does not meet safe drinking water standards applicable to public water systems.

(2) Except for sales of bottled water delivered to the buyer in a reusable container that is not sold with the water, sellers must collect tax on sales subject to this exemption. Any buyer that has paid at least twenty-five dollars in state and local sales taxes on purchases of bottled water subject to this exemption may apply for a refund of the taxes directly from the department in a form and manner prescribed by the department. The department must deny any refund application if the amount of the refund requested is less than twenty-five dollars. No refund may be made for taxes paid more than four years after the end of the calendar year in which the tax was paid to the seller.

(3)(a) With respect to sales of bottled water delivered to the buyer in a reusable container that is not sold with the water, buyers claiming the exemption provided in this section must provide the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(b) The department may waive the requirement for an exemption certificate in the event of disaster or similar circumstance. [2017 3rd sp.s. c 28 § 105.]

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

Chapter 82.12 RCW USE TAX

Sections

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82.12.965	Exemptions—Semiconductor materials manufacturing. <i>(Effective January 1, 2018; contingent effective date; contingent expiration date.)</i>
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82.12.970	Exemptions—Gases and chemicals used to manufacture semiconductor materials. <i>(Effective January 1, 2018; contingent effective date; contingent expiration date.)</i>
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82.12.9994	Exemptions—Bottled water—Prescription use.
82.12.99941	Exemptions—Bottled water—Primary water source unsafe.

82.12.010 Definitions.

For the purposes of this chapter:

(1) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, has full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, also means any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services. With respect to property distributed to persons within this state by a consumer as defined in this subsection (1), the use of the property is deemed to be by such consumer.

(2) "Extended warranty" has the same meaning as in RCW 82.04.050(7).

(3) "Purchase price" means the same as sales price as defined in RCW 82.08.010.

(4)(a)(i) Except as provided in (a)(ii) of this subsection (4), "retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter.

(ii) "Retailer" does not include a professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale of tangible personal property, extended warranty, digital good, digital code, or a sale of any digital automated service or service defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)(c) that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is

deemed to be the retailer and is responsible for collecting and remitting the tax imposed by this chapter.

(b) For the purposes of (a) of this subsection, the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540.

(5) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08 RCW.

(6) "Use," "used," "using," or "put to use" have their ordinary meaning, and mean:

(a) With respect to tangible personal property, except for natural gas and manufactured gas, the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state;

(b) With respect to a service defined in RCW 82.04.050(2)(a), the first act within this state after the service has been performed by which the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed (as a consumer), and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(c) With respect to an extended warranty, the first act within this state after the extended warranty has been acquired by which the taxpayer takes or assumes dominion or control over the article of tangible personal property to which the extended warranty applies, and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(d) With respect to a digital good or digital code, the first act within this state by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good or digital code;

(e) With respect to a digital automated service, the first act within this state by which the taxpayer, as a consumer, uses, enjoys, or otherwise receives the benefit of the service;

(f) With respect to a service defined as a retail sale in RCW 82.04.050(6)(c), the first act within this state by which the taxpayer, as a consumer, accesses the prewritten computer software;

(g) With respect to a service defined as a retail sale in RCW 82.04.050(2)(g), the first act within this state after the service has been performed by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good upon which the service was performed; and

(h) With respect to natural gas or manufactured gas, the use of which is taxable under RCW 82.12.022, including gas that is also taxable under the authority of RCW 82.14.230, the first act within this state by which the taxpayer consumes the gas by burning the gas or storing the gas in the taxpayer's own facilities for later consumption by the taxpayer.

(7)(a) "Value of the article used" is the purchase price for the article of tangible personal property, the use of which is taxable under this chapter. The term also includes, in addition to the purchase price, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used is determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used must be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used is determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules as the department of revenue may prescribe.

(c) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used must be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in (a) of this subsection.

(d) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used is determined according to the value of the ingredients of such articles.

(e) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used is determined by: (i) The retail selling price of such new or improved product when first offered for sale; or (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(f) In the case of an article purchased with a direct pay permit under RCW 82.32.087, the value of the article used is determined by the purchase price of such article if, but for the

use of the direct pay permit, the transaction would have been subject to sales tax.

(8) "Value of the digital good or digital code used" means the purchase price for the digital good or digital code, the use of which is taxable under this chapter. If the digital good or digital code is acquired other than by purchase, the value of the digital good or digital code must be determined as nearly as possible according to the retail selling price at place of use of similar digital goods or digital codes of like quality and character under rules the department may prescribe.

(9) "Value of the extended warranty used" means the purchase price for the extended warranty, the use of which is taxable under this chapter. If the extended warranty is received by gift or under conditions wherein the purchase price does not represent the true value of the extended warranty, the value of the extended warranty used is determined as nearly as possible according to the retail selling price at place of use of similar extended warranties of like quality and character under rules the department may prescribe.

(10) "Value of the service used" means the purchase price for the digital automated service or other service, the use of which is taxable under this chapter. If the service is received by gift or under conditions wherein the purchase price does not represent the true value thereof, the value of the service used is determined as nearly as possible according to the retail selling price at place of use of similar services of like quality and character under rules the department may prescribe. [2017 c 323 § 519; 2015 c 169 § 5. Prior: 2010 c 127 § 4; 2009 c 535 § 304; 2006 c 301 § 3; 2005 c 514 § 104; prior: 2003 c 168 § 102; 2003 c 5 § 1; 2002 c 367 § 3; 2001 c 188 § 3; 1994 c 93 § 1; prior: 1985 c 222 § 1; 1985 c 132 § 1; 1983 1st ex.s. c 55 § 2; 1975-76 2nd ex.s. c 1 § 1; 1975 1st ex.s. c 278 § 52; 1965 ex.s. c 173 § 17; 1961 c 293 § 15; 1961 c 15 § 82.12.010; prior: 1955 c 389 § 24; 1951 1st ex.s. c 9 § 3; 1949 c 228 § 9; 1945 c 249 § 8; 1943 c 156 § 10; 1939 c 225 § 18; 1937 c 191 § 4; 1935 c 180 § 35; Rem. Supp. 1949 § 8370-35.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2015 c 169: See note following RCW 82.04.050.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Finding—Intent—Retroactive application—2003 c 5: "The legislature finds that in the enactment of chapter 367, Laws of 2002, some use tax exemptions were not updated to reflect the change in taxability regarding services. It is the legislature's intent to correct this omission by amending the various use tax exemptions so that services exempt from the sales tax are also exempt from the use tax. Sections 1 through 19 of this act apply retroactively to June 1, 2002. The department of revenue shall refund any use taxes paid and forgive use taxes unpaid as a result of the omission." [2003 c 5 § 20.]

Finding—Intent—Effective date—2001 c 188: See notes following RCW 82.32.087.

Additional notes found at www.leg.wa.gov

82.12.020 Use tax imposed. (1) There is levied and collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any:

(a) Article of tangible personal property acquired by the user in any manner, including tangible personal property acquired at a casual or isolated sale, and including by-products used by the manufacturer thereof, except as otherwise

provided in this chapter, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state;

(b) Prewritten computer software, regardless of the method of delivery, but excluding prewritten computer software that is either provided free of charge or is provided for temporary use in viewing information, or both;

(c) Services defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)(c), excluding services defined as a retail sale in RCW 82.04.050(6)(c) that are provided free of charge;

(d) Extended warranty; or

(e)(i) Digital good, digital code, or digital automated service, including the use of any services provided by a seller exclusively in connection with digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(ii) With respect to the use of digital goods, digital automated services, and digital codes acquired by purchase, the tax imposed in this subsection (1)(e) applies in respect to:

(A) Sales in which the seller has granted the purchaser the right of permanent use;

(B) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(C) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(D) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(iii) With respect to digital goods, digital automated services, and digital codes acquired other than by purchase, the tax imposed in this subsection (1)(e) applies regardless of whether or not the consumer has a right of permanent use or is obligated to make continued payment as a condition of use.

(2) The provisions of this chapter do not apply in respect to the use of any article of tangible personal property, extended warranty, digital good, digital code, digital automated service, or service taxable under RCW 82.04.050 (2) (a) or (g) or (6)(c), if the sale to, or the use by, the present user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.

(3)(a) Except as provided in this section, payment of the tax imposed by this chapter or chapter 82.08 RCW by one purchaser or user of tangible personal property, extended warranty, digital good, digital code, digital automated service, or other service does not have the effect of exempting any other purchaser or user of the same property, extended warranty, digital good, digital code, digital automated service, or other service from the taxes imposed by such chapters.

(b) The tax imposed by this chapter does not apply:

(i) If the sale to, or the use by, the present user or his or her bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his or her bailor or donor;

(ii) In respect to the use of any article of tangible personal property acquired by bailment and the tax has once been paid based on reasonable rental as determined by RCW 82.12.060 measured by the value of the article at time of first use multiplied by the tax rate imposed by chapter 82.08 RCW or this chapter as of the time of first use;

(iii) In respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and the original bailment was prior to June 9, 1961; or

(iv) To the use of digital goods or digital automated services, which were obtained through the use of a digital code, if the sale of the digital code to, or the use of the digital code by, the present user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.

(4)(a) Except as provided in (b) of this subsection (4), the tax is levied and must be collected in an amount equal to the value of the article used, value of the digital good or digital code used, value of the extended warranty used, or value of the service used by the taxpayer, multiplied by the applicable rates in effect for the retail sales tax under RCW 82.08.020.

(b) In the case of a seller required to collect use tax from the purchaser, the tax must be collected in an amount equal to the purchase price multiplied by the applicable rate in effect for the retail sales tax under RCW 82.08.020.

(5) For purposes of the tax imposed in this section, "person" includes anyone within the definition of "buyer," "purchaser," and "consumer" in RCW 82.08.010. [2017 c 323 § 520; 2015 c 169 § 6; 2010 1st sp.s. c 23 § 206; 2009 c 535 § 305; 2005 c 514 § 105. Prior: 2003 c 361 § 302; 2003 c 168 § 214; 2003 c 5 § 2; 2002 c 367 § 4; 1999 c 358 § 9; 1998 c 332 § 7; 1996 c 148 § 5; 1994 c 93 § 2; 1983 c 7 § 7; 1981 2nd ex.s. c 8 § 2; 1980 c 37 § 79; 1977 ex.s. c 324 § 3; 1975-'76 2nd ex.s. c 130 § 2; 1975-'76 2nd ex.s. c 1 § 2; 1971 ex.s. c 281 § 10; 1969 ex.s. c 262 § 32; 1967 ex.s. c 149 § 22; 1965 ex.s. c 173 § 18; 1961 c 293 § 9; 1961 c 15 § 82.12.020; prior: 1959 ex.s. c 3 § 10; 1955 ex.s. c 10 § 3; 1955 c 389 § 25; 1949 c 228 § 7; 1943 c 156 § 8; 1941 c 76 § 6; 1939 c 225 § 14; 1937 c 191 § 1; 1935 c 180 § 31; Rem. Supp. 1949 § 8370-31.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2015 c 169: See note following RCW 82.04.050.

Effective date—2010 1st sp.s. c 23: See note following RCW 82.32.655.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Findings—2003 c 361: See note following RCW 82.38.030.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Findings—Intent—Effective date—1998 c 332: See notes following RCW 82.04.29001.

Intent—1980 c 37: See note following RCW 82.04.4281.

High capacity transportation systems—Sales and use tax: RCW 81.104.170.

Additional notes found at www.leg.wa.gov

82.12.0203 Refinery fuel gas—Value—Tax rate—Local use tax exemption. (1) The value of the article used with respect to refinery fuel gas under this chapter is the most recent monthly United States natural gas wellhead price, as published by the federal energy information administration.

[2017 RCW Supp—page 990]

(2) In lieu of the use tax rate provided in RCW 82.12.020, refinery fuel gas is subject to a rate of:

(a) 0.963 percent from January 1, 2018, through December 31, 2018;

(b) 1.926 percent from January 1, 2019, through December 31, 2019;

(c) 2.889 percent from January 1, 2020, through December 31, 2020; and

(d) 3.852 percent from January 1, 2021, and thereafter.

(3) The use of fuel by the extractor or manufacturer thereof when used directly in the operation of the particular extractive operation or manufacturing plant that produced or manufactured the same is not subject to local use tax. [2017 3rd sp.s. c 28 § 108.]

Application—2017 3rd sp.s. c 28 §§ 107-109: See note following RCW 82.12.0263.

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

82.12.0207 Exemptions—Adapted housing—Disabled veterans—Construction. (1) An eligible purchaser who has paid the tax levied by RCW 82.12.020 on materials incorporated as an ingredient or component of adapted housing is eligible for an exemption from all or a portion of that tax in the form of a remittance.

(2) All of the eligibility requirements, conditions, limitations, and definitions in RCW 82.08.0207 apply to this section. [2017 c 176 § 3.]

Findings—Intent—Application—2017 c 176: See notes following RCW 82.08.0207.

82.12.02082 Exemptions—Digital products or services—Made available for free to general public. The provisions of this chapter do not apply to the use by a business or other organization of digital goods, digital codes, digital automated services, or services defined as a retail sale in RCW 82.04.050(6)(c) for the purpose of making the digital good or digital automated service, including a digital good or digital automated service acquired through the use of a digital code, or service defined as a retail sale in RCW 82.04.050(6)(c) available free of charge for the use or enjoyment of the general public. For purposes of this section, "general public" has the same meaning as in RCW 82.08.02082. The exemption provided in this section does not apply unless the user has the legal right to broadcast, rebroadcast, transmit, retransmit, license, relicense, distribute, redistribute, or exhibit the product, in whole or in part, to the general public. [2017 c 323 § 521; 2010 c 111 § 501; 2009 c 535 § 603.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Purpose—Retroactive application—Effective date—2010 c 111: See notes following RCW 82.04.050.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.12.02088 Exemptions—Digital products—Business buyers—Concurrently available for use within and outside state—Apportionment. (1) A business or other organization subject to the tax imposed in RCW 82.12.020 on

the use of digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c) that are concurrently available for use within and outside this state is entitled to apportion the amount of tax due this state based on users in this state compared to users everywhere. The department may authorize or require an alternative method of apportionment supported by the taxpayer's records that fairly reflects the proportion of in-state to out-of-state use by the taxpayer of the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c).

(2) No apportionment under this section is allowed unless the apportionment method is supported by the taxpayer's records kept in the ordinary course of business.

(3) For purposes of this section, the following definitions apply:

(a) "Concurrently available for use within and outside this state" means that employees or other agents of the taxpayer may use the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c) simultaneously at one or more locations within this state and one or more locations outside this state. A digital code is concurrently available for use within and outside this state if employees or other agents of the taxpayer may use the digital goods or digital automated services to be obtained by the code simultaneously at one or more locations within this state and one or more locations outside this state.

(b) "User" means an employee or agent of the taxpayer who is authorized by the taxpayer to use the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c) in the performance of his or her duties as an employee or other agent of the taxpayer. [2017 c 323 § 522; 2009 c 535 § 702.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.12.022 Natural or manufactured gas—Use tax imposed—Exemption. (Effective until January 1, 2018; contingent expiration date.) (1) A use tax is levied on every person in this state for the privilege of using natural gas or manufactured gas, including compressed natural gas and liquefied natural gas, within this state as a consumer.

(2) The tax must be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020. The "value of the article used" does not include any amounts that are paid for the hire or use of a gas distribution business as defined in RCW 82.16.010(2) in transporting the gas subject to tax under this subsection if those amounts are subject to tax under that chapter.

(3) The tax levied in this section does not apply to the use of natural or manufactured gas delivered to the consumer by other means than through a pipeline.

(4) The tax levied in this section does not apply to the use of natural or manufactured gas if the person who sold the gas

to the consumer has paid a tax under RCW 82.16.020 with respect to the gas for which exemption is sought under this subsection.

(5)(a) The tax levied in this section does not apply to the use of natural or manufactured gas by an aluminum smelter as that term is defined in RCW 82.04.217 before January 1, 2027.

(b) A person claiming the exemption provided in this subsection (5) must file a complete annual report with the department under RCW 82.32.534.

(6) The tax imposed by this section does not apply to the use of natural gas, compressed natural gas, or liquefied natural gas, if the consumer uses the gas for transportation fuel as defined in RCW 82.16.310.

(7) The tax levied in this section does not apply to the use of natural or manufactured gas by a silicon smelter as that term is defined in RCW 82.16.315.

(8) There is a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

(9) The use tax imposed in this section must be paid by the consumer to the department.

(10) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report must contain the volume of gas delivered, name of the consumer to whom delivered, and such other information as the department may require by rule.

(11) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6, chapter 384, Laws of 1989. [2017 3rd sp.s. c 37 § 706; 2015 3rd sp.s. c 6 § 506; 2014 c 216 § 304; 2011 c 174 § 304. Prior: 2010 1st sp.s. c 2 § 5; 2010 c 114 § 127; 2006 c 182 § 5; 2004 c 24 § 12; 1994 c 124 § 9; 1989 c 384 § 3.]

Contingent expiration date—2017 3rd sp.s. c 37 §§ 701-708: See note following RCW 82.32.537.

Findings—Intent—Tax preference performance statement—2017 3rd sp.s. c 37 §§ 701-708: See note following RCW 82.16.315.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Findings—Tax preference performance statement—2015 3rd sp.s. c 6 §§ 502-506: See note following RCW 82.04.2909.

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

Intent—1989 c 384: "Due to a change in the federal regulations governing the sale of brokered natural gas, cities have lost significant revenues from the utility tax on natural gas. It is therefore the intent of the legislature to adjust the utility and use tax authority of the state and cities to maintain this revenue source for the municipalities and provide equality of taxation between intrastate and interstate transactions." [1989 c 384 § 1.]

Additional notes found at www.leg.wa.gov

82.12.022 Natural or manufactured gas—Use tax imposed—Exemption. (Effective January 1, 2018; contingent expiration date.) (1) A use tax is levied on every person in this state for the privilege of using natural gas or manufactured gas, including compressed natural gas and liquefied natural gas, within this state as a consumer.

(2) The tax must be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020. The "value of the article used" does not include any amounts that are paid for the hire or use of a gas distribution business as defined in RCW 82.16.010(2) in transporting the gas subject to tax under this subsection if those amounts are subject to tax under that chapter.

(3) The tax levied in this section does not apply to the use of natural or manufactured gas delivered to the consumer by other means than through a pipeline.

(4) The tax levied in this section does not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 82.16.020 with respect to the gas for which exemption is sought under this subsection.

(5)(a) The tax levied in this section does not apply to the use of natural or manufactured gas by an aluminum smelter as that term is defined in RCW 82.04.217 before January 1, 2027.

(b) A person claiming the exemption provided in this subsection (5) must file a complete annual tax performance report with the department under RCW 82.32.534.

(6) The tax imposed by this section does not apply to the use of natural gas, compressed natural gas, or liquefied natural gas, if the consumer uses the gas for transportation fuel as defined in RCW 82.16.310.

(7) The tax levied in this section does not apply to the use of natural or manufactured gas by a silicon smelter as that term is defined in RCW 82.16.315.

(8) There is a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

(9) The use tax imposed in this section must be paid by the consumer to the department.

(10) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report must contain the volume of gas delivered, name of the consumer to whom delivered, and such other information as the department may require by rule.

(11) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6, chapter 384, Laws of 1989. [2017 3rd sp.s. c 37 § 707; 2017 c 135 § 27; 2015 3rd sp.s. c 6 § 506; 2014 c

216 § 304; 2011 c 174 § 304. Prior: 2010 1st sp.s. c 2 § 5; 2010 c 114 § 127; 2006 c 182 § 5; 2004 c 24 § 12; 1994 c 124 § 9; 1989 c 384 § 3.]

Contingent expiration date—2017 3rd sp.s. c 37 §§ 701-708: See note following RCW 82.32.537.

Findings—Intent—Tax preference performance statement—2017 3rd sp.s. c 37 §§ 701-708: See note following RCW 82.16.315.

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Effective date—2017 c 135: See note following RCW 82.32.534.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Findings—Tax preference performance statement—2015 3rd sp.s. c 6 §§ 502-506: See note following RCW 82.04.2909.

Effective date—Findings—Tax preference performance statement—2014 c 216: See notes following RCW 82.38.030.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

Intent—1989 c 384: "Due to a change in the federal regulations governing the sale of brokered natural gas, cities have lost significant revenues from the utility tax on natural gas. It is therefore the intent of the legislature to adjust the utility and use tax authority of the state and cities to maintain this revenue source for the municipalities and provide equality of taxation between intrastate and interstate transactions." [1989 c 384 § 1.]

Additional notes found at www.leg.wa.gov

82.12.025651 Exemptions—Use of machinery and equipment by public research institutions. (Effective January 1, 2018.) (1) The provisions of this chapter do not apply in respect to the use by a public research institution of machinery and equipment used primarily in a research and development operation, or to the use of labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment.

(2) The definitions in RCW 82.08.025651 apply to this section.

(3) A public research institution receiving the benefit of the exemption provided in this section must file a complete annual tax performance report with the department under RCW 82.32.534. [2017 c 135 § 28; 2011 c 23 § 5.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Findings—2011 c 23: See note following RCW 82.08.02565.

Effective date—Construction—2011 c 23: See notes following RCW 82.08.025651.

82.12.0259 Exemptions—Use of personal property, digital automated services, or certain other services by federal corporations providing aid and relief. The provisions of this chapter do not apply in respect to the use of personal property or the use of digital automated services or services defined in RCW 82.04.050 (2)(a) or (6)(c) by corporations that have been incorporated under any act of the congress of the United States and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, flood, and other national calamities and to devise and carry on measures for preventing the same. [2017 c 323 § 523; 2009 c 535 § 613; 2003 c 5 § 7; 1980 c 37 § 59. Formerly RCW 82.12.030(9).]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0263 Exemptions—Use of fuel by extractor or manufacturer thereof. The provisions of this chapter do not apply in respect to the use of biomass fuel by the extractor or manufacturer thereof when used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same. For purposes of this section, "biomass fuel" means wood waste and other wood residuals, including forest derived biomass, but does not include firewood or wood pellets. "Biomass fuel" also includes partially organic by-products of pulp, paper, and wood manufacturing processes. [2017 3rd sp.s. c 28 § 107; 1980 c 37 § 62. Formerly RCW 82.12.030(12).]

Application—2017 3rd sp.s. c 28 §§ 107-109: "Sections 107 through 109 of this act apply with respect to fuel, other than biomass fuel, consumed within this state on or after August 1, 2017, regardless of whether such fuel was produced or manufactured before August 1, 2017. For purposes of this section, "consumed" means the use of fuel resulting in the release of usable energy." [2017 3rd sp.s. c 28 § 109.]

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

Intent—1980 c 37: See note following RCW 82.04.4281.

82.12.0293 Exemptions—Use of food and food ingredients. (1) The provisions of this chapter do not apply in respect to the use of food and food ingredients for human consumption. "Food and food ingredients" has the same meaning as in RCW 82.08.0293.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section does not apply to prepared food, soft drinks, bottled water, or dietary supplements. "Prepared food," "soft drinks," "bottled water," and "dietary supplements" have the same meanings as in RCW 82.08.0293.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section applies to food and food ingredients which are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the older Americans act (P.L. 95-478 Title III) and RCW 74.38.040(6);

(b) Which are provided to senior citizens, individuals with disabilities, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior hous-

ing facility" has the same meaning as in RCW 82.08.0293. [2017 3rd sp.s. c 28 § 102; 2011 c 2 § 303 (Initiative Measure No. 1107, approved November 2, 2010); 2010 1st sp.s. c 23 § 903; 2009 c 483 § 4; 2003 c 168 § 303; 1988 c 103 § 2; 1986 c 182 § 2; 1985 c 104 § 2; 1982 1st ex.s. c 35 § 34.]

Reviser's note: Referendum Bill No. 52 was rejected by the voters at the November 2010 election. This section has been returned to the status existing before its amendment by 2010 1st sp.s. c 35.

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

Findings—Construction—2011 c 2 (Initiative Measure No. 1107): See notes following RCW 82.08.0293.

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Finding—Intent—Effective date—2009 c 483: See notes following RCW 82.08.0293.

Additional notes found at www.leg.wa.gov

82.12.035 Credit for retail sales or use taxes paid to other jurisdictions with respect to property used. A credit is allowed against the taxes imposed by this chapter upon the use in this state of tangible personal property, extended warranty, digital good, digital code, digital automated service, or services defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)(c), in the amount that the present user thereof or his or her bailor or donor has paid a legally imposed retail sales or use tax with respect to such property, extended warranty, digital good, digital code, digital automated service, or service defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)(c) to any other state, possession, territory, or commonwealth of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof. [2017 c 323 § 524; 2015 c 169 § 8; 2009 c 535 § 1107; 2007 c 6 § 1203; 2005 c 514 § 108; 2002 c 367 § 5; 1996 c 148 § 6; 1987 c 27 § 2; 1967 ex.s. c 89 § 5.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2015 c 169: See note following RCW 82.04.050.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Additional notes found at www.leg.wa.gov

82.12.040 Retailers to collect tax—Penalty—Continuing expiration of subsection. (1) Every person who is subject to a collection obligation under chapter 82.08 RCW, except a person making a valid election to comply with the notice and reporting provisions of RCW 82.13.020, must obtain from the department a certificate of registration, and must, at the time of making sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)(c), or making transfers of either possession or title, or both, of tangible personal property for use in this state, collect from the purchas-

ers or transferees the tax imposed under this chapter. The tax to be collected under this section must be in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020.

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)(c), of his or her principals for use in this state, must, at the time such sales are made, collect from the purchasers the tax imposed on the purchase price under this chapter, and for that purpose is deemed a retailer as defined in this chapter.

(3) The tax required to be collected by this chapter is deemed to be held in trust by the retailer until paid to the department, and any retailer who appropriates or converts the tax collected to the retailer's own use or to any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment on the due date as prescribed is guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is nevertheless personally liable to the state for the amount of such tax, unless the seller has taken from the buyer a copy of a direct pay permit issued under RCW 82.32.087.

(4) Any retailer who refunds, remits, or rebates to a purchaser, or transferee, either directly or indirectly, and by whatever means, all or any part of the tax levied by this chapter is guilty of a misdemeanor.

(5) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if the person would have been obligated to collect retail sales tax on the sale absent a specific exemption provided in chapter 82.08 RCW, and there is no corresponding use tax exemption in this chapter. Nothing in this subsection (5) may be construed as relieving purchasers from liability for reporting and remitting the tax due under this chapter directly to the department.

(6) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if the state is prohibited under the Constitution or laws of the United States from requiring the person to collect the tax imposed by this chapter.

(7) Notwithstanding subsections (1) through (4) of this section, any licensed dealer facilitating a firearm sale or transfer between two unlicensed persons by conducting background checks under chapter 9.41 RCW is not obligated to collect the tax imposed by this chapter. [2017 3rd sp.s. c 28 § 213; (2017 3rd sp.s. c 28 § 212 expired July 23, 2017); 2017 c 323 § 525; 2015 c 169 § 9; 2015 c 1 § 11 (Initiative Measure No. 594, approved November 4, 2014); 2011 1st sp.s. c 20 § 103; 2010 c 106 § 221; 2009 c 535 § 1108; 2005 c 514 § 109. Prior: 2003 c 168 § 215; 2003 c 76 § 4; 2001 c 188 § 5; 1986 c 48 § 1; 1971 ex.s. c 299 § 11; 1961 c 293 § 11; 1961 c 15 § 82.12.040; prior: 1955 c 389 § 27; 1945 c 249 § 7; 1941 c 178

§ 10; 1939 c 225 § 16; Rem. Supp. 1945 § 8370-33; prior: 1935 c 180 § 33.]

Expiration date—2017 3rd sp.s. c 28 § 212: "Section 212 of this act expires July 23, 2017." [2017 3rd sp.s. c 28 § 606.]

Findings—Intent—2017 3rd sp.s. c 28 §§ 201-214: See note following RCW 82.08.053.

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2015 c 169: See note following RCW 82.04.050.

Finding—2015 c 1 (Initiative Measure No. 594): See note following RCW 9.41.010.

Effective date—2010 c 106: See note following RCW 35.102.145.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—2003 c 76: See note following RCW 82.08.050.

Finding—Intent—Effective date—2001 c 188: See notes following RCW 82.32.087.

Project on exemption reporting requirements: RCW 82.32.440.

Additional notes found at www.leg.wa.gov

82.12.805 Exemptions—Personal property used at an aluminum smelter. (Effective January 1, 2018.) (1) A person who is subject to tax under RCW 82.12.020 for personal property used at an aluminum smelter, or for tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. The amount of the credit equals the state share of use tax computed to be due under RCW 82.12.020. The person must submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) A person reporting under the tax rate provided in this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(4) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2027. [2017 c 135 § 29; 2015 3rd sp.s. c 6 § 505; 2011 c 174 § 305. Prior: 2010 1st sp.s. c 2 § 4; 2010 c 114 § 128; 2009 c 535 § 620; 2006 c 182 § 4; 2004 c 24 § 11.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Findings—Tax preference performance statement—2015 3rd sp.s. c 6 §§ 502-506: See note following RCW 82.04.2909.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

82.12.860 Exemptions—Property and services acquired from a federal credit union. (1) This chapter does not apply to state credit unions with respect to the use of any article of tangible personal property, digital good, digital code, digital automated service, service defined as a retail sale in RCW 82.04.050 (2) (a) or (g) or (6)(c), or extended warranty, acquired from a federal credit union, foreign credit union, or out-of-state credit union as a result of a merger or conversion.

(2) For purposes of this section, the following definitions apply:

(a) "Federal credit union" means a credit union organized and operating under the laws of the United States.

(b) "Foreign credit union" means a credit union organized and operating under the laws of another country or other foreign jurisdiction.

(c) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or United States territory or possession.

(d) "State credit union" means a credit union organized and operating under the laws of this state. [2017 c 323 § 526; 2015 c 169 § 10; 2009 c 535 § 621; 2006 c 11 § 1.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2015 c 169: See note following RCW 82.04.050.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.12.962 Exemptions—Use of machinery and equipment in generating electricity. (Expires January 1, 2020.)

(1)(a) Except as provided in RCW 82.12.963, consumers who have paid the tax imposed by RCW 82.12.020 on machinery and equipment used directly in generating electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, anaerobic digestion, technology that converts otherwise lost energy from exhaust, or landfill gas as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, are eligible for an exemption as provided in this section, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than one thousand watts of electricity.

(b) Beginning on July 1, 2009, through June 30, 2011, the provisions of this chapter do not apply in respect to the use of machinery and equipment described in (a) of this subsection that are used directly in generating electricity or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment.

(c) Beginning on July 1, 2011, through January 1, 2020, the amount of the exemption under this subsection (1) is equal to seventy-five percent of the state and local sales tax paid. The consumer is eligible for an exemption under this subsection (1)(c) in the form of a remittance.

(2)(a) A person claiming an exemption in the form of a remittance under subsection (1)(c) of this section must pay the tax imposed by RCW 82.12.020 and all applicable local use taxes imposed under the authority of chapters 82.14 and 81.104 RCW. The consumer may then apply to the department for remittance in a form and manner prescribed by the department. A consumer may not apply for a remittance

under this section more frequently than once per quarter. The consumer must specify the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The consumer must retain, in adequate detail, records to enable the department to determine whether the consumer is entitled to an exemption under this section, including: Invoices; proof of tax paid; and documents describing the machinery and equipment.

(b) The department must determine eligibility under this section based on the information provided by the consumer, which is subject to audit verification by the department. The department must on a quarterly basis remit exempted amounts to qualifying consumers who submitted applications during the previous quarter.

(3) Purchases exempt under RCW 82.08.962 are also exempt from the tax imposed under RCW 82.12.020.

(4) The definitions in RCW 82.08.962 apply to this section.

(5) The exemption provided in subsection (1) of this section does not apply:

(a) To machinery and equipment used directly in the generation of electricity using solar energy and capable of generating no more than five hundred kilowatts of electricity, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, when first use within this state of such machinery and equipment, or labor and services, occurs after September 30, 2017; and

(b) To any other machinery and equipment described in subsection (1)(a) of this section, or to sales of or charges made for labor and services rendered in respect to installing such machinery or equipment, when first use within this state of such machinery and equipment, or labor and services, occurs after December 31, 2019.

(6) This section expires January 1, 2020. [2017 3rd sp.s. c 36 § 16; 2013 2nd sp.s. c 13 § 1505; 2009 c 469 § 102.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

Intent—Effective date—2013 2nd sp.s. c 13: See notes following RCW 82.08.962.

Effective date—2009 c 469: See note following RCW 82.08.962.

82.12.963 Exemptions—Use of machinery and equipment using solar energy to generate electricity or produce thermal heat. (Expires June 30, 2018.)

(1) The provisions of this chapter do not apply with respect to machinery and equipment used directly in generating not more than ten kilowatts of electricity or producing not more than three million British thermal units per day using solar energy, or to the use of labor and services rendered in respect to installing such machinery and equipment.

(2) The definitions in RCW 82.08.963 apply to this section.

(3) The exemption provided by this section does not apply:

(a) To the use of machinery and equipment used directly in the generation of electricity using solar energy, or to the use of labor and services rendered in respect to installing such machinery and equipment, when first use within this state of such machinery and equipment, or labor and services, occurs after September 30, 2017; and

(b) To the use of any machinery or equipment used directly in producing thermal heat using solar energy, or to the use of labor and services rendered in respect to installing such machinery or equipment, when first use within this state of such machinery and equipment, or labor and services, occurs after June 30, 2018.

(4) This section expires June 30, 2018. [2017 3rd sp.s. c 36 § 17; 2013 2nd sp.s. c 13 § 1603; 2009 c 469 § 104.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

Intent—2013 2nd sp.s. c 13: See note following RCW 82.08.963.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.956.

Effective date—2009 c 469: See note following RCW 82.08.962.

82.12.965 Exemptions—Semiconductor materials manufacturing. (Effective until January 1, 2018; contingent effective date; contingent expiration date.) (1) The provisions of this chapter do not apply with respect to the use of tangible personal property that will be incorporated as an ingredient or component of new buildings used for the manufacturing of semiconductor materials during the course of constructing such buildings or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b).

(2) The eligibility requirements, conditions, and definitions in RCW 82.08.965 apply to this section, including the filing of a complete annual report with the department under RCW 82.32.534.

(3) No exemption may be taken after the expiration date of this section, however all of the eligibility criteria and limitations are applicable to any exemptions claimed before that date.

(4) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 511; 2010 c 114 § 129; 2003 c 149 § 6.]

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

Contingent effective date—2010 c 114: See RCW 82.32.790.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

82.12.965 Exemptions—Semiconductor materials manufacturing. (Effective January 1, 2018; contingent effective date; contingent expiration date.) (1) The provisions of this chapter do not apply with respect to the use of tangible personal property that will be incorporated as an ingredient or component of new buildings used for the manufacturing of semiconductor materials during the course of constructing such buildings or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b).

(2) The eligibility requirements, conditions, and definitions in RCW 82.08.965 apply to this section, including the filing of a complete annual tax performance report with the department under RCW 82.32.534.

(3) No exemption may be taken after the expiration date of this section, however all of the eligibility criteria and lim-

itations are applicable to any exemptions claimed before that date.

(4) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 512; 2017 c 135 § 30; 2010 c 114 § 129; 2003 c 149 § 6.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Contingent effective date—2017 c 135; 2010 c 114: See RCW 82.32.790.

Effective date—2017 c 135: See note following RCW 82.32.534.

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

82.12.9651 Exemptions—Gases and chemicals used in production of semiconductor materials. (Effective until January 1, 2018.)

(1) The provisions of this chapter do not apply with respect to the use of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. This exemption is limited to gases and chemicals used in the production process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the production process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For purposes of this section, "semiconductor materials" has the meaning provided in RCW 82.04.2404 and 82.04.294(3).

(2)(a) Except as provided under (b) of this subsection (2), a person claiming the exemption under this section must file a complete annual survey with the department under RCW 82.32.585.

(b) A person claiming the exemption under this section and who is required to file a complete annual report with the department under RCW 82.32.534 as a result of claiming the tax preference provided by RCW 82.04.2404 is not also required to file a complete annual survey under RCW 82.32.585.

(3) No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(4) Any person who has claimed the preferential tax rate under this section must reimburse the department for fifty percent of the amount of the tax preference under this section, if:

(a) The number of persons employed by the person claiming the tax preference is less than ninety percent of the person's three-year employment average for the three years immediately preceding the year in which the preferential tax rate is claimed; or

(b) The person is subject to a review under section 501(4)(a), chapter 37, Laws of 2017 3rd sp. sess. and such person does not meet performance criteria in section 501(4)(a), chapter 37, Laws of 2017 3rd sp. sess.

(5) This section expires December 1, 2028. [2017 3rd sp.s. c 37 § 507; 2014 c 97 § 406; 2010 c 114 § 130; 2009 c 469 § 503; 2006 c 84 § 4.]

Tax preference performance statement—2017 3rd sp.s. c 37 §§ 505-508: See note following RCW 82.08.9651.

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—2009 c 469: See note following RCW 82.08.962.

Findings—Intent—2006 c 84: See note following RCW 82.04.2404.

Additional notes found at www.leg.wa.gov

82.12.9651 Exemptions—Gases and chemicals used in production of semiconductor materials. (Effective January 1, 2018, until December 1, 2028.) (1) The provisions of this chapter do not apply with respect to the use of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. This exemption is limited to gases and chemicals used in the production process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the production process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For purposes of this section, "semiconductor materials" has the meaning provided in RCW 82.04.2404 and 82.04.294(3).

(2) A person claiming the exemption under this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(3) No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(4) Any person who has claimed the preferential tax rate under this section must reimburse the department for fifty percent of the amount of the tax preference under this section, if:

(a) The number of persons employed by the person claiming the tax preference is less than ninety percent of the person's three-year employment average for the three years immediately preceding the year in which the preferential tax rate is claimed; or

(b) The person is subject to a review under section 501(4)(a), chapter 37, Laws of 2017 3rd sp. sess. and such person does not meet performance criteria in section 501(4)(a), chapter 37, Laws of 2017 3rd sp. sess.

(5) This section expires December 1, 2028. [2017 3rd sp.s. c 37 § 508; 2017 c 135 § 31; 2014 c 97 § 406; 2010 c 114 § 130; 2009 c 469 § 503; 2006 c 84 § 4.]

Tax preference performance statement—2017 3rd sp.s. c 37 §§ 505-508: See note following RCW 82.08.9651.

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—2009 c 469: See note following RCW 82.08.962.

Findings—Intent—2006 c 84: See note following RCW 82.04.2404.

Additional notes found at www.leg.wa.gov

82.12.970 Exemptions—Gases and chemicals used to manufacture semiconductor materials. (Effective until January 1, 2018; contingent effective date; contingent expiration date.) (1) The provisions of this chapter do not apply with respect to the use of gases and chemicals used by a manufacturer or processor for hire in the manufacturing of semiconductor materials. This exemption is limited to gases and chemicals used in the manufacturing process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the manufacturing process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For purposes of this section, "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person claiming the exemption under this section must file a complete annual report with the department under RCW 82.32.534. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 521; 2010 c 114 § 131; 2003 c 149 § 8.]

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

Contingent effective date—2010 c 114: See RCW 82.32.790.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

82.12.970 Exemptions—Gases and chemicals used to manufacture semiconductor materials. (Effective January 1, 2018; contingent effective date; contingent expiration date.) (1) The provisions of this chapter do not apply with respect to the use of gases and chemicals used by a manufacturer or processor for hire in the manufacturing of semiconductor materials. This exemption is limited to gases and chemicals used in the manufacturing process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the manufacturing process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For purposes of this section, "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person claiming the exemption under this section must file a complete annual tax performance report with the department under RCW 82.32.534. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 522; 2017 c 135 § 32; 2010 c 114 § 131; 2003 c 149 § 8.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Contingent effective date—2017 c 135; 2010 c 114: See RCW 82.32.790.

Effective date—2017 c 135: See note following RCW 82.32.534.

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

82.12.980 Exemptions—Labor, services, and personal property related to the manufacture of commercial airplanes. (Effective January 1, 2018, until July 1, 2040.)

(1) The provisions of this chapter do not apply with respect to the use of:

(a) Tangible personal property that will be incorporated as an ingredient or component in constructing new buildings for (i) a manufacturer engaged in the manufacturing of commercial airplanes or the fuselages or wings of commercial airplanes or (ii) a port district, political subdivision, or municipal corporation, to be leased to a manufacturer engaged in the manufacturing of commercial airplanes or the fuselages or wings of commercial airplanes; or

(b) Labor and services rendered in respect to installing, during the course of constructing such buildings, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b).

(2) The eligibility requirements, conditions, and definitions in RCW 82.08.980 apply to this section, including the filing of a complete annual tax performance report with the department under RCW 82.32.534.

(3) This section expires July 1, 2040. [2017 c 135 § 33; 2013 3rd sp.s. c 2 § 4; 2010 c 114 § 132; 2003 2nd sp.s. c 1 § 12.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Contingent effective date—2013 3rd sp.s. c 2: See RCW 82.32.850.

Findings—Intent—2013 3rd sp.s. c 2: See note following RCW 82.32.850.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

82.12.9994 Exemptions—Bottled water—Prescription use. (1) The provisions of this chapter do not apply in respect to the use of bottled water dispensed or to be dispensed to patients pursuant to a prescription for use in the cure, mitigation, treatment, or prevention of disease or medical condition.

(2) For the purposes of this section, "prescription" has the same meaning as provided in RCW 82.08.9994. [2017 3rd sp.s. c 28 § 104.]

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

82.12.99941 Exemptions—Bottled water—Primary water source unsafe. The provisions of this chapter do not apply in respect to the use of bottled water by persons whose primary source of drinking water is unsafe as provided in RCW 82.08.99941. [2017 3rd sp.s. c 28 § 106.]

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

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Chapter 82.13 RCW

COLLECTION AND REMITTANCE OF RETAIL SALES AND USE TAX—MARKETPLACE FACILITATORS, REFERRERS, AND REMOTE SELLERS

Sections

82.13.010	Definitions.
82.13.020	Notice and reporting requirements.
82.13.030	Penalties.
82.13.040	Administration of chapter.
82.13.050	Liability, administration, and enforcement under chapters 82.08 and 82.12 RCW.

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

(1) "Affiliated person" means a person that, with respect to another person:

(a) Has an ownership interest of more than five percent, whether direct or indirect, in the other person; or

(b) Is related to the other person because a third person, or group of third persons who are affiliated persons with respect to each other, holds an ownership interest of more than five percent, whether direct or indirect, in the related persons.

(2) "Consumer" has the same meaning as provided in chapters 82.04, 82.08, and 82.12 RCW.

(3) "Marketplace facilitator" means a person that contracts with sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the seller's products through a physical or electronic marketplace operated by the person, and engages:

(a) Directly or indirectly, through one or more affiliated persons in any of the following:

(i) Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;

(ii) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together;

(iii) Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller; or

(iv) Software development or research and development activities related to any of the activities described in (b) of this subsection (3), if such activities are directly related to a physical or electronic marketplace operated by the person or an affiliated person; and

(b) In any of the following activities with respect to the seller's products:

(i) Payment processing services;

(ii) Fulfillment or storage services;

(iii) Listing products for sale;

(iv) Setting prices;

(v) Branding sales as those of the marketplace facilitator;

(vi) Order taking;

(vii) Advertising or promotion; or

(viii) Providing customer service or accepting or assisting with returns or exchanges.

(4) "Marketplace seller" means a seller that makes retail sales through any physical or electronic marketplaces operated by a marketplace facilitator or directly resulting from a referral by a referrer, regardless of whether the seller is

required to be registered with the department as provided in RCW 82.32.030.

(5) "Platform" means an electronic or physical medium, including a web site or catalog, operated by a referrer.

(6) "Product" has the same meaning as provided in RCW 82.32.023.

(7) "Purchaser" means any consumer who purchases or leases a product sourced to this state under RCW 82.32.730.

(8) "Referral" means the transfer by a referrer of a potential customer to a marketplace seller who advertises or lists products for sale on the referrer's platform.

(9)(a) "Referrer" means a person, other than a person engaging in the business of printing a newspaper or publishing a newspaper as defined in RCW 82.04.214, who contracts or otherwise agrees with a seller to list or advertise for sale one or more items in any medium, including a web site or catalog; receives a commission, fee, or other consideration from the seller for the listing or advertisement; transfers, via telephone, internet link, or other means, a purchaser to a seller or an affiliated person to complete the sale; and does not collect receipts from the purchasers for the transaction.

(b) "Referrer" does not include a person that:

(i) Provides internet advertising services; and

(ii) Does not ever provide either the marketplace seller's shipping terms or advertise whether a marketplace seller charges sales tax.

(10) "Remote seller" means any seller, other than a marketplace facilitator or referrer, who does not have a physical presence in this state and makes retail sales to purchasers.

(11) "Retail sale" and "sale" have the same meaning as provided in chapter 82.04 RCW.

(12) "Seller" has the same meaning as in RCW 82.08.010 and includes marketplace facilitators, whether making sales in their own right or on behalf of marketplace sellers, and referrers. [2017 3rd sp.s. c 28 § 204.]

Findings—Intent—2017 3rd sp.s. c 28 §§ 201-214: See note following RCW 82.08.053.

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

82.13.020 Notice and reporting requirements. (1) Except as otherwise provided in subsection (5) of this section, a seller that does not collect the tax imposed under chapter 82.08 or 82.12 RCW on a taxable retail sale must comply with the applicable notice and reporting requirements of this section. For taxable retail sales made through a marketplace facilitator, or other agent, the marketplace facilitator, or other agent must comply with the notice and reporting requirements of this section, and the principal is not subject to the notice and reporting requirements of this section with respect to those sales. If the referrer makes an election to comply with the applicable notice and reporting requirements of this section, marketplace sellers to whom a referral is made by the referrer remain subject to the applicable notice and reporting requirements under this section for their sales unless the marketplace sellers collect the tax imposed under chapter 82.08 or 82.12 RCW on taxable retail sales sourced to this state under RCW 82.32.730.

(2)(a) A seller, other than a referrer acting in its capacity as a referrer, subject to the notice and reporting requirements of this section must:

(i) Post a conspicuous notice on its marketplace, platform, web site, catalog, or any other similar medium that informs Washington purchasers that:

(A) Sales or use tax is due on certain purchases;

(B) Washington requires the purchaser to file a use tax return; and

(C) The notice is provided under the requirements of this section; and

(ii) Provide a notice to each consumer at the time of each retail sale. The notice under this subsection (2)(a)(ii) must include the following information:

(A) A statement that neither sales nor use tax is being collected or remitted upon the sale;

(B) A statement that the consumer may be required to remit sales or use tax directly to the department; and

(C) Instructions for obtaining additional information from the department regarding whether and how to remit the sales or use tax to the department.

(b) The notice under (a)(ii) of this subsection (2) must be prominently displayed on all invoices and order forms including, where applicable, electronic and catalog invoices and order forms, and upon each sales receipt or similar document provided to the purchaser, whether in paper or electronic form. No indication may be made that sales or use tax is not imposed upon the transaction, unless:

(i) Such indication is followed immediately with the notice required by (a)(ii) of this subsection (2); or

(ii) The transaction with respect to which the indication is given is exempt from sales and use tax pursuant to law.

(3) A referrer subject to the notice and reporting requirements of this section must:

(a) Post a conspicuous notice on its platform that informs Washington purchasers:

(i) That sales or use tax is due on certain purchases;

(ii) That the seller may or may not collect and remit retail sales tax on a purchase;

(iii) That Washington requires the purchaser to file a use tax return if retail sales tax is not assessed at the time of a taxable sale by the seller;

(iv) That the notice is provided under the requirements of this section;

(v) Of the instructions for obtaining additional information from the department regarding whether and how to remit the sales or use tax to the department; and

(vi) That if the seller to whom the purchaser is referred does not collect retail sales tax on a subsequent purchase by the purchaser, the seller may be required to provide information to the purchaser and the department about the purchaser's potential sales or use tax liability.

(b) The notice under (a) of this subsection (3) must be prominently displayed on the platform and may include pop-up boxes or notification by other means that appear when the referrer transfers a purchaser to a marketplace seller or an affiliated person to complete the sale.

(4)(a) A seller, other than a referrer acting in its capacity as a referrer, subject to the notice and reporting requirements of subsection (2) of this section must, no later than February 28th of each year, provide a report to each consumer for

whom the seller was required to provide a notice under subsection (2)(a)(ii) of this section.

(b) The report under this subsection (4) must include:

(i) A statement that the seller did not collect sales or use tax on the consumer's transactions with the seller and that the consumer may be required to remit such tax directly to the department;

(ii) A list, by date, generally indicating the type of product purchased or leased during the immediately preceding calendar year by the consumer from the seller, sourced to this state under RCW 82.32.730, and the price of each product;

(iii) Instructions for obtaining additional information from the department regarding whether and how to remit the sales or use tax to the department;

(iv) A statement that the seller is required to submit a report to the department pursuant to subsection (6) of this section stating the total dollar amount of the consumer's purchases from the seller; and

(v) Any information as the department may reasonably require.

(c)(i) The report required under this subsection (4) must be sent to the consumer's billing address or, if unknown, the consumer's shipping address, by first-class mail, in an envelope marked prominently with words indicating important tax information is enclosed.

(ii) If no billing or shipping address is known, the report must be sent electronically to the consumer's last known email address with a subject heading indicating important tax information is enclosed.

(5)(a) A referrer subject to the notice requirements under subsection (3) of this section must, no later than February 28th of each year, provide notice to each marketplace seller to whom the referrer transferred a potential purchaser located in Washington during the previous calendar year.

(b) The notice under this subsection (5) must include:

(i) A statement that Washington imposes a sales or use tax on retail sales;

(ii) A statement that a seller, meeting the threshold in RCW 82.08.053(2), is required to either collect and remit retail sales or use tax on all taxable retail sales sourced to this state under RCW 82.32.730 or to comply with this section; and

(iii) Instructions for obtaining additional information from the department.

(c) By February 28th of each year, a referrer required to provide the notice under this subsection must provide the department with:

(i) A list of sellers who received the referrer's notice under this subsection. The information must be provided electronically in a form and manner required by the department.

(ii) An affidavit signed under penalty of perjury from an officer of the referrer affirming that the referrer made reasonable efforts to comply with the applicable sales and use tax notice and reporting requirements of this section.

(6)(a) A seller, other than a referrer acting in its capacity as a referrer, subject to the notice and reporting requirements of this section must, no later than February 28th of each year, file a report with the department.

(b) The report under this subsection (6) must include, with respect to each consumer to whom the seller is required

to provide a report under subsection (4) of this section by February 28th of the current calendar year:

(i) The consumer's name;

(ii) The billing address and, if different, the last known mailing address;

(iii) The shipping address for each product sold or leased to such consumer for delivery to a location in this state during the immediately preceding calendar year; and

(iv) The total dollar amount of all such purchases by such consumer.

(c) The report under this subsection (6) must also include an affidavit signed under penalty of perjury from an officer of the seller affirming that the seller made reasonable efforts to comply with the applicable sales and use tax notice and reporting requirements in this section.

(d) Except for the affidavit, the report under this subsection (6) must be filed electronically in a form and manner required by the department.

(7) A seller who is registered with the department to collect and remit retail sales and use tax, and who makes a reasonable effort to comply with the requirements of RCW 82.08.050 and 82.12.040, is not required to provide notice or file reports under this section.

(8) Every seller subject to this chapter must keep and preserve, for a period of five years, suitable records as may be necessary for the department to verify the seller's compliance with this chapter. All of the seller's books, records, and invoices must be open for examination at any reasonable time by the department. The department may require the attendance of any officer of the seller or any employee of the seller having knowledge pertinent to the department's investigation of the seller's compliance with this chapter, at a time and place fixed in a subpoena issued under RCW 82.32.117, and may take the person's testimony under oath.

(9) In exercising discretion in enforcing the provisions of this chapter, the department may take into consideration available resources, whether the anticipated benefits from any potential enforcement activities are likely to exceed the department's expected enforcement costs, and any other factors the department deems appropriate. [2017 3rd sp.s. c 28 § 205.]

Application—2017 3rd sp.s. c 28: "The tax collection, reporting, and payment obligations imposed by this act apply prospectively only." [2017 3rd sp.s. c 28 § 604.]

Effective dates—2017 3rd sp.s. c 28: "(1) Except as otherwise provided in this section, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 7, 2017].

(2) Part I of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect August 1, 2017.

(3) Section 213 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 23, 2017.

(4) Part III of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2017.

(5) Section 502 of this act takes effect January 1, 2018." [2017 3rd sp.s. c 28 § 605.]

Findings—Intent—2017 3rd sp.s. c 28 §§ 201-214: See note following RCW 82.08.053.

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

82.13.030 Penalties. (1)(a) The department must assess a penalty against any seller, other than a referrer acting in its capacity as a referrer, that fails to provide notice to consumers pursuant to RCW 82.13.020(2)(a), in addition to any other applicable penalties, in the amount of twenty thousand dollars. The department may assess the penalty under this subsection only once per calendar year, regardless of the number of notices a seller fails to provide pursuant to RCW 82.13.020(2)(a) during the calendar year. The department may apply this penalty at any time during a calendar year and no more frequently than annually.

(b) The department must assess a penalty against any referrer that fails to provide notice to consumers pursuant to RCW 82.13.020(3), in addition to any other applicable penalties, in the amount of twenty thousand dollars. The department may apply this penalty at any time during a calendar year and no more frequently than annually.

(2)(a) The department must assess a penalty against a seller who fails to provide a report as required by RCW 82.13.020 (4) or (5), in addition to any other applicable penalties, as follows:

(i) Five thousand dollars if the gross receipts of the seller and through the seller's marketplace from retail sales sourced to this state under RCW 82.32.730 are less than fifty thousand dollars for the calendar year for which the report was required to be made;

(ii) Ten thousand dollars if the gross receipts of the seller and through the seller's marketplace from retail sales sourced to this state under RCW 82.32.730 are at least fifty thousand dollars but less than one hundred fifty thousand dollars;

(iii) Fifty thousand dollars if the gross receipts of the seller and through the seller's marketplace from retail sales sourced to this state under RCW 82.32.730 are at least one hundred fifty thousand dollars but less than three hundred thousand dollars; or

(iv) If the gross receipts of the seller and through the seller's marketplace from retail sales sourced to this state under RCW 82.32.730 are three hundred thousand dollars or greater, one hundred thousand dollars plus twenty thousand dollars for every fifty thousand dollars in gross receipts over three hundred thousand dollars.

(b) The department must assess a penalty against a referrer who fails to provide the notice and list required by RCW 82.13.020(5), in addition to any other applicable penalties. The department may assess the penalty under this subsection only once per calendar year, regardless of the number of failures to comply with RCW 82.13.020(5) during the calendar year. The amount of the penalties assessed are as follows:

(i) Fifty thousand dollars if the gross income of the referrer is at least two hundred sixty-seven thousand dollars but less than three hundred thousand dollars of the gross income of the business received from the referrer's referral services apportioned to Washington under RCW 82.04.460, whether or not subject to tax under chapter 82.04 RCW, for the calendar year for which the notice and list was required to be made; or

(ii) If the gross income of the referrer is three hundred thousand dollars or greater, one hundred thousand dollars plus twenty thousand dollars for every fifty thousand dollars in gross income over three hundred thousand dollars of the gross income of the business received from the referrer's

referral services apportioned to Washington under RCW 82.04.460, whether or not subject to tax under chapter 82.04 RCW, for the calendar year for which the notice and list was required to be made.

(3) The department must assess a penalty against any seller, other than a referrer acting in its capacity as a referrer, who fails to provide a report to the department as required by RCW 82.13.020(6), in addition to any other applicable penalties, in the amount of twenty-five dollars multiplied by the number of consumers that should have been included on such report, but not less than twenty thousand dollars for any calendar year.

(4) The penalties imposed under subsections (1) through (3) of this section are cumulative.

(5) No penalty may be imposed by the department under subsections (1) through (4) of this section more than four years after the close of the calendar year in which the notice or report giving rise to the penalty was required to have been provided. This subsection (5) does not apply to penalties reassessed under subsection (9) of this section.

(6) When assessing a penalty under this section, the department may use any reasonable estimation technique where necessary or appropriate to determine the amount of any penalty.

(7) Interest accrues on the amount of the total penalty that has been assessed under this section until the total penalty amount is paid in full. Interest imposed under this section must be computed and assessed as provided in RCW 82.32.050 as if the penalty imposed under this subsection was a tax liability.

(8) The department must notify a seller by mail, or electronically as provided in RCW 82.32.135, of the amount of any penalty and interest due under this section. Amounts due under this section must be paid in full within thirty days from the date of the notice, or within such further time as the department may provide in its sole discretion.

(9)(a)(i) A seller is entitled to a conditional waiver of penalties and interest imposed under this section if the seller enters into a written agreement with the department electing to collect retail sales or use tax or fully comply with all applicable notice and reporting requirements of this chapter, beginning by a date acceptable to the department. An election to collect retail sales or use tax must be for a period of at least twelve consecutive months and is subject to the provisions of RCW 82.08.053(1)(d).

(ii) The department may grant a waiver of penalties and interest under this subsection (9)(a) for penalties and interest assessed for a seller's failure to comply with the notice and reporting requirements for one or more violations.

(iii) The department may not grant more than one request by a seller for a waiver of penalties and interest under this subsection (9)(a).

(iv) The department must reassess penalties and interest conditionally waived under this subsection (9)(a) if the department finds that, after the date that the seller agreed to fully comply with the applicable notice and reporting requirements of this chapter, the seller failed to:

(A) Provide notice under RCW 82.13.020(2)(a)(ii) to at least ninety percent of the consumers entitled to such notice in any given calendar year or portion of the initial calendar year in which the agreement required under this subsection

was in effect if the agreement was in effect for less than the entire calendar year;

(B) Timely provide the reports required under RCW 82.13.020(4) to all consumers who received notice from the seller under RCW 82.13.020(2)(a)(ii) during any calendar year, unless the department finds that any such failure was due to circumstances beyond the seller's control;

(C) Timely provide the reports required under RCW 82.13.020(6) during any calendar year, unless the department finds that any such failure was due to circumstances beyond the seller's control; or

(D) With respect to referrers, timely provide the notice required under RCW 82.13.020(3) and the notice and list required under RCW 82.13.020(5) during any calendar year, unless the department finds that any such failure was due to circumstances beyond the referrer's control.

(v) The department must reassess penalties and interest conditionally waived under this subsection (9)(a) if the department finds that, after the date that the seller elected to collect retail sales or use tax, the seller failed to register with the department and make a reasonable effort to comply with the requirements of RCW 82.08.050 and 82.12.040.

(vi) The department may not reassess penalties and interest conditionally waived under this subsection (9)(a) more than four calendar years following the calendar year in which the department granted the conditional waiver under this subsection (9)(a).

(vii) The provisions of subsection (8) of this section apply to penalties and interest reassessed under this subsection (9)(a). The department may add additional interest on penalties reassessed under this subsection (9)(a) only if the total amount of penalties reassessed under this subsection (9)(a) is not paid in full by the date due.

(b) The department must waive penalties and interest imposed under this section if the department determines that the failure of the seller to fully comply with the notice or reporting requirements was due to circumstances beyond the seller's control.

(c) The department may waive penalties imposed under this section if the department determines that the failure of the seller to fully comply with the notice or reporting requirements was due to reasonable cause and not willful neglect. In determining whether reasonable cause exists, the department will consider, among other relevant factors, whether: (i) The failure was due to willful or reckless disregard of the seller's notice or reporting obligations; (ii) the seller made subsequent efforts to avoid future noncompliance; and (iii) the magnitude of the noncompliance was significant in terms of dollars and time when accounting for the seller's size and volume of transactions. On appeal, a court or the board of tax appeals must give great deference to the department's penalty waiver decision under this subsection (9)(c) and affirm the department's decision, unless the taxpayer can show by clear, cogent, and convincing evidence that the department's decision lacked any reasonable basis.

(d) A request for a waiver of penalties and interest under this subsection must be received by the department in writing and before the penalties and interest for which a waiver is requested are due pursuant to subsection (8) of this section. The department must deny any request for a waiver of penal-

ties and interest that does not fully comply with the provisions of this subsection (9)(d). [2017 3rd sp.s. c 28 § 206.]

Findings—Intent—2017 3rd sp.s. c 28 §§ 201-214: See note following RCW 82.08.053.

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

82.13.040 Administration of chapter. Chapter 82.32 RCW applies to the administration of this chapter. [2017 3rd sp.s. c 28 § 207.]

Findings—Intent—2017 3rd sp.s. c 28 §§ 201-214: See note following RCW 82.08.053.

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

82.13.050 Liability, administration, and enforcement under chapters 82.08 and 82.12 RCW. Nothing in this chapter relieves sellers or consumers who are subject to chapter 82.08 or 82.12 RCW from any responsibilities imposed under those chapters. Nor does anything in this chapter prevent the department from administering and enforcing the taxes imposed under chapter 82.08 or 82.12 RCW with respect to any seller or consumer who is subject to such taxes. [2017 3rd sp.s. c 28 § 208.]

Findings—Intent—2017 3rd sp.s. c 28 §§ 201-214: See note following RCW 82.08.053.

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

Chapter 82.14 RCW

LOCAL RETAIL SALES AND USE TAXES

Sections

82.14.046	Repealed.
82.14.052	Distributions—Local sales and use tax account—Ordinance or resolution imposing tax in excess of limits. (<i>Effective until October 1, 2019.</i>)
82.14.052	Repealed. (<i>Effective October 1, 2019.</i>)
82.14.390	Sales and use tax for regional centers.
82.14.457	Sales and use tax for digital goods—Apportionment.
82.14.485	Sales and use taxes for regional centers.
82.14.495	Streamlined sales and use tax mitigation account—Creation. (<i>Effective until October 1, 2019.</i>)
82.14.495	Repealed. (<i>Effective October 1, 2019.</i>)
82.14.500	Streamlined sales and use tax mitigation account—Funding—Determination of losses. (<i>Effective until October 1, 2019.</i>)
82.14.500	Repealed. (<i>Effective October 1, 2019.</i>)
82.14.820	Warehouse and grain elevators and distribution centers—Exemption does not apply.

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

82.14.052 Repealed. (*Effective October 1, 2019.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.14.052 Distributions—Local sales and use tax account—Ordinance or resolution imposing tax in excess of limits. (*Effective until October 1, 2019.*) (1)(a) Monthly,

the state treasurer must distribute from the local sales and use tax account to the counties, cities, transportation authorities, public facilities districts, and transportation benefit districts the amount of tax collected on behalf of each taxing authority, less:

- (i) The deduction provided for in RCW 82.14.050; and
 - (ii) The amount of any refunds of local sales and use taxes exempted under RCW 82.08.962, 82.12.962, 82.08.02565, 82.12.02565, 82.08.025661, or 82.12.025661, which must be made without appropriation; and
 - (iii) The deduction required under RCW 82.14.500.
- (b) The state treasurer must make the distribution under this section without appropriation.

(2) In the event that any ordinance or resolution imposes a sales and use tax at a rate in excess of the applicable limits contained herein, such ordinance or resolution may not be considered void in toto, but only with respect to that portion of the rate that is in excess of the applicable limits contained herein. [2017 3rd sp.s. c 28 § 403.]

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

82.14.390 Sales and use tax for regional centers. (1) Except as provided in subsection (7) of this section, the governing body of a public facilities district (a) created before July 31, 2002, under chapter 35.57 or 36.100 RCW that commenced construction of at least one new regional center, or improvement or rehabilitation of an existing new regional center, before January 1, 2004; (b) created before July 1, 2006, under chapter 35.57 RCW in a county or counties in which there are no other public facilities districts on June 7, 2006, and in which the total population in the public facilities district is greater than ninety thousand that commenced construction of a new regional center before February 1, 2007; (c) created under the authority of RCW 35.57.010(1)(d); or (d) created before September 1, 2007, under chapter 35.57 or 36.100 RCW, in a county or counties in which there are no other public facilities districts on July 22, 2007, and in which the total population in the public facilities district is greater than seventy thousand, that commenced construction of a new regional center before January 1, 2009, or before January 1, 2011, in the case of a new regional center in a county designated by the president as a disaster area in December 2007, may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district. The rate of tax may not exceed 0.033 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax.

(2)(a) The governing body of a public facilities district imposing a sales and use tax under the authority of this section may increase the rate of tax up to 0.037 percent if, within three fiscal years of July 1, 2008, the department determines that, as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020, a public facilities district's sales and use tax collections for fiscal years after July 1, 2008, have been reduced by a net loss of at least 0.50 per-

cent from the fiscal year before July 1, 2008. The fiscal year in which this section becomes effective is the first fiscal year after July 1, 2008.

(b) The department must determine sales and use tax collection net losses under this section as provided in *RCW 82.14.500 (2) and (3). The department must provide written notice of its determinations to public facilities districts. Determinations by the department of a public facilities district's sales and use tax collection net losses as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020 are final and not appealable.

(c) A public facilities district may increase its rate of tax after it has received written notice from the department as provided in (b) of this subsection. The increase in the rate of tax must be made in 0.001 percent increments and must be the least amount necessary to mitigate the net loss in sales and use tax collections as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020. The increase in the rate of tax is subject to RCW 82.14.055.

(3) The tax imposed under subsection (1) of this section must be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue must perform the collection of such taxes on behalf of the county at no cost to the public facilities district. During the 2011-2013 fiscal biennium, distributions by the state to a public facilities district based on the additional rate authorized in subsection (2) of this section must be reduced by 3.4 percent.

(4) No tax may be collected under this section before August 1, 2000. The tax imposed in this section expires when bonds issued to finance or refinance the construction, improvement, rehabilitation, or expansion of the regional center and related parking facilities are retired, but not more than forty years after the tax is first collected.

(5) Moneys collected under this section may only be used for the purposes set forth in RCW 35.57.020 and must be matched with an amount from other public or private sources equal to thirty-three percent of the amount collected under this section; however, amounts generated from non-voter approved taxes authorized under chapter 35.57 RCW or nonvoter approved taxes authorized under chapter 36.100 RCW do not constitute a public or private source. For the purpose of this section, public or private sources includes, but is not limited to cash or in-kind contributions used in all phases of the development or improvement of the regional center, land that is donated and used for the siting of the regional center, cash or in-kind contributions from public or private foundations, or amounts attributed to private sector partners as part of a public and private partnership agreement negotiated by the public facilities district.

(6) The combined total tax levied under this section may not be greater than 0.037 percent. If both a public facilities district created under chapter 35.57 RCW and a public facilities district created under chapter 36.100 RCW impose a tax under this section, the tax imposed by a public facilities district created under chapter 35.57 RCW must be credited against the tax imposed by a public facilities district created under chapter 36.100 RCW.

(7) A public facilities district created under chapter 36.100 RCW is not eligible to impose the tax under this sec-

tion if the legislative authority of the county where the public facilities district is located has imposed a sales and use tax under RCW 82.14.0485 or 82.14.0494. [2017 c 164 § 1; 2011 1st sp.s. c 50 § 973; 2008 c 48 § 1. Prior: 2007 c 486 § 2; 2007 c 6 § 904; 2006 c 298 § 1; 2002 c 363 § 4; 1999 c 165 § 13.]

***Reviser's note:** RCW 82.14.500 was repealed by 2017 3rd sp.s. c 28 § 404, effective October 1, 2019.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2008 c 48: "This act takes effect July 1, 2008." [2008 c 48 § 2.]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.14.457 Sales and use tax for digital goods—Apportionment. (1) A business or other organization that is entitled under RCW 82.12.02088 to apportion the amount of state use tax on the use of digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(c) is also entitled to apportion the amount of local use taxes imposed under the authority of this chapter and RCW 81.104.170 on the use of such products or services.

(2) To ensure that the tax base for state and local use taxes is identical, the measure of local use taxes apportioned under this section must be the same as the measure of state use tax apportioned under RCW 82.12.02088.

(3) This section does not affect the sourcing of local use taxes. [2017 c 323 § 527; 2009 c 535 § 703.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Intent—Construction—2009 c 535: See notes following RCW 82.04.192.

82.14.485 Sales and use taxes for regional centers.

(1) In a county with a population under three hundred thousand, the governing body of a public facilities district, which is created before August 1, 2001, under chapter 35.57 RCW or before January 1, 2000, under chapter 36.100 RCW, in which the total population in the public facilities district is greater than ninety thousand and less than one hundred thousand that commences improvement or rehabilitation of an existing regional center, to be used for community events, and artistic, musical, theatrical, or other cultural exhibitions, presentations, or performances and having two thousand or fewer permanent seats, before January 1, 2009, may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district. The rate of tax for a public facilities district created prior to August 1, 2001, under chapter 35.57 RCW, may not exceed 0.025 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax. The rate of tax, for a public facilities district created prior to January 1, 2000, under chapter 36.100 RCW, may not exceed 0.020 percent of the selling price in the case of a sales tax or the value of the article used in the case of a use tax.

(2) The tax imposed under subsection (1) of this section must be deducted from the amount of tax otherwise required to be collected or paid over to the department under chapter 82.08 or 82.12 RCW. The department must perform the collection of such taxes on behalf of the county at no cost to the public facilities district.

(3) The tax imposed in this section expires when bonds issued to finance or refinance the construction, improvement, rehabilitation, or expansion of the regional center and related parking facilities are retired, but not more than forty years after the tax is first collected.

(4) Moneys collected under this section may only be used for the purposes set forth in RCW 35.57.020 and must be matched with an amount from other public or private sources equal to thirty-three percent of the amount collected under this section, provided that amounts generated from nonvoter-approved taxes authorized under chapter 35.57 RCW may not constitute a public or private source. For the purpose of this section, public or private sources include, but are not limited to cash or in-kind contributions used in all phases of the development or improvement of the regional center, land that is donated and used for the siting of the regional center, cash or in-kind contributions from public or private foundations, or amounts attributed to private sector partners as part of a public and private partnership agreement negotiated by the public facilities district. [2017 c 164 § 2; 2007 c 486 § 3.]

82.14.495 Repealed. (Effective October 1, 2019.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.14.495 Streamlined sales and use tax mitigation account—Creation. (Effective until October 1, 2019.) (1) The streamlined sales and use tax mitigation account is created in the state treasury. Through July 1, 2019, the state treasurer must transfer into the account from the general fund amounts as directed in RCW 82.14.500. Expenditures from the account may be used only for the purpose of mitigating the negative fiscal impacts to local taxing jurisdictions as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020.

(2) Beginning July 1, 2008, through September 30, 2019, the state treasurer, as directed by the department, must distribute the funds in the streamlined sales and use tax mitigation account to local taxing jurisdictions in accordance with RCW 82.14.500.

(3) The definitions in this subsection apply throughout this section and RCW 82.14.390 and 82.14.500 unless the context clearly requires otherwise.

(a) "Agreement" means the same as in RCW 82.32.020.

(b) "Local taxing jurisdiction" means through June 30, 2017, counties, cities, transportation authorities under RCW 82.14.045, public facilities districts under chapters 36.100 and 35.57 RCW, public transportation benefit areas under RCW 82.14.440, and regional transit authorities under chapter 81.112 RCW, that impose a sales and use tax. Beginning July 1, 2017, "local taxing jurisdiction" means cities, counties, and public facilities districts under chapters 36.100 and 35.57 RCW.

(c) "Loss" or "losses" means the local sales and use tax revenue reduction to a local taxing jurisdiction resulting from the sourcing provisions in RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020.

(d) "Marketplace facilitator/remote seller revenue" means the local sales and use tax revenue gain, including taxes voluntarily remitted and taxes collected from consumers, to each local taxing jurisdiction from part II of chapter 28, Laws of 2017 3rd sp. sess. as estimated by the department in RCW 82.14.500(6).

(e) "Net loss" or "net losses" means a loss offset by any voluntary compliance revenue and marketplace facilitator/remote seller revenue.

(f) "Voluntary compliance revenue" means the local sales tax revenue gain to each local taxing jurisdiction reported to the department from persons registering through the central registration system authorized under the agreement.

(g) "Working day" has the same meaning as in RCW 82.45.180. [2017 3rd sp.s. c 28 § 401; 2010 1st sp.s. c 37 § 952; 2009 c 4 § 907; 2007 c 6 § 902.]

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2009 c 4: See note following RCW 43.79.460.

Findings—Intent—2007 c 6: "(1) The legislature finds and declares that:

(a) Washington state's participation as a member state in the streamlined sales and use tax agreement benefits the state, all its local taxing jurisdictions, and its retailing industry, by increasing state and local revenues, improving the state's business climate, and standardizing and simplifying the state's tax structure;

(b) Participation in the streamlined sales and use tax agreement is a matter of statewide concern and is in the best interests of the state, the general public, and all local jurisdictions that impose a sales and use tax under applicable law;

(c) Participation in the streamlined sales and use tax agreement requires the adoption of the agreement's sourcing provisions, which change the location in which a retail sale of delivered tangible personal property occurs for local sales tax purposes from the point of origin to the point of destination;

(d) Changes in the local sales tax sourcing law provisions to conform with the streamlined sales and use tax agreement will cause sales tax revenues to shift among local taxing jurisdictions. The legislature finds that there will be an unintended adverse impact on local taxing jurisdictions that receive less revenues because local tax revenues will be redistributed, with revenue increases for some jurisdictions and reductions for others, due solely to changes in local sales tax sourcing rules to be implemented under RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020, even though no local taxing jurisdiction has changed its tax rate or tax base;

(e) The purpose of providing mitigation to such jurisdictions is to mitigate the unintended revenue redistribution effect of the sourcing law changes among local governments;

(f) It is in the best interest of the state and all its subdivisions to mitigate the adverse effects of amending the local sales tax sourcing provisions to be in conformance with the streamlined sales and use tax agreement;

(g) Additionally, changes in sourcing laws may have negative implications for industry sectors such as warehousing and manufacturing, as well as jurisdictions that house a concentration of these industries and have made zoning decisions, infrastructure investments, bonding decisions, and land use policy decisions based on point of origin sales tax rules in place before July 1, 2008, and the mitigation provided by RCW 82.14.495, 82.14.500, 82.14.390, and *44.28.815 is intended to help offset those negative implications; and

(h) It is important that the state of Washington maintain its supply of industrial land for present and future economic development activities, and local governments taking advantage of the mitigation provided by RCW

82.14.495, 82.14.500, 82.14.390, and *44.28.815 should strive to maintain the supply of industrial land available for economic development efforts.

(2) The legislature intends that the streamlined sales and use tax mitigation account established in RCW 82.14.495 have the sole objective of mitigating, for negatively affected local taxing jurisdictions, the net local sales tax revenue reductions incurred as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020." [2007 c 6 § 901.]

*Reviser's note: RCW 44.28.815 expired July 1, 2011.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

82.14.500 Repealed. (Effective October 1, 2019.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.14.500 Streamlined sales and use tax mitigation account—Funding—Determination of losses. (Effective until October 1, 2019.) (1) In order to mitigate local sales tax revenue net losses as a result of the sourcing provisions of the streamlined sales and use tax agreement under this title, the state treasurer, on July 1, 2011, and each July 1st thereafter through July 1, 2019, must transfer into the streamlined sales and use tax mitigation account from the general fund the sum required to mitigate actual net losses as determined under this section.

(2) Beginning July 1, 2008, and continuing until the department determines annual losses under subsection (3) of this section, the department must determine the amount of local sales tax net loss each local taxing jurisdiction experiences as a result of the sourcing provisions of the streamlined sales and use tax agreement under this title each calendar quarter. The department must determine losses by analyzing and comparing data from tax return information and tax collections for each local taxing jurisdiction before and after July 1, 2008, on a calendar quarter basis. The department's analysis may be revised and supplemented in consultation with the oversight committee as provided in subsection (4) of this section. To determine net losses, the department must reduce losses by the amount of voluntary compliance revenue for the calendar quarter analyzed. Beginning December 31, 2008, distributions must be made quarterly from the streamlined sales and use tax mitigation account by the state treasurer, as directed by the department, to each local taxing jurisdiction, other than public facilities districts for losses in respect to taxes imposed under the authority of RCW 82.14.390, in an amount representing its net losses for the previous calendar quarter. Distributions must be made on the last working day of each calendar quarter and must cease when distributions under subsection (3) of this section begin.

(3)(a) By December 31, 2009, or such later date the department in consultation with the oversight committee determines that sufficient data is available, the department must determine each local taxing jurisdiction's annual loss. The department must determine annual losses by comparing at least twelve months of data from tax return information and tax collections for each local taxing jurisdiction before and after July 1, 2008. The department is not required to determine annual losses on a recurring basis, but may make any adjustments to annual losses as it deems proper as a result of the annual reviews provided in (b) of this subsection. Beginning the calendar quarter in which the department determines annual losses, and each calendar quarter thereafter

ter through September 30, 2019, distributions must be made from the streamlined sales and use tax mitigation account by the state treasurer on the last working day of the calendar quarter, as directed by the department, to each local taxing jurisdiction, other than public facilities districts for losses in respect to taxes imposed under the authority of RCW 82.14.390, in an amount representing one-fourth of the jurisdiction's annual loss reduced by voluntary compliance revenue reported during the previous calendar quarter and marketplace facilitator/remote seller revenue reported during the previous calendar quarter.

(b) The department's analysis of annual losses must be reviewed by December 1st of each year and may be revised and supplemented in consultation with the oversight committee as provided in subsection (4) of this section.

(4) The department must convene an oversight committee to assist in the determination of losses. The committee includes one representative of one city whose revenues are increased, one representative of one city whose revenues are reduced, one representative of one county whose revenues are increased, one representative of one county whose revenues are decreased, one representative of one transportation authority under RCW 82.14.045 whose revenues are increased, and one representative of one transportation authority under RCW 82.14.045 whose revenues are reduced, as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020. Beginning July 1, 2008, the oversight committee must meet quarterly with the department to review and provide additional input and direction on the department's analyses of losses. Local taxing jurisdictions may also present to the oversight committee additional information to improve the department's analyses of the jurisdiction's loss. Beginning January 1, 2010, the oversight committee must meet at least annually with the department by December 1st.

(5) The rule-making provisions of chapter 34.05 RCW do not apply to this section.

(6)(a) As a result of part II of chapter 28, Laws of 2017 3rd sp. sess., local sales and use tax revenue is anticipated to increase due to additional tax remittance by marketplace facilitators, remote sellers, and consumers. This additional revenue will further mitigate the losses that resulted from the sourcing provisions of the streamlined sales and use tax agreement under this title and should be reflected in mitigation payments to negatively impacted local jurisdictions.

(b) Beginning January 1, 2018, and continuing through September 30, 2019, the department must determine the increased sales and use tax revenue each local taxing jurisdiction experiences from marketplace facilitator/remote seller revenue as a result of RCW 82.08.053, 82.08.0531, 82.32.047, and 82.32.763, chapter 82.13 RCW, and sections 201, 211, and 213, chapter 28, Laws of 2017 3rd sp. sess. each calendar quarter. The department must convene the mitigation advisory committee before January 1, 2018, to receive input on the determination of marketplace facilitator/remote seller revenue. Beginning with distributions made after March 31, 2018, distributions from the streamlined sales and use tax mitigation account by the state treasurer, as directed by the department, to each local taxing jurisdiction, must be reduced by the amount of its marketplace facilitator/remote seller revenue reported during the previous calen-

dar quarter. No later than December 1, 2019, the department will determine the total marketplace facilitator/remote seller revenue for each local taxing jurisdiction for reporting periods beginning January 1, 2018, through reporting periods ending June 30, 2019. If the total distribution made from the streamlined sales and use tax mitigation account to a local taxing jurisdiction was not fully reduced by its total amount of marketplace facilitator/remote seller revenue for reporting periods beginning January 1, 2018, through reporting periods ending June 30, 2019, the department must reduce the local taxing jurisdiction's distribution of local sales and use tax under RCW 82.14.060 by the excess amount received. [2017 3rd sp.s. c 28 § 402; 2011 1st sp.s. c 50 § 974; 2007 c 6 § 903.]

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

82.14.820 Warehouse and grain elevators and distribution centers—Exemption does not apply. The exemptions in RCW 82.08.820, 82.12.820, 82.08.0207, and 82.12.0207 are for the state portion of the sales and use tax and do not extend to the tax imposed in this chapter. [2017 c 176 § 4; 1997 c 450 § 4.]

Findings—Intent—Application—2017 c 176: See notes following RCW 82.08.0207.

Findings—Intent—Report—Effective date—1997 c 450: See notes following RCW 82.08.820.

Chapter 82.16 RCW PUBLIC UTILITY TAX

Sections

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82.16.315	Exemptions—Sales of electricity or gas to silicon smelters. (<i>Effective January 1, 2018; contingent expiration date.</i>)

82.16.020 Public utility tax imposed—Additional tax imposed—Deposit of moneys. (1) There is levied and collected from every person a tax for the act or privilege of engaging within this state in any one or more of the busi-

nesses herein mentioned. The tax is equal to the gross income of the business, multiplied by the rate set out after the business, as follows:

(a) Express, sewerage collection, and telegraph businesses: Three and six-tenths percent;

(b) Light and power business: Three and sixty-two one-hundredths percent;

(c) Gas distribution business: Three and six-tenths percent;

(d) Urban transportation business: Six-tenths of one percent;

(e) Vessels under sixty-five feet in length, except tug-boats, operating upon the waters within the state: Six-tenths of one percent;

(f) Motor transportation, railroad, railroad car, and tug-boat businesses, and all public service businesses other than ones mentioned above: One and eight-tenths of one percent;

(g) Water distribution business: Four and seven-tenths percent;

(h) Log transportation business: One and twenty-eight one-hundredths percent. The reduced rate established in this subsection (1)(h) is not subject to the ten-year expiration provision in RCW 82.32.805(1)(a).

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section.

(3) Twenty percent of the moneys collected under subsection (1) of this section on water distribution businesses and sixty percent of the moneys collected under subsection (1) of this section on sewerage collection businesses must be deposited in the education legacy trust account created in RCW 83.100.230 from July 1, 2013, through June 30, 2023, and thereafter in the public works assistance account created in RCW 43.155.050. [2017 3rd sp.s. c 10 § 14; 2015 3rd sp.s. c 6 § 703; 2013 2nd sp.s. c 9 § 7; 2011 1st sp.s. c 48 § 7033; 2011 1st sp.s. c 48 § 7032; (2009 c 469 § 702 expired June 30, 2013); 1996 c 150 § 2; 1989 c 302 § 204; 1986 c 282 § 14; 1985 c 471 § 10; 1983 2nd ex.s. c 3 § 13; 1982 2nd ex.s. c 5 § 1; 1982 1st ex.s. c 35 § 5; 1971 ex.s. c 299 § 12; 1967 ex.s. c 149 § 24; 1965 ex.s. c 173 § 21; 1961 c 293 § 13; 1961 c 15 § 82.16.020. Prior: 1959 ex.s. c 3 § 16; 1939 c 225 § 19; 1935 c 180 § 36; RRS § 8370-36.]

Effective date—Tax preference performance statement—2015 3rd sp.s. c 6 §§ 702 and 703: See notes following RCW 82.16.010.

Intent—Effective dates—2013 2nd sp.s. c 9: See notes following RCW 28A.150.220.

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2009 c 469: See note following RCW 82.08.962.

Expiration date—2009 c 469 §§ 701 and 702: See note following RCW 82.16.010.

Finding, purpose—1989 c 302: See note following RCW 82.04.120.

Additional notes found at www.leg.wa.gov

82.16.0421 Exemptions—Sales to electrolytic processing businesses. (Effective January 1, 2018, until June 30, 2019.) (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Chlor-alkali electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a chlor-alkali electrolytic process to split the electrochemical bonds of sodium chloride and water to make chlorine and sodium hydroxide. A "chlor-alkali electrolytic processing business" does not include direct service industrial customers or their subsidiaries that contract for the purchase of power from the Bonneville power administration as of June 10, 2004.

(b) "Sodium chlorate electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a sodium chlorate electrolytic process to split the electrochemical bonds of sodium chloride and water to make sodium chlorate and hydrogen. A "sodium chlorate electrolytic processing business" does not include direct service industrial customers or their subsidiaries that contract for the purchase of power from the Bonneville power administration as of June 10, 2004.

(2) Effective July 1, 2004, the tax levied under this chapter does not apply to sales of electricity made by a light and power business to a chlor-alkali electrolytic processing business or a sodium chlorate electrolytic processing business for the electrolytic process if the contract for sale of electricity to the business contains the following terms:

(a) The electricity to be used in the electrolytic process is separately metered from the electricity used for general operations of the business;

(b) The price charged for the electricity used in the electrolytic process will be reduced by an amount equal to the tax exemption available to the light and power business under this section; and

(c) Disallowance of all or part of the exemption under this section is a breach of contract and the damages to be paid by the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business are the amount of the tax exemption disallowed.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the electrolytic process.

(4) In order to claim an exemption under this section, the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business must provide the light and power business with an exemption certificate in a form and manner prescribed by the department.

(5) A person receiving the benefit of the exemption provided in this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(6)(a) This section does not apply to sales of electricity made after December 31, 2018.

(b) This section expires June 30, 2019. [2017 c 135 § 34; 2010 c 114 § 133; 2009 c 434 § 1; 2004 c 240 § 1.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

82.16.0496 Credit—Clean alternative fuel commercial vehicles. (Effective January 1, 2018, until January 1, 2022.) (1)(a) A person who is taxable under this chapter is allowed a credit against the tax imposed in this chapter

according to the gross vehicle weight rating of the vehicle and the incremental cost of the vehicle purchased above the purchase price of a comparable conventionally fueled vehicle. The credit is limited, as set forth in the table below, to the

lesser of the incremental cost amount or the maximum credit amount per vehicle purchased, and subject to a maximum annual credit amount per vehicle class.

Gross Vehicle Weight	Incremental Cost Amount	Maximum Credit Amount Per Vehicle	Maximum Annual Credit Per Vehicle Class
Up to 14,000 pounds	50% of incremental cost	\$25,000	\$2,000,000
14,001 to 26,500 pounds	50% of incremental cost	\$50,000	\$2,000,000
Above 26,500 pounds	50% of incremental cost	\$100,000	\$2,000,000

(b) On September 1st of each year any unused credits from any weight class identified in the table in (a) of this subsection must be made available to applicants applying for credits under any other weight class listed.

(c) The credit provided in this subsection (1) is available for the lease of a vehicle. The credit amount for a leased vehicle is equal to the credit in this subsection (1) multiplied by the lease reduction factor. The person claiming the credit for a leased vehicle must be the lessee as identified in the lease contract.

(2) A person who is taxable under this chapter is allowed, subject to the maximum annual credit per vehicle class in subsection (1)(a) of this section, a credit against the tax imposed in this chapter for the lesser of twenty-five thousand dollars or thirty percent of the costs of converting a commercial vehicle to be principally powered by a clean alternative fuel with a United States environmental protection agency certified conversion.

(3) The total credits under this section may not exceed two hundred fifty thousand dollars or twenty-five vehicles per person per calendar year.

(4) A person may not receive credit under this section for amounts claimed as credits under chapter 82.04 RCW.

(5) Credits are available on a first-in-time basis. The department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed under this section, and RCW 82.04.4496, during any calendar year to exceed six million dollars. The department must provide notification on its web site monthly on the amount of credits that have been applied for, the amount issued, and the amount remaining before the statewide annual limit is reached. In addition, the department must provide written notice to any person who has applied to claim tax credits in excess of the limitation in this subsection.

(6) For the purposes of the limits provided in this section, a credit must be counted against such limits for the calendar year in which the credit is earned.

(7) To claim a credit under this section a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. No refunds may be granted for credits under this section.

(8) To claim a credit under this section, the person applying must:

(a) Complete an application for the credit which must include:

(i) The name, business address, and tax identification number of the applicant;

(ii) A quote or unexecuted copy of the purchase requisition or order for the vehicle;

(iii) The type of alternative fuel to be used by the vehicle;

(iv) The incremental cost of the alternative fuel system;

(v) The anticipated delivery date of the vehicle;

(vi) The estimated annual fuel use of the vehicle in the anticipated duties;

(vii) The gross weight of each vehicle;

(viii) For leased vehicles, a copy of the lease contract that includes the gross capitalized cost, residual value, and name of the lessee; and

(ix) Any other information deemed necessary by the department to support administration or reporting of the program.

(b) Within fifteen days of notice of credit availability from the department, provide notice of intent to claim the credit including:

(i) A copy of the order for the vehicle, including the total cost for the vehicle;

(ii) The anticipated delivery date of the vehicle, which must be within one year of acceptance of the credit; and

(iii) Any other information deemed necessary by the department to support administration or reporting of the program.

(c) Provide final documentation within fifteen days of receipt of the vehicle, including:

(i) A copy of the final invoice for the vehicle;

(ii) A copy of the factory build sheet or equivalent documentation;

(iii) The vehicle identification number of each vehicle;

(iv) The incremental cost of the alternative fuel system;

(v) Attestations signed by both the seller and purchaser of the vehicle attesting that the incremental cost of the alternative fuel system includes only the costs necessary for the vehicle to run on alternative fuel and no other vehicle options, equipment, or costs; and

(vi) Any other information deemed necessary by the department to support administration or reporting of the program.

(9) A person applying for credit under subsection (8) of this section may apply for multiple vehicles on the same application, but the application must include the required information for each vehicle included in the application.

(10) To administer the credits, the department must, at a minimum:

(a) Provide notification on its web site monthly of the amount of credits that have been applied for, claimed, and the amount remaining before the statewide annual limit is reached;

(b) Within fifteen days of receipt of the application, notify persons applying of the availability of tax credits in the year in which the vehicles applied for are anticipated to be delivered;

(c) Within fifteen days of receipt of the notice of intent to claim the tax credit, notify the applicant of the approval, denial, or missing information in their notice; and

(d) Within fifteen days of receipt of final documentation, review the documentation and notify the person applying of the acceptance of their final documentation.

(11) If a person fails to supply the information as required in subsection (8) of this section, the department must deny the application.

(12)(a) Taxpayers are only eligible for a credit under this section based on:

(i) Sales or leases of new commercial vehicles and qualifying used commercial vehicles with propulsion units that are principally powered by a clean alternative fuel; or

(ii) Costs to modify a commercial vehicle, including sales of tangible personal property incorporated into the vehicle and labor or service expenses incurred in modifying the vehicle, to be principally powered by a clean alternative fuel.

(b) A credit is earned when the purchaser or the lessee takes receipt of the qualifying commercial vehicle or the conversion is complete.

(13) The definitions in RCW 82.04.4496 apply to this section.

(14) A credit earned during one calendar year may be carried over to be credited against taxes incurred in the subsequent calendar year, but may not be carried over a second year.

(15)(a) Beginning November 25, 2015, and on the 25th of February, May, August, and November of each year thereafter, the department must notify the state treasurer of the amount of credits taken under this section as reported on returns filed with the department during the preceding calendar quarter ending on the last day of December, March, June, and September, respectively.

(b) On the last day of March, June, September, and December of each year, the state treasurer, based upon information provided by the department, must transfer a sum equal to the dollar amount of the credit provided under this section from the multimodal transportation account to the general fund.

(16) Credits may be earned under this section from January 1, 2016, through January 1, 2021, except for credits for leased vehicles, which may be earned from July 1, 2016, through January 1, 2021.

(17) Credits earned under this section may not be used after January 1, 2022.

(18) This section expires January 1, 2022. [2017 c 116 § 2; 2016 c 29 § 2; 2015 3rd sp.s. c 44 § 412.]

Effective date—2017 c 116: See note following RCW 82.04.4496.

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Short title—Findings—Tax preference performance statement—2015 3rd sp.s. c 44 §§ 411 and 412: See note following RCW 82.04.4496.

82.16.120 Renewable energy system cost recovery—Application to light/power business—Certification—Limitations. (1)(a) Any individual, business, local govern-

mental entity, not in the light and power business or in the gas distribution business, or a participant in a community solar project may apply to the light and power business serving the situs of the system, each fiscal year beginning on July 1, 2005, and ending June 30, 2017, for an investment cost recovery incentive for each kilowatt-hour from a customer-generated electricity renewable energy system.

(b) In the case of a community solar project as defined in RCW 82.16.110(2)(a)(i), the administrator must apply for the investment cost recovery incentive on behalf of each of the other owners.

(c) In the case of a community solar project as defined in RCW 82.16.110(2)(a)(iii), the company owning the community solar project must apply for the investment cost recovery incentive on behalf of each member of the company.

(2)(a) Before submitting for the first time the application for the incentive allowed under subsection (4) of this section, the applicant must submit to the department of revenue and to the climate and rural energy development center at the Washington State University, established under RCW 28B.30.642, a certification in a form and manner prescribed by the department that includes, but is not limited to, the information described in (c) of this subsection.

(b) The department may not accept certifications submitted to the department under (a) of this subsection after September 30, 2017.

(c) The certification must include:

(i) The name and address of the applicant and location of the renewable energy system.

(A) If the applicant is an administrator of a community solar project as defined in RCW 82.16.110(2)(a)(i), the certification must also include the name and address of each of the owners of the community solar project.

(B) If the applicant is a company that owns a community solar project as defined in RCW 82.16.110(2)(a)(iii), the certification must also include the name and address of each member of the company;

(ii) The applicant's tax registration number;

(iii) That the electricity produced by the applicant meets the definition of "customer-generated electricity" and that the renewable energy system produces electricity with:

(A) Any solar inverters and solar modules manufactured in Washington state;

(B) A wind generator powered by blades manufactured in Washington state;

(C) A solar inverter manufactured in Washington state;

(D) A solar module manufactured in Washington state;

(E) A stirling converter manufactured in Washington state; or

(F) Solar or wind equipment manufactured outside of Washington state;

(iv) That the electricity can be transformed or transmitted for entry into or operation in parallel with electricity transmission and distribution systems; and

(v) The date that the renewable energy system received its final electrical inspection from the applicable local jurisdiction.

(d) Within thirty days of receipt of the certification the department of revenue must notify the applicant by mail, or electronically as provided in RCW 82.32.135, whether the renewable energy system qualifies for an incentive under this

section. The department may consult with the climate and rural energy development center to determine eligibility for the incentive. System certifications and the information contained therein are not confidential tax information under RCW 82.32.330 and are subject to disclosure.

(3)(a) By August 1st of each year through August 1, 2017, the application for the incentive must be made to the light and power business serving the situs of the system by certification in a form and manner prescribed by the department that includes, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system.

(A) If the applicant is an administrator of a community solar project as defined in RCW 82.16.110(2)(a)(i), the application must also include the name and address of each of the owners of the community solar project.

(B) If the applicant is a company that owns a community solar project as defined in RCW 82.16.110(2)(a)(iii), the application must also include the name and address of each member of the company;

(ii) The applicant's tax registration number;

(iii) The date of the notification from the department of revenue stating that the renewable energy system is eligible for the incentives under this section; and

(iv) A statement of the amount of kilowatt-hours generated by the renewable energy system in the prior fiscal year.

(b) Within sixty days of receipt of the incentive certification the light and power business serving the situs of the system must notify the applicant in writing whether the incentive payment will be authorized or denied. The business may consult with the climate and rural energy development center to determine eligibility for the incentive payment. Incentive certifications and the information contained therein are not confidential tax information under RCW 82.32.330 and are subject to disclosure.

(c)(i) Persons, administrators of community solar projects, and companies receiving incentive payments must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received. Such records must be open for examination at any time upon notice by the light and power business that made the payment or by the department. If upon examination of any records or from other information obtained by the business or department it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the business may assess against the person for the amount found to have been paid in excess of the correct amount of incentive payable and must add thereto interest on the amount. Interest is assessed in the manner that the department assesses interest upon delinquent tax under RCW 82.32.050.

(ii) If it appears that the amount of incentive paid is less than the correct amount of incentive payable the business may authorize additional payment.

(4) Except for community solar projects, the investment cost recovery incentive may be paid fifteen cents per economic development kilowatt-hour unless requests exceed the amount authorized for credit to the participating light and power business. For community solar projects, the investment cost recovery incentive may be paid thirty cents per

economic development kilowatt-hour unless requests exceed the amount authorized for credit to the participating light and power business. For the purposes of this section, the rate paid for the investment cost recovery incentive may be multiplied by the following factors:

(a) For customer-generated electricity produced using solar modules manufactured in Washington state or a solar stirling converter manufactured in Washington state, two and four-tenths;

(b) For customer-generated electricity produced using a solar or a wind generator equipped with an inverter manufactured in Washington state, one and two-tenths;

(c) For customer-generated electricity produced using an anaerobic digester, or by other solar equipment or using a wind generator equipped with blades manufactured in Washington state, one; and

(d) For all other customer-generated electricity produced by wind, eight-tenths.

(5)(a) No individual, household, business, or local governmental entity is eligible for incentives provided under subsection (4) of this section for more than five thousand dollars per year.

(b) Except as provided in (c) through (e) of this subsection (5), each applicant in a community solar project is eligible for up to five thousand dollars per year.

(c) Where the applicant is an administrator of a community solar project as defined in RCW 82.16.110(2)(a)(i), each owner is eligible for an incentive but only in proportion to the ownership share of the project, up to five thousand dollars per year.

(d) Where the applicant is a company owning a community solar project that has applied for an investment cost recovery incentive on behalf of its members, each member of the company is eligible for an incentive that would otherwise belong to the company but only in proportion to each ownership share of the company, up to five thousand dollars per year. The company itself is not eligible for incentives under this section.

(e) In the case of a utility-owned community solar project, each ratepayer that contributes to the project is eligible for an incentive in proportion to the contribution, up to five thousand dollars per year.

(6) The climate and rural energy development center at Washington State University energy program may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

(7) The environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the investment cost recovery incentive.

(8) No incentive may be paid under this section for kilowatt-hours generated before July 1, 2005, or after June 30, 2017, except as provided in subsections (10) through (12) of this section.

(9) Beginning October 1, 2017, program management, technical review, and tracking responsibilities of the department under this section are transferred to the Washington State University extension energy program. At the earliest date practicable and no later than September 30, 2017, the department must transfer all records necessary for the admin-

istration of the remaining incentive payments due under this section to the Washington State University extension energy program.

(10) Participants in the renewable energy investment cost recovery program under this section will continue to receive payments for electricity produced through June 30, 2020, at the same rates their utility paid to participants for electricity produced between July 1, 2015, and June 30, 2016.

(11) In order to continue to receive the incentive payment allowed under subsection (4) of this section, a person or community solar project administrator who has, by September 30, 2017, submitted a complete certification to the department under subsection (2) of this section must apply to the Washington State University extension energy program by April 30, 2018, for a certification authorizing the utility serving the situs of the renewable energy system to annually remit the incentive payment allowed under subsection (4) of this section for each kilowatt-hour generated by the renewable energy system through June 30, 2020.

(12)(a) The Washington State University extension energy program must establish an application process and form by which to collect the system operation data described in RCW 82.16.165(7)(a)(iii) from each person or community solar project administrator applying for a certification under subsection (11) of this section. The Washington State University extension energy program must notify any applicant that providing this data is a condition of certification and that any certification issued pursuant to this section is void as of June 30, 2018, if the applicant has failed to provide the data by that date.

(b) Beginning July 1, 2018, the Washington State University extension energy program must, in a form and manner that is consistent with the roles and processes established under RCW 82.16.165 (19) and (20), calculate for the year and provide to the utility the amount of the incentive payment due to each participant under subsection (11) of this section. [2017 3rd sp.s. c 36 § 3; 2011 c 179 § 3. Prior: 2010 c 202 § 2; 2010 c 106 § 103; 2009 c 469 § 505; 2007 c 111 § 101; 2005 c 300 § 3.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

Effective date—2010 c 106: See note following RCW 35.102.145.

Effective date—2009 c 469: See note following RCW 82.08.962.

Part headings not law—2007 c 111: "Part headings used in this act are not any part of the law." [2007 c 111 § 401.]

Findings—Intent—Effective date—2005 c 300: See notes following RCW 82.16.110.

82.16.130 Renewable energy system cost recovery—Light/power business tax credit. (1) A light and power business is allowed a credit against taxes due under this chapter in an amount equal to:

(a) Incentive payments made in any fiscal year under RCW 82.16.120 and 82.16.165; and

(b) Any fees a utility is allowed to recover pursuant to RCW 82.16.165(5).

(2) The credits must be taken in a form and manner as required by the department. The credit taken under this section for the fiscal year may not exceed one and one-half percent of the businesses' taxable power sales generated in cal-

endar year 2014 and due under RCW 82.16.020(1)(b) or two hundred fifty thousand dollars, whichever is greater.

(3) The credit may not exceed the tax that would otherwise be due under this chapter. Refunds may not be granted in the place of credits. Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years.

(4) For any business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.120, the amount of tax against which credit was claimed for the excess payments is immediately due and payable. The department may deduct amounts due from future credits claimed by the business.

(a) Except as provided in (b) of this subsection, the department must assess interest but not penalties on the taxes against which the credit was claimed. Interest must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and accrues until the taxes against which the credit was claimed are repaid.

(b) A business is not liable for excess payments made in reliance on amounts reported by the Washington State University extension energy program as due and payable as provided under RCW 82.16.165(20), if such amounts are later found to be abnormal or inaccurate due to no fault of the business.

(5) The amount of credit taken under this section is not confidential taxpayer information under RCW 82.32.330 and is subject to disclosure.

(6) The right to earn tax credits for incentive payments made under RCW 82.16.120 expires June 30, 2020. Credits may not be claimed after June 30, 2021.

(7) The right to earn tax credits for incentive payments made under RCW 82.16.165 expires June 30, 2029. Credits may not be claimed after June 30, 2030. [2017 3rd sp.s. c 36 § 4; 2010 c 202 § 3; 2009 c 469 § 506; 2005 c 300 § 4.]

Finding—Intent—2017 3rd sp.s. c 36: "The legislature finds and declares that stimulating local investment in distributed renewable energy generation is an important part of a state energy strategy, helping to increase energy independence from fossil fuels, promote economic development, hedge against the effects of climate change, and attain environmental benefits. The legislature intends to increase the effectiveness of the existing renewable energy investment cost recovery program by reducing the maximum incentive rate provided for each kilowatt-hour of electricity generated by a renewable energy system over the period of the program and by creating opportunities for broader participation by low-income individuals and others who may not own the premises where a renewable energy system may be installed. The legislature intends to provide an incentive sufficient to promote installation of systems through 2021, at which point the legislature expects that the state's renewable energy industry will be capable of sustained growth and vitality without the cost recovery incentive. The legislature intends for the program to balance the deployment of community solar and shared commercial solar projects in order to support participation in renewable energy generation, and that deployment of community solar projects is balanced among eligible utilities, nonprofits, and local housing authorities, as doing so will support maximum deployment of renewable energy generation throughout the state." [2017 3rd sp.s. c 36 § 1.]

Effective date—2017 3rd sp.s. c 36: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 7, 2017]." [2017 3rd sp.s. c 36 § 19.]

Effective date—2009 c 469: See note following RCW 82.08.962.

Findings—Intent—Effective date—2005 c 300: See notes following RCW 82.16.110.

82.16.155 Tax preference performance statement—Joint legislative audit and review committee review—Washington State University data collection. (1) This section is the tax preference performance statement for the tax preference and incentives created under RCW 82.16.130 and section 6, chapter 36, Laws of 2017 3rd sp. sess. This performance statement is only intended to be used for subsequent evaluation of the tax preference and incentives. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes the tax preference created under RCW 82.16.130 and incentive payments authorized in section 6, chapter 36, Laws of 2017 3rd sp. sess. as intended to:

(a) Induce participating utilities to make incentive payments to utility customers who invest in renewable energy systems; and

(b) By inducing utilities, nonprofit organizations, and utility customers to acquire and install renewable energy systems, retain jobs in the clean energy sector and create additional jobs.

(3) The legislature's public policy objectives are to:

(a) Increase energy independence from fossil fuels; and

(b) Promote economic development through increasing and improving investment in, development of, and use of clean energy technology in Washington; and

(c) Increase the number of jobs in and enhance the sustainability of the clean energy technology industry in Washington.

(4) It is the legislature's intent to provide the incentives in section 6, chapter 36, Laws of 2017 3rd sp. sess. and RCW 82.16.130 in order to ensure the sustainable job growth and vitality of the state's renewable energy sector. The purpose of the incentive is to reduce the costs associated with installing and operating solar energy systems by persons or entities receiving the incentive.

(5) As part of its 2021 tax preference reviews, the joint legislative audit and review committee must review the tax preferences and incentives in section 6, chapter 36, Laws of 2017 3rd sp. sess. and RCW 82.16.130. The legislature intends for the legislative auditor to determine that the incentive has achieved its desired outcomes if the following objectives are achieved:

(a) Installation of one hundred fifteen megawatts of solar photovoltaic capacity by participants in the incentive program between July 1, 2017, and June 30, 2021; and

(b) Growth of solar-related employment from 2015 levels, as evidenced by:

(i) An increased per capita rate of solar energy-related jobs in Washington, which may be determined by consulting a relevant trade association in the state; or

(ii) Achievement of an improved national ranking for solar energy-related employment and per capita solar energy-related employment, as reported in a nationally recognized report.

(6) In order to obtain the data necessary to perform the review, the joint legislative audit and review committee may refer to data collected by the Washington State University extension energy program and may obtain employment data from the employment security department.

(7) The Washington State University extension energy program must collect, through the application process, data from persons claiming the tax credit under RCW 82.16.130 and persons receiving the incentive payments created in RCW 82.16.165, as necessary, and may collect data from other interested persons as necessary to report on the performance of chapter 36, Laws of 2017 3rd sp. sess.

(8) All recipients of tax credits or incentive payments awarded under this chapter must provide data necessary to evaluate the tax preference performance objectives in this section as requested by the Washington State University extension energy program or the joint legislative audit and review committee. Failure to comply may result in the loss of a tax credit award or incentive payment in the following year. [2017 3rd sp.s. c 36 § 2.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

82.16.160 Definitions—Renewable energy tax incentives. The definitions in this section apply throughout this section and RCW 82.16.165, 82.16.170, and 82.16.175 unless the context clearly requires otherwise.

(1) "Administrator" means the utility, nonprofit, or other local housing authority that organizes and administers a community solar project as provided in RCW 82.16.165 and 82.16.170.

(2) "Certification" means the authorization issued by the Washington State University extension energy program establishing a person's eligibility to receive annual incentive payments from the person's utility for the program term.

(3) "Commercial-scale system" means a renewable energy system or systems other than a community solar project or a shared commercial solar project with a combined nameplate capacity greater than twelve kilowatts that meets the applicable system eligibility requirements established in RCW 82.16.165.

(4) "Community solar project" means a solar energy system that has a direct current nameplate generating capacity that is no larger than one thousand kilowatts and meets the applicable eligibility requirements established in RCW 82.16.165 and 82.16.170.

(5) "Consumer-owned utility" has the same meaning as in RCW 19.280.020.

(6) "Customer-owner" means the owner of a residential-scale or commercial-scale renewable energy system, where such owner is not a utility and such owner is a customer of the utility and either owns the premises where the renewable energy system is installed or occupies the premises.

(7) "Electric utility" or "utility" means a consumer-owned utility or investor-owned utility as those terms are defined in RCW 19.280.020.

(8) "Governing body" has the same meaning as provided in RCW 19.280.020.

(9) "Person" means any individual, firm, partnership, corporation, company, association, agency, or any other legal entity.

(10) "Program term" means: (a) For community solar projects, eight years or until cumulative incentive payments for electricity produced by the project reach fifty percent of the total system price, including applicable sales tax, whichever occurs first; and (b) for other renewable energy systems,

including shared commercial solar projects, eight years or until cumulative incentive payments for electricity produced by a system reach fifty percent of the total system price, including applicable sales tax, whichever occurs first.

(11) "Renewable energy system" means a solar energy system, including a community solar project, an anaerobic digester as defined in RCW 82.08.900, or a wind generator used for producing electricity.

(12) "Residential-scale system" means a renewable energy system or systems located at a single situs with combined nameplate capacity of twelve kilowatts or less that meets the applicable system eligibility requirements established in RCW 82.16.165.

(13) "Shared commercial solar project" means a solar energy system, owned or administered by an electric utility, with a combined nameplate capacity of greater than one megawatt and not more than five megawatts and meets the applicable eligibility requirements established in RCW 82.16.165 and 82.16.175. [2017 3rd sp.s. c 36 § 5.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

82.16.165 Annual production incentive certification.

(1) Beginning July 1, 2017, the following persons may submit a one-time application to the Washington State University extension energy program to receive a certification authorizing the utility serving the situs of a renewable energy system in the state of Washington to remit an annual production incentive for each kilowatt-hour of alternating current electricity generated by the renewable energy system:

(a) The utility's customer who is the customer-owner of a residential-scale or commercial-scale renewable energy system;

(b) An administrator of a community solar project meeting the eligibility requirements outlined in RCW 82.16.170 and applies for certification on behalf of each of the project participants; or

(c) A utility or a business under contract with a utility that administers a shared commercial solar project that meets the eligibility requirements in RCW 82.16.175 and applies for certification on behalf of each of the project participants.

(2) No person, business, or household is eligible to receive incentive payments provided under subsection (1) of this section of more than five thousand dollars per year for residential systems or community solar projects, twenty-five thousand dollars per year for commercial-scale systems, or thirty-five thousand dollars per year for shared commercial solar projects.

(3)(a) No new certification may be issued under this section to an applicant who submits a request for or receives an annual incentive payment for a renewable energy system that was certified under RCW 82.16.120, or for a renewable energy system served by a utility that has elected not to participate in the incentive program, as provided in subsection (4) of this section.

(b) The Washington State University extension energy program may issue a new certification for an additional system installed at a situs with a previously certified system so long as the new system meets the requirements of this section and its production can be measured separately from the previously certified system.

(c) The Washington State University extension energy program may issue a recertification for a residential-scale or commercial-scale system if a customer makes investments resulting in an expansion of the system's nameplate capacity. Such recertification expires on the same day as the original certification for the residential-scale or commercial-scale system and applies to the entire system the incentive rates and program rules in effect as of the date of the recertification.

(4) A utility's participation in the incentive program provided in this section is voluntary.

(a) A utility electing to participate in the incentive program must notify the Washington State University extension energy program of such election in writing.

(b) The utility may terminate its voluntary participation in the production incentive program by providing notice in writing to the Washington State University extension energy program to cease issuing new certifications for renewable energy systems that would be served by that utility.

(c) Such notice of termination of participation is effective after fifteen days, at which point the Washington State University extension energy program may not accept new applications for certification of renewable energy systems that would be served by that utility.

(d) Upon receiving a utility's notice of termination of participation in the incentive program, the Washington State University extension energy program must report on its web site that customers of that utility are no longer eligible to receive new certifications under the program.

(e) A utility's termination of participation does not affect the utility's obligation to continue to make annual incentive payments for electricity generated by systems that were certified prior to the effective date of the notice. The Washington State University extension energy program must continue to process and issue certifications for renewable energy systems that were received by the Washington State University extension energy program before the effective date of the notice of termination.

(f) A utility that has terminated participation in the program may resume participation upon filing notice with the Washington State University extension energy program.

(5)(a) The Washington State University extension energy program may certify a renewable energy system that is connected to equipment capable of measuring the electricity production of the system and interconnecting with the utility's system in a manner that allows the utility, or the customer at the utility's option, to measure and report to the Washington State University extension energy program the total amount of electricity produced by the renewable energy system.

(b) The Washington State University extension energy program must establish a reporting and fee-for-service system to accept electricity production data from the utility or the customer that is not reported electronically and with the reporting entity selected at the utility's option as described in subsection (19) of this section. The fee-for-service agreement must allow for electronic reporting or reporting by mail, may be specific to individual utilities, and must recover only the program's costs of obtaining the electricity production data and incorporating it into an electronic format. A statement of the amount due for the fee-for-service must be provided to the utility by the Washington State University extension

energy program with the report provided to the utility pursuant to subsection (20)(a) of this section. The utility may determine how to assess and remit the fee, and the utility may be allowed a credit for fees paid under this subsection (5) against taxes due, as provided in RCW 82.16.130(1).

(6) The Washington State University extension energy program may issue a certification authorizing annual incentive payments up to the following annual dollar limits:

(a) For community solar projects, five thousand dollars per project participant;

(b) For residential-scale systems, five thousand dollars;

(c) For commercial-scale systems, twenty-five thousand dollars; and

(d) For shared commercial solar projects, up to thirty-five thousand dollars a year per participant, as determined by the terms of subsection (15) of this section.

(7)(a) To obtain certification under this section, a person must submit to the Washington State University extension energy program an application, including:

(i) A signed statement that the applicant has not previously received a notice of eligibility from the department under RCW 82.16.120 entitling the applicant to receive annual incentive payments for electricity generated by the renewable energy system at the same meter location;

(ii) A signed statement of the total price, including applicable sales tax, paid by the applicant for the renewable energy system;

(iii) System operation data including global positioning system coordinates, tilt, estimated shading, and azimuth;

(iv) Any other information the Washington State University extension energy program deems necessary in determining eligibility and incentive levels, administering the program, tracking progress toward achieving the limits on program participation established in RCW 82.16.130, or facilitating the review of the performance of the tax preferences by the joint legislative audit and review committee, as described in RCW 82.16.155; and

(v)(A) Except as provided in (a)(v)(B) of this subsection (7), the date that the renewable energy system received its final electrical inspection from the applicable local jurisdiction, as well as a copy of the permit or, if the permit is available online, the permit number;

(B) The Washington State University extension energy program may waive the requirement in (a)(v)(A) of this subsection (7), accepting an application and granting provisional certification prior to proof of final electrical inspection. Provisional certification expires one hundred eighty days after issuance, unless the applicant submits proof of the final electrical inspection from the applicable local jurisdiction or the Washington State University extension energy program extends the certification, for a term or terms of thirty days, due to extenuating circumstances; and

(b)(i) Prior to obtaining certification under this subsection, a community solar project or shared commercial solar project must apply for precertification against the remaining funds available for incentive payments under subsection (13)(d) of this section in order to be guaranteed an incentive payment under this section;

(ii) A project applicant of a community solar project or shared commercial solar project must complete an application for certification with the Washington State University

extension energy program within less than one year to retain the precertification status described in this subsection; and

(iii) The Washington State University extension energy program may design a reservation or precertification system for an applicant of a residential-scale or commercial-scale renewable energy system.

(8) No incentive payments may be authorized or accrued until the final electrical inspection and executed interconnection agreement are submitted to the Washington State University extension energy program.

(9) Within thirty days of receipt of the application for certification, the Washington State University extension energy program must notify the applicant and, except when a utility is the applicant, the utility serving the situs of the renewable energy system, by mail or electronically, whether certification has been granted. The certification notice must state the rate to be paid per kilowatt-hour of electricity generated by the renewable energy system, as provided in subsection (12) of this section, subject to any applicable cap on total annual payment provided in subsection (6) of this section.

(10) Certification is valid for the program term and entitles the applicant or, in the case of a community solar project or shared commercial solar project, the participant, to receive incentive payments for electricity generated from the date the renewable energy system commences operation, or the date the system is certified, whichever date is later. For purposes of this subsection, the Washington State University extension energy program must define when a renewable energy system commences operation and provide notice of such date to the recipient and the utility serving the situs of the system. Certification may not be retroactively changed except to correct later discovered errors that were made during the original application or certification process.

(11)(a) System certification follows the system if the following conditions are met using procedures established by the Washington State University extension energy program:

(i) The renewable energy system is transferred to a new owner who notifies the Washington State University extension energy program of the transfer; and

(ii) The new owner provides an executed interconnection agreement with the utility serving the premises.

(b) In the event that a community solar project participant terminates their participation in a community solar project, the system certification follows the system and participation may be transferred to a new participant. The administrator of a community solar project must provide notice to the Washington State University extension energy program of any changes or transfers in project participation.

(12) The Washington State University extension energy program must determine the total incentive rate for a new renewable energy system certification by adding to the base rate any applicable made-in-Washington bonus rate. A made-in-Washington bonus rate is provided for a renewable energy system or a community solar project with solar modules made in Washington or with a wind turbine or tower that is made in Washington. Both the base rates and bonus rate vary, depending on the fiscal year in which the system is certified and the type of renewable energy system being certified, as provided in the following table:

Fiscal year of system certification	Base rate - residential-scale	Base rate - commercial-scale	Base rate - community solar	Base rate - shared commercial solar	Made in Washington bonus
2018	\$0.16	\$0.06	\$0.16	\$0.06	\$0.05
2019	\$0.14	\$0.04	\$0.14	\$0.04	\$0.04
2020	\$0.12	\$0.02	\$0.12	\$0.02	\$0.03
2021	\$0.10	\$0.02	\$0.10	\$0.02	\$0.02

(13) The Washington State University extension energy program must cease to issue new certifications:

(a) For community solar projects and shared commercial solar projects in any fiscal year for which the Washington State University extension energy program estimates that fifty percent of the remaining funds for credit available to a utility for renewable energy systems certified under this section as of July 1, 2017, have been allocated to community solar projects and shared commercial solar projects combined;

(b) For commercial-scale systems in any fiscal year for which the Washington State University extension energy program estimates that twenty-five percent of the remaining funds for credit available to a utility for renewable energy systems certified under this section as of July 1, 2017, have been allocated to commercial-scale systems;

(c) For any renewable energy system served by a utility, if certification is likely to result in incentive payments by that utility, including payments made under RCW 82.16.120, exceeding the utility's available funds for credit under RCW 82.16.130; and

(d) For any renewable energy system, if certification is likely to result in total incentive payments under this section exceeding one hundred ten million dollars.

(14) If the Washington State University extension energy program ceases issuing new certifications during a fiscal year or biennium as provided in subsection (13) of this section, in the following fiscal year or biennium, or when additional funds are available for credit such that the thresholds described in subsection (13) of this section are no longer exceeded, the Washington State University extension energy program must resume issuing new certifications using a method of awarding certifications that results in equitable and orderly allocation of benefits to applicants.

(15) A customer who is a participant in a shared commercial solar project may not receive incentive payments associated with the project greater than the difference between the levelized cost of energy output of the system over its production life and the retail rate for the rate class to which the customer belongs. The levelized cost of the output of the energy must be determined by the utility that administers the shared commercial solar project and must be disclosed, along with an explanation of the limitations on incentive payments contained in this subsection (15), in the contractual agreement with the shared commercial solar project participants.

(16) In order to begin to receive annual incentive payments, a person who has been issued a certification for the incentive as provided in subsection (9) of this section must obtain an executed interconnection agreement with the utility serving the situs of the renewable energy system.

(17) The Washington State University extension energy program must establish a list of equipment that is eligible for the bonus rates described in subsection (12) of this section. The Washington State University extension energy program must, in consultation with the department of commerce, develop technical specifications and guidelines to ensure consistent and predictable determination of eligibility. A solar module is made in Washington for purposes of receiving the bonus rate only if the lamination of the module takes place in Washington. A wind turbine is made in Washington only if it is powered by a turbine or built with a tower manufactured in Washington.

(18) The manufacturer of a renewable energy system component subject to a bonus rate under subsection (12) of this section may apply to the Washington State University extension energy program to receive a determination of eligibility for such bonus rates. The Washington State University extension energy program must publish a list of components that have been certified as eligible for such bonus rates. The Washington State University extension energy program may assess an equipment certification fee to recover its costs. The Washington State University extension energy program must deposit all revenue generated by this fee into the state general fund.

(19) Annually, the utility must report electronically to the Washington State University extension energy program the amount of gross kilowatt-hours generated by each renewable energy system since the prior annual report. For the purposes of this section, to report electronically means to submit statistical or factual information in alphanumeric form through a web site established by the Washington State University extension energy program or in a list, table, spreadsheet, or other nonnarrative format that can be digitally transmitted or processed. The utility may instead opt to report by mail or require program participants to report individually, but if the utility exercises one or more of these options it must negotiate with the Washington State University extension energy program the fee-for-service arrangement described in subsection (5)(b) of this section.

(20)(a) The Washington State University extension energy program must calculate for the year and provide to the utility the amount of the incentive payment due to each participant and the total amount of credit against tax due available to the utility under RCW 82.16.130 that has been allocated as annual incentive payments. Upon notice to the Washington State University extension energy program, a utility may opt to directly perform this calculation and provide its results to the Washington State University extension energy program.

(b) If the Washington State University extension energy program identifies an abnormal production claim, it must notify the utility, the department of revenue, and the appli-

cant, and must recommend withholding payment until the applicant has demonstrated that the production claim is accurate and valid. The utility is not liable to the customer for withholding payments pursuant to such recommendation unless and until the Washington State University extension energy program notifies the utility to resume incentive payments.

(21)(a) The utility must issue the incentive payment within ninety days of receipt of the information required under subsection (20)(a) of this section from the Washington State University extension energy program. The utility must resume the incentive payments withheld under subsection (20)(b) of this section within thirty days of receiving notice from the Washington State University extension energy program that the claim has been demonstrated accurate and valid and payment should be resumed.

(b) A utility is not liable for incentive payments to a customer-owner if the utility has disconnected the customer due to a violation of a customer service agreement, such as non-payment of the customer's bill, or a violation of an interconnection agreement.

(22) Beginning January 1, 2018, the Washington State University extension energy program must post on its web site and update at least monthly a report, by utility, of:

(a) The number of certifications issued for renewable energy systems, including estimated system sizes, costs, and annual energy production and incentive yields for various system types; and

(b) An estimate of the amount of credit that has not yet been allocated for incentive payments under each utility's credit limit and remains available for new renewable energy system certifications.

(23) Persons receiving incentive payments under this section must keep and preserve, for a period of five years for the duration of the consumer contract, suitable records as may be necessary to determine the amount of incentive payments applied for and received. The Washington State University extension energy program may direct a utility to cease issuing incentive payments if the records are not made available for examination upon request. A utility receiving such a directive is not liable to the applicant for any incentive payments or other damages for ceasing payments pursuant to the directive.

(24) The nonpower attributes of the renewable energy system belong to the utility customer who owns or hosts the system or, in the case of a community solar project or a shared commercial solar project, the participant, and can be kept, sold, or transferred at the utility customer's discretion unless, in the case of a utility-owned community solar or shared commercial solar project, a contract between the customer and the utility clearly specifies that the attributes will be retained by the utility.

(25) All lists, technical specifications, determinations, and guidelines developed under this section must be made publicly available online by the Washington State University extension energy program.

(26) No certification may be issued under this section after June 30, 2021.

(27) The Washington State University extension energy program must collect a one-time fee for applications submitted under subsection (1) of this section of one hundred

twenty-five dollars per applicant. The Washington State University extension energy program must deposit all revenue generated by this fee into the state general fund. The Washington State University extension energy program must administer and budget for the program established in RCW 82.16.120, this section, and RCW 82.16.170 in a manner that ensures its administrative costs through June 30, 2022, are completely met by the revenues from this fee. If the Washington State University extension energy program determines that the fee authorized in this subsection is insufficient to cover the administrative costs through June 30, 2022, the Washington State University extension energy program must report to the legislature on costs incurred and fees collected and demonstrate why a different fee amount or funding mechanism should be authorized.

(28) The Washington State University extension energy program may, through a public process, develop any program requirements, policies, and processes necessary for the administration or implementation of this section, RCW 82.16.120, 82.16.155, and 82.16.170. The department is authorized, in consultation with the Washington State University extension energy program, to adopt any rules necessary for administration or implementation of the program established under this section and RCW 82.16.170.

(29) Applications, certifications, requests for incentive payments under this section, and the information contained therein are not deemed tax information under RCW 82.32.330 and are subject to disclosure.

(30)(a) By November 1, 2019, and in compliance with RCW 43.01.036, the Washington State University extension energy program must submit a report to the legislature that includes the following:

(i) The number and types of renewable energy systems that have been certified under this section as of July 1, 2019, both statewide and per participating utility;

(ii) The number of utilities that are approaching or have reached the credit limit established under RCW 82.16.130(2) or the thresholds established under subsection (13) of this section;

(iii) The share of renewable energy systems by type that contribute to each utility's threshold under subsection (13) of this section;

(iv) An assessment of the deployment of community solar projects in the state, including but not limited to the following:

(A) An evaluation of whether or not community solar projects are being deployed in low-income and moderate-income communities, as those terms are defined in RCW 43.63A.510, including a description of any barriers to project deployment in these communities;

(B) A description of the share of community solar projects by administrator type that contribute to each utility's threshold under subsection (13)(a) of this section; and

(C) A description of any barriers to participation by non-profits and local housing authorities in the incentive program established under this section and under RCW 82.16.170;

(v) The total dollar amount of incentive payments that have been made to participants in the incentive program established under this section to date; and

(vi) The total number of megawatts of solar photovoltaic capacity installed to date by participants in the incentive program established under this section.

(b) By December 31, 2019, the legislature must review the report submitted under (a) of this subsection and determine whether the credit limit established under RCW 82.16.130(2) should be increased to two percent of a light and power business' taxable power sales generated in calendar year 2014 and due under RCW 82.16.020(1)(b) or two hundred fifty thousand dollars, whichever is greater, in order to achieve the legislative intent under section 1, chapter 36, Laws of 2017 3rd sp. sess. [2017 3rd sp.s. c 36 § 6.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

82.16.170 Community solar programs—Organization and administration. (1) The purpose of community solar programs is to facilitate broad, equitable community investment in and access to solar power. Beginning July 1, 2017, a community solar administrator may organize and administer a community solar project as provided in this section.

(2) A community solar project must have a direct current nameplate capacity that is no more than one thousand kilowatts and must have at least ten participants or one participant for every ten kilowatts of direct current nameplate capacity, whichever is greater. A community solar project that has a direct current nameplate capacity greater than five hundred kilowatts must be subject to a standard interconnection agreement with the utility serving the situs of the community solar project. Except for community solar projects authorized under subsection (9) of this section, each participant must be a customer of the utility providing service at the situs of the community solar project.

(3) The administrator of a community solar project must administer the project in a transparent manner that allows for fair and nondiscriminatory opportunity for participation by utility customers.

(4) The administrator of a community solar project may establish a reasonable fee to cover costs incurred in organizing and administering the community solar project. Project participants, prior to making the commitment to participate in the project, must be given clear and conspicuous notice of the portion of the incentive payment that will be used for this purpose.

(5) The administrator of a community solar project must maintain and update annually through June 30, 2030, the following information for each project it operates or administers:

- (a) Ownership information;
- (b) Contact information for technical management questions;
- (c) Business address;
- (d) Project design details, including project location, output capacity, equipment list, and interconnection information; and
- (e) Subscription information, including rates, fees, terms, and conditions.

(6) The administrator of a community solar project must provide the information required in subsection (5) of this section to the Washington State University extension energy

program at the time it submits the application allowed under RCW 82.16.165(1).

(7) The administrator of a community solar project must provide each project participant with a disclosure form containing all material terms and conditions of participation in the project, including but not limited to the following:

(a) Plain language disclosure of the terms under which the project participant's share of any incentive payment will be calculated by the Washington State University extension energy program over the life of the contract;

(b) Contract provisions regulating the disposition or transfer of the project participant's interest in the project, including any potential costs associated with such a transfer;

(c) All recurring and nonrecurring charges;

(d) A description of the billing and payment procedures;

(e) A description of any compensation to be paid in the event of project underperformance;

(f) Current production projections and a description of the methodology used to develop the projections;

(g) Contact information for questions and complaints; and

(h) Any other terms and conditions of the services provided by the administrator.

(8) A utility may not adopt rates, terms, conditions, or standards that unduly or unreasonably discriminate between utility-administered community solar projects and those administered by another entity.

(9) A public utility district that is engaged in distributing electricity to more than one retail electric customer in the state and a joint operating agency organized under chapter 43.52 RCW on or before January 1, 2017, may enter into an agreement with each other to construct and own a community solar project that is located on property owned by a joint operating agency or on property that receives electric service from a participating public utility district. Each participant of a community solar project under this subsection must be a customer of at least one of the public utility districts that is a party to the agreement with a joint operating agency to construct and own a community solar project.

(10) The Washington utilities and transportation commission must publish, without disclosing proprietary information, a list of the following:

(a) Entities other than utilities, including affiliates or subsidiaries of utilities, that organize and administer community solar projects; and

(b) Community solar projects and related programs and services offered by investor-owned utilities.

(11) If a consumer-owned utility opts to provide a community solar program or contracts with a nonutility administrator to offer a community solar program, the governing body of the consumer-owned utility must publish, without disclosing proprietary information, a list of the nonutility administrators contracted by the utility as part of its community solar program.

(12) Except for parties engaged in actions and transactions regulated under laws administered by other authorities and exempted under RCW 19.86.170, a violation of this section constitutes an unfair or deceptive act in trade or commerce in violation of chapter 19.86 RCW, the consumer protection act. Acts in violation of chapter 36, Laws of 2017 3rd sp. sess. are not reasonable in relation to the development and

preservation of business, and constitute matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(13) Nothing in this section may be construed as intending to preclude persons from investing in or possessing an ownership interest in a community solar project, or from applying for and receiving federal investment tax credits. [2017 3rd sp.s. c 36 § 7.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

82.16.175 Shared commercial solar projects—Organization and administration. (1) The purpose of a shared commercial solar project is to provide an entry point in solar utilization by large load customers in a manner that achieves economies of scale and maximizes system performance without limitations posed by on-site systems where sun exposure is not optimal or structural and other site deficiencies preclude solar development.

(2) Beginning July 1, 2017, a utility may, at its discretion, organize and administer a shared commercial solar project as provided in this section.

(3) A shared commercial solar project must have a direct current nameplate capacity greater than one megawatt and no more than five megawatts and must have at least five participants. To receive incentive payments under RCW 82.16.165, each participant must be a customer of the utility providing service at the situs of the shared commercial solar project and must be located in the state of Washington.

(4) The administrator of a shared commercial solar project must administer the project in a transparent manner.

(5) The administrator of a shared commercial solar project may establish a reasonable fee to cover costs incurred in organizing and administering the shared commercial solar project. Project participants, prior to making the commitment to participate in the project, must be given clear and conspicuous notice of the fees charged by the administrator as authorized under this subsection.

(6) The administrator of a shared commercial solar project must submit to the Washington State University extension energy program at the time it submits an application allowed under RCW 82.16.165(1) project design details, including project location, output capacity, equipment list, and interconnection information.

(7) The administrator of a shared commercial solar project must provide each project participant with a disclosure form containing all material terms and conditions of participation in the project, including but not limited to the following:

- (a) All recurring and nonrecurring charges;
- (b) A description of the billing and payment procedures;
- (c) Production projections and a description of the methodology used to develop the projections;
- (d) An estimate of the project participant's share of any incentive payment over the life of the contract;
- (e) A description of contract terms that relate to project underperformance;
- (f) Contract provisions regulating the disposition or transfer of the project participant's interest in the project, including any potential costs associated with such a transfer;

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(g) Contact information for questions and complaints; and

(h) Any other terms and conditions of the services provided by the administrator.

(8) If a utility opts to contract with a nonutility administrator to offer a shared commercial solar program, the utility must publish, without disclosing proprietary information, the name of the nonutility administrator contracted by the utility as part of its shared commercial solar program.

(9) In order to meet the intent of chapter 36, Laws of 2017 3rd sp. sess. of promoting a sustainable, local renewable energy industry, the legislature prefers award of the majority of the installation of shared commercial solar projects be given to contractors based in Washington state. In the event the majority of the installation of a shared commercial solar project is awarded to out-of-state contractors, the administrator must submit to the Washington State University extension energy program the reasons for using out-of-state contractors, the percentage of installation work performed by out-of-state contractors, and a cost comparison of the installation services performed by out-of-state contractors against the same services performed by Washington-based contractors. [2017 3rd sp.s. c 36 § 8.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

82.16.180 Solar modules—Sale and installation tax incentives. (1) Any person who sells a solar module to a customer-owner, or who receives compensation from a customer-owner in exchange for installing a solar module for use in a residential-scale system or commercial-scale system in Washington must provide to the customer-owner current information regarding the tax incentives available to the customer-owner under Washington law, including the scheduled expiration date of any tax incentives and the maximum period of time during which the customer-owner may benefit from any tax incentives, based on the law as it existed on the date of sale or installation of the solar module.

(2) The definitions in RCW 82.16.160 apply to this section.

(3) For the purposes of this section, "solar module" has the same meaning as provided in RCW 82.16.110.

(4) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this section is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act or practice in the conduct of trade or commerce and an unfair method of competition. Violations of this section may be enforced by the attorney general under the consumer protection act, chapter 19.86 RCW. [2017 3rd sp.s. c 36 § 9.]

Findings—Intent—Effective date—2017 3rd sp.s. c 36: See notes following RCW 82.16.130.

82.16.315 Exemptions—Sales of electricity or gas to silicon smelters. (Effective until January 1, 2018; contingent expiration date.) (1) A person who is subject to tax under this chapter on gross income from sales of electricity, natural gas, or manufactured gas made to a silicon smelter is eligible for an exemption from the tax in the form of a credit,

if the contract for sale of electricity or gas to the silicon smelter specifies that the price charged for the electricity or gas will be reduced by an amount equal to the credit.

(2) The credit is equal to the gross income from the sale of the electricity or gas to a silicon smelter multiplied by the corresponding rate in effect at the time of the sale for the public utility tax under RCW 82.16.020.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process.

(4) The department must provide a separate tax reporting line for reporting credits under this section by sellers of electricity, natural gas, or manufactured gas.

(5) For purposes of the annual survey required by RCW 82.32.585:

(a) The silicon smelter receiving the benefit of the credit under this section is deemed to be the taxpayer claiming the credit and is required to file the annual survey; and

(b) The person selling the electricity, natural gas, or manufactured gas to the silicon smelter is not required to file the annual survey.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Silicon smelter" means a manufacturing facility that processes silica into solar grade silicon.

(b) "Solar grade silicon" means high-purity silicon used exclusively in components of solar energy systems using photovoltaic modules to capture direct sunlight. "Solar grade silicon" does not include silicon used in semiconductors. [2017 3rd sp.s. c 37 § 702.]

Findings—Intent—Tax preference performance statement—2017 3rd sp.s. c 37 §§ 701-708: "(1) The legislature finds that an opportunity exists through a smelting process to produce silicon metal, which can be used in the production of photovoltaic cells for solar energy systems. The legislature further finds that energy is one of the largest costs for the smelting process and therefore ensuring the lowest possible energy cost is one of the key drivers of business location decisions. The legislature further finds that the silicon smelting process creates an opportunity to reduce carbon dioxide emissions used in the manufacturing of materials for solar energy systems. The legislature further finds that if the silicon smelting process occurs in Washington, the carbon footprint of the end product solar energy systems is likely to be less than if the silicon smelting occurred elsewhere. It is the legislature's specific public policy objective to promote the manufacturing of silicon for use in production of photovoltaic cells for solar energy systems. The legislature intends to provide a public utility tax credit, a business and occupation tax credit, and an exemption from the brokered natural gas use tax for silicon smelters thereby promoting the manufacture of silicon for solar energy systems, thereby reducing the cost of energy in the smelting process, and thereby stimulating economic growth and job creation in Washington's rural counties, as defined in RCW 82.14.370(5).

(2)(a) This section is the tax preference performance statement for the tax preferences contained in this part. This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes the tax preferences in sections 702 through 707, chapter 37, Laws of 2017 3rd sp. sess. as ones intended to create jobs, as indicated in RCW 82.32.808(2)(c) and to provide tax relief for certain businesses or individuals as indicated in RCW 82.32.808(2)(e).

(c) To measure the effectiveness of this part in achieving the specific public policy objective described in (b) of this subsection, the joint legislative audit and review committee must, at minimum, evaluate the following:

(i) The number of businesses who are claiming the tax preferences in sections 702 through 707, chapter 37, Laws of 2017 3rd sp. sess., and the total relief provided to them, as reported to the department of revenue on an annual basis;

(ii) The volume of solar grade silicon made in Washington compared to years prior to October 19, 2017;

(iii) Specifically assess the number of employment positions for each silicon smelter claiming or receiving the benefit of the preferences in sections 702 through 707, chapter 37, Laws of 2017 3rd sp. sess., using data provided by the department of revenue;

(iv) Estimate the cost per job based on the amount of tax preferences taken by each silicon smelter;

(v) Estimate the number of solar energy systems, and the power output of those systems, that were likely produced using Washington state solar grade silicon based on the volume of silicon smelted in Washington at each silicon smelter utilizing the incentive; and

(vi) Determine, utilizing the finalized 2015 county wage data from the census of employment and wages as reported by the employment security department:

(A) The number of jobs at each eligible silicon smelter paying above the county average annual wage in the county in which the facility is located; and

(B) The proportion of jobs paying above the county average annual wage represented by the jobs provided by each eligible silicon smelter utilizing the incentive.

(d) In addition to the data sources described under this section, the joint legislative audit and review committee may use any other data it deems necessary in performing the evaluation under (c) of this subsection." [2017 3rd sp.s. c 37 § 701.]

Contingent expiration date—2017 3rd sp.s. c 37 §§ 701-708: See note following RCW 82.32.537.

82.16.315 Exemptions—Sales of electricity or gas to silicon smelters. (Effective January 1, 2018; contingent expiration date.) (1) A person who is subject to tax under this chapter on gross income from sales of electricity, natural gas, or manufactured gas made to a silicon smelter is eligible for an exemption from the tax in the form of a credit, if the contract for sale of electricity or gas to the silicon smelter specifies that the price charged for the electricity or gas will be reduced by an amount equal to the credit.

(2) The credit is equal to the gross income from the sale of the electricity or gas to a silicon smelter multiplied by the corresponding rate in effect at the time of the sale for the public utility tax under RCW 82.16.020.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process.

(4) The department must provide a separate tax reporting line for reporting credits under this section by sellers of electricity, natural gas, or manufactured gas.

(5) For purposes of the annual tax performance report required by RCW 82.32.534:

(a) The silicon smelter receiving the benefit of the credit under this section is deemed to be the taxpayer claiming the credit and is required to file the annual tax performance report; and

(b) The person selling the electricity, natural gas, or manufactured gas to the silicon smelter is not required to file the annual tax performance report.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Silicon smelter" means a manufacturing facility that processes silica into solar grade silicon.

(b) "Solar grade silicon" means high-purity silicon used exclusively in components of solar energy systems using photovoltaic modules to capture direct sunlight. "Solar grade silicon" does not include silicon used in semiconductors. [2017 3rd sp.s. c 37 § 703; 2017 3rd sp.s. c 37 § 702.]

Contingent expiration date—2017 3rd sp.s. c 37 §§ 701-708: See note following RCW 82.32.537.

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Chapter 82.18 RCW

SOLID WASTE COLLECTION TAX

Sections

82.18.040 Collection of tax—Payment to state.

82.18.040 Collection of tax—Payment to state. (1) Taxes collected under this chapter must be held in trust until paid to the state. Except as otherwise provided in this subsection (1), taxes received by the state must be deposited in the public works assistance account created in RCW 43.155.050. For the period beginning July 1, 2011, and ending June 30, 2015, taxes received by the state under this chapter must be deposited in the general fund for general purpose expenditures. For fiscal years 2016, 2017, and 2018, one-half of the taxes received by the state under this chapter must be deposited in the general fund for general purpose expenditures and the remainder deposited in the education legacy trust account created in RCW 83.100.230. For fiscal years 2019 through 2023, taxes received by the state under this chapter must be deposited in the education legacy trust account created in RCW 83.100.230. Any person collecting the tax who appropriates or converts the tax collected is guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. If a taxpayer fails to pay the tax imposed by this chapter to the person charged with collection of the tax and the person charged with collection fails to pay the tax to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the tax.

(2) The tax is due from the taxpayer within twenty-five days from the date the taxpayer is billed by the person collecting the tax.

(3) The tax is due from the person collecting the tax at the end of the tax period in which the tax is received from the taxpayer. If the taxpayer remits only a portion of the total amount billed for taxes, consideration, and related charges, the amount remitted must be applied first to payment of the solid waste collection tax and this tax has priority over all other claims to the amount remitted. [2017 3rd sp.s. c 10 § 15; 2013 2nd sp.s. c 9 § 8; 2012 2nd sp.s. c 5 § 2; 2011 1st sp.s. c 48 § 7034; 2000 c 103 § 11; 1989 c 431 § 85; 1986 c 282 § 9.]

Intent—Effective dates—2013 2nd sp.s. c 9: See notes following RCW 28A.150.220.

Effective date—2012 2nd sp.s. c 5 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2012]." [2012 2nd sp.s. c 5 § 13.]

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

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Chapter 82.19 RCW

LITTER TAX

Sections

82.19.040 Application of chapters 82.04 and 82.32 RCW—Disposition of revenue. (*Effective until June 30, 2019.*)
82.19.040 Application of chapters 82.04 and 82.32 RCW—Disposition of revenue. (*Effective June 30, 2019.*)

82.19.040 Application of chapters 82.04 and 82.32 RCW—Disposition of revenue. (*Effective until June 30, 2019.*) (1) To the extent applicable, all of the definitions of chapter 82.04 RCW and all of the provisions of chapter 82.32 RCW apply to the tax imposed in this chapter.

(2) Until June 30, 2019, taxes collected under this chapter shall be distributed as follows: (a) Five million dollars per fiscal year must be deposited in equal monthly amounts to the state parks renewal and stewardship account under RCW 79A.05.215; and (b) the remainder to the waste reduction, recycling, and litter control account under RCW 70.93.180. [2017 3rd sp.s. c 1 § 989; 2015 c 15 § 5; 2013 2nd sp.s. c 15 § 5; 2001 c 118 § 6; 1992 c 175 § 6; 1971 ex.s. c 307 § 16. Formerly RCW 70.93.160.]

Expiration date—2017 3rd sp.s. c 1 § 989: "Section 989 (RCW 82.19.040) of this act expires June 30, 2019." [2017 3rd sp.s. c 1 § 999.]

Expiration date—2017 3rd sp.s. c 1; 2013 2nd sp.s. c 15 §§ 5-7: "Sections 5 and 6 of this act expire June 30, 2019. Section 7 of this act expires June 30, 2017." [2017 3rd sp.s. c 1 § 992; 2013 2nd sp.s. c 15 § 8.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Expiration date—2015 c 15 §§ 2 and 5: See note following RCW 70.93.180.

Effective date—2013 2nd sp.s. c 15 §§ 5-7: "Sections 5 through 7 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2013." [2013 2nd sp.s. c 15 § 9.]

82.19.040 Application of chapters 82.04 and 82.32 RCW—Disposition of revenue. (*Effective June 30, 2019.*)

(1) To the extent applicable, all of the definitions of chapter 82.04 RCW and all of the provisions of chapter 82.32 RCW apply to the tax imposed in this chapter.

(2) Beginning June 30, 2019, taxes collected under this chapter shall be deposited in the waste reduction, recycling, and litter control account under RCW 70.93.180. [2017 3rd sp.s. c 1 § 990; 2015 c 15 § 6; 2001 c 118 § 6; 1992 c 175 § 6; 1971 ex.s. c 307 § 16. Formerly RCW 70.93.160.]

Effective date—2017 3rd sp.s. c 1 § 990: "Section 990 (RCW 82.19.040) of this act takes effect June 30, 2019." [2017 3rd sp.s. c 1 § 998.]

Effective date—2015 c 15 §§ 3 and 6: See note following RCW 70.93.180.

Chapter 82.27 RCW

TAX ON ENHANCED FOOD FISH

Sections

82.27.020 Excise tax imposed—Deduction—Measure of tax—Rates—Additional tax imposed. (*Effective January 1, 2018.*)
82.27.070 Deposit of taxes. (*Effective January 1, 2018.*)

82.27.020 Excise tax imposed—Deduction—Measure of tax—Rates—Additional tax imposed. (*Effective January 1, 2018.*) (1) In addition to all other taxes, licenses, or fees provided by law there is established an excise tax on the

commercial possession of enhanced food fish as provided in this chapter. The tax is levied upon and shall be collected from the owner of the enhanced food fish whose possession constitutes the taxable event. The taxable event is the first possession in Washington by an owner after the enhanced food fish has been landed. Processing and handling of enhanced food fish by a person who is not the owner is not a taxable event to the processor or handler.

(2) A person in possession of enhanced food fish and liable to this tax may deduct from the price paid to the person from which the enhanced food fish (except oysters) are purchased an amount equal to a tax at one-half the rate levied in this section upon these products.

(3) The measure of the tax is the value of the enhanced food fish at the point of landing.

(4) The tax shall be equal to the measure of the tax multiplied by the rates for enhanced food fish as follows:

(a) Puget Sound Chinook, coho, and chum salmon and anadromous game fish: Five and twenty-five one-hundredths percent;

(b) Ocean waters, Columbia river, Willapa Bay, and Grays Harbor Chinook, coho, and chum salmon and anadromous game fish: Six and twenty-five one-hundredths percent;

(c) Pink and sockeye salmon: Three and fifteen one-hundredths percent;

(d) Other food fish and shellfish, except oysters, sea urchins, and sea cucumbers: Two and one-tenth percent;

(e) Oysters: Eight one-hundredths of one percent;

(f) Sea urchins: Two and one-tenth percent; and

(g) Sea cucumbers: Two and one-tenth percent.

(5) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (4) of this section. [2017 3rd sp.s. c 8 § 53; 2010 c 193 § 16; 2005 c 110 § 3; 2001 c 320 § 9; 1999 c 126 § 3; 1993 sp.s. c 17 § 12; 1985 c 413 § 2; 1983 2nd ex.s. c 3 § 17; 1983 c 284 § 6; 1982 1st ex.s. c 35 § 10; 1980 c 98 § 2.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Finding—Contingent effective date—Severability—1993 sp.s. c 17: See notes following RCW 77.32.520.

Findings—Intent—1983 c 284: "The legislature finds that there are commercial fish buyers benefiting financially from the propagation of game fish in the state. The legislature recognizes that license fees obtained from sports fishermen support the majority of the production of these game fish. The legislature finds that commercial operations which benefit from the commercial harvest of these fish should pay a tax to assist in the funding of these facilities. However, the intent of the legislature is not to support the commercial harvest of steelhead and other game fish." [1983 c 284 § 8.]

Additional notes found at www.leg.wa.gov

82.27.070 Deposit of taxes. (Effective January 1, 2018.) All taxes collected by the department of revenue under this chapter shall be deposited in the state general fund except for the following:

(1) The excise tax on anadromous game fish is deposited in the state wildlife account.

(2) The excise tax on ocean waters, Columbia river, Willapa Bay, and Grays Harbor chinook, coho, and chum salmon is deposited as follows:

(a) The equivalent of five and twenty-five one-hundredths percent shall be deposited in the state general fund.

(b) The equivalent of one percent shall be deposited in the state wildlife account. [2017 3rd sp.s. c 8 § 54; 2010 c 193 § 17; 2005 c 110 § 4; 2003 c 39 § 46; 1999 c 126 § 4; 1988 c 36 § 61; 1983 c 284 § 7; 1980 c 98 § 7.]

Finding—Intent—Effective date—2017 3rd sp.s. c 8: See notes following RCW 77.08.010.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Chapter 82.29A RCW LEASEHOLD EXCISE TAX

Sections

82.29A.120 Allowable credits. (*Effective January 1, 2022, until January 1, 2032.*)

82.29A.130 Exemptions—Certain property.

82.29A.137 Exemptions—Certain leasehold interests related to the manufacture of superefficient airplanes. (*Effective January 1, 2018, until July 1, 2040.*)

82.29A.120 Allowable credits. (Effective January 1, 2022, until January 1, 2032.) (1)(a) After computation of the taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040, the following credits are allowed in determining the tax payable:

(i) For lessees and sublessees who would qualify for a property tax exemption under RCW 84.36.381 if the property were privately owned, the tax otherwise due after this credit must be reduced by a percentage equal to the percentage reduction in property tax that would result from the property tax exemption under RCW 84.36.381; and

(ii) A credit of thirty-three percent of the tax otherwise due is allowed with respect to a product lease.

(b)(i) For a leasehold interest in real property owned by a state university, a credit is allowed equal to the amount that the tax under this chapter exceeds the property tax that would apply if the real property were privately owned by the taxpayer.

(ii) The credit under this subsection (1)(b) is available only if the tax parcel that is subject to the leasehold interest has a market value in excess of ten million dollars. If the leasehold interest attaches to two or more parcels, the credit is available if at least one of the tax parcels has a market value in excess of ten million dollars. In either case, the market value must be determined as of January 1st of the year prior to the year for which the credit is claimed.

(iii) For purposes of calculating the credit under this subsection (1)(b):

(A) If a tax parcel does not have current assessed value in accordance with RCW 84.40.020, a market value appraisal performed by a Washington state-certified general real estate appraiser, as defined in RCW 18.140.010, is sufficient to establish the market value. If the underlying real property that is the subject of the leasehold interest consists of a part of one or more tax parcels, this appraisal must include the market value of the part of the parcel or parcels to which the leasehold interest applies; and

(B) The property tax that would otherwise apply to the real property that is the subject of the leasehold interest is calculated using the existing consolidated levy rate for the property's tax code area.

(iv) The definitions in this subsection apply throughout this subsection (1)(b) unless the context clearly requires otherwise.

(A) "Market value" means the true and fair value of the property as that term is used in RCW 84.40.030, based on the property's highest and best use and determined by any reasonable means approved by the department.

(B) "Real property" has the same meaning as in RCW 84.04.090 and also includes all improvements upon the land the fee of which is still vested in the public owner.

(C) "State university" has the same meaning as "state universities" as provided in RCW 28B.10.016.

(v) The credit provided under this subsection (1)(b) may not be claimed for tax reporting periods beginning on or after January 1, 2032.

(2) This section expires January 1, 2032. [2017 3rd sp.s. c 37 § 1302; 2013 c 235 § 3; 1994 c 95 § 2; 1986 c 285 § 2; 1975-'76 2nd ex.s. c 61 § 12.]

Tax preference performance statement—2017 3rd sp.s. c 37 § 1302:

"(1) This section is the tax preference performance statement for the tax preference provided in section 1302, chapter 37, Laws of 2017 3rd sp. sess. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to reduce structural inefficiencies in the state tax structure, as indicated in RCW 82.32.808(2)(d).

(3) It is the legislature's specific public policy objective to reduce the leasehold excise tax for certain taxpayers where the amount of leasehold excise tax exceeds what would be owed in property taxes if the property was owned by the taxpayer.

(4) To measure the effectiveness of the tax preference provided in section 1302, chapter 37, Laws of 2017 3rd sp. sess. in achieving the specific public policy objective described in subsection (3) of this section, the joint legislative audit and review committee must determine the amount of leasehold excise tax paid by taxpayers claiming the credit under section 1302, chapter 37, Laws of 2017 3rd sp. sess. in comparison to the amount of leasehold excise taxes or property taxes paid by a sample of taxpayers occupying property geographically proximate to taxpayers claiming the credit under section 1302, chapter 37, Laws of 2017 3rd sp. sess. The amount of leasehold excise tax or property tax must be expressed in dollars per thousand dollars of assessed value and any other way the joint legislative audit and review committee deems necessary to clearly convey the data.

(5)(a) The information provided by taxpayers to the department of revenue and publicly available property tax data is intended to provide the informational basis for the evaluation under subsection (4) of this section.

(b) In addition to the data source described under (a) of this subsection, the joint legislative audit and review committee may use any other data it deems necessary in performing the evaluation under subsection (4) of this section.

(6) The amount of credit reported by a taxpayer to the department is not confidential tax information under RCW 82.32.330 and is subject to disclosure." [2017 3rd sp.s. c 37 § 1301.]

Effective date—2017 3rd sp.s. c 37 §§ 1301 and 1302: "Sections 1301 and 1302 of this act take effect January 1, 2022." [2017 3rd sp.s. c 37 § 1408.]

Additional notes found at www.leg.wa.gov

82.29A.130 Exemptions—Certain property. The following leasehold interests are exempt from taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040:

(1) All leasehold interests constituting a part of the operating properties of any public utility which is assessed and taxed as a public utility pursuant to chapter 84.12 RCW.

(2) All leasehold interests in facilities owned or used by a school, college or university which leasehold provides housing for students and which is otherwise exempt from taxation under provisions of RCW 84.36.010 and 84.36.050.

(3) All leasehold interests of subsidized housing where the fee ownership of such property is vested in the government of the United States, or the state of Washington or any political subdivision thereof but only if income qualification exists for such housing.

(4) All leasehold interests used for fair purposes of a nonprofit fair association that sponsors or conducts a fair or fairs which receive support from revenues collected pursuant to RCW 67.16.100 and allocated by the director of the department of agriculture where the fee ownership of such property is vested in the government of the United States, the state of Washington or any of its political subdivisions. However, this exemption does not apply to the leasehold interest of any sublessee of such nonprofit fair association if such leasehold interest would be taxable if it were the primary lease.

(5) All leasehold interests in any property of any public entity used as a residence by an employee of that public entity who is required as a condition of employment to live in the publicly owned property.

(6) All leasehold interests held by enrolled Indians of lands owned or held by any Indian or Indian tribe where the fee ownership of such property is vested in or held in trust by the United States and which are not subleased to other than to a lessee which would qualify pursuant to this chapter, RCW 84.36.451 and 84.40.175.

(7) All leasehold interests in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. However, this exemption applies only where it is determined that contract rent paid is greater than or equal to ninety percent of fair market rental, to be determined by the department of revenue using the same criteria used to establish taxable rent in RCW 82.29A.020(2)(g).

(8) All leasehold interests for which annual taxable rent is less than two hundred fifty dollars per year. For purposes of this subsection leasehold interests held by the same lessee in contiguous properties owned by the same lessor are deemed a single leasehold interest.

(9) All leasehold interests which give use or possession of the leased property for a continuous period of less than thirty days: PROVIDED, That for purposes of this subsection, successive leases or lease renewals giving substantially continuous use of possession of the same property to the same lessee are deemed a single leasehold interest: PROVIDED FURTHER, That no leasehold interest is deemed to give use or possession for a period of less than thirty days solely by virtue of the reservation by the public lessor of the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(10) All leasehold interests under month-to-month leases in residential units rented for residential purposes of the lessee pending destruction or removal for the purpose of constructing a public highway or building.

(11) All leasehold interests in any publicly owned real or personal property to the extent such leasehold interests arises solely by virtue of a contract for public improvements or work executed under the public works statutes of this state or of the United States between the public owner of the property and a contractor.

(12) All leasehold interests that give use or possession of state adult correctional facilities for the purposes of operating correctional industries under RCW 72.09.100.

(13) All leasehold interests used to provide organized and supervised recreational activities for persons with disabilities of all ages in a camp facility and for public recreational purposes by a nonprofit organization, association, or corporation that would be exempt from property tax under RCW 84.36.030(1) if it owned the property. If the publicly owned property is used for any taxable purpose, the leasehold excise taxes set forth in RCW 82.29A.030 and 82.29A.040 must be imposed and must be apportioned accordingly.

(14) All leasehold interests in the public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy that is in a county with a population of over one million, that has a seating capacity of over forty thousand, and that is constructed on or after January 1, 1995. "Public or entertainment areas" include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include locker rooms or private offices exclusively used by the lessee.

(15) All leasehold interests in the public or entertainment areas of a stadium and exhibition center, as defined in RCW 36.102.010, that is constructed on or after January 1, 1998. For the purposes of this subsection, "public or entertainment areas" has the same meaning as in subsection (14) of this section, and includes exhibition areas.

(16) All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW.

(17) All leasehold interests in property that is: (a) Owned by the United States government or a municipal corporation; (b) listed on any federal or state register of historical sites; and (c) wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

(18) All leasehold interests in the public or entertainment areas of an amphitheater if a private entity is responsible for one hundred percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over seventeen thousand reserved and general admission seats and is in a county that had a population of over three hundred fifty thousand, but less than four hundred twenty-five thousand when the amphitheater first opened to the public.

For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality

areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include office areas used predominately by the lessee.

(19) All leasehold interests in real property used for the placement of military housing meeting the requirements of RCW 84.36.665.

(20) All leasehold interests in facilities owned or used by a community college or technical college, which leasehold interest provides:

(a) Food services for students, faculty, and staff;

(b) The operation of a bookstore on campus; or

(c) Maintenance, operational, or administrative services to the community college or technical college. [2017 3rd sp.s. c 37 § 1303. Prior: 2008 c 194 § 1; 2008 c 84 § 2; 2007 c 90 § 1; prior: 2005 c 514 § 601; 2005 c 170 § 1; 1999 c 165 § 21; 1997 c 220 § 202 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 307; 1995 c 138 § 1; 1992 c 123 § 2; 1975-'76 2nd ex.s. c 61 § 13.]

Tax preference performance statement and expiration—2017 3rd sp.s. c 37 § 1303: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to section 1303 of this act." [2017 3rd sp.s. c 37 § 1304.]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Additional notes found at www.leg.wa.gov

82.29A.137 Exemptions—Certain leasehold interests related to the manufacture of superefficient airplanes. (Effective January 1, 2018, until July 1, 2040.) (1) All leasehold interests in port district facilities exempt from tax under RCW 82.08.980 or 82.12.980 and used by a manufacturer engaged in the manufacturing of superefficient airplanes, as defined in RCW 82.32.550, are exempt from tax under this chapter. A person claiming the credit under RCW 82.04.4463 is not eligible for the exemption under this section.

(2) In addition to all other requirements under this title, a person claiming the exemption under this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(3) This section expires July 1, 2040. [2017 c 135 § 35; 2013 3rd sp.s. c 2 § 13; 2010 c 114 § 134; 2003 2nd sp.s. c 1 § 13.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Contingent effective date—2013 3rd sp.s. c 2: See RCW 82.32.850.

Findings—Intent—2013 3rd sp.s. c 2: See note following RCW 82.32.850.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

Chapter 82.32 RCW

GENERAL ADMINISTRATIVE PROVISIONS

Sections

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82.32.790	Tax incentives contingent upon semiconductor microchip fabrication facility siting and operation. (<i>Effective January 1, 2018; contingent expiration date.</i>)
82.32.808	Tax preferences—Performance statement requirement. (<i>Effective January 1, 2018.</i>)

82.32.030 Registration certificates—Threshold levels—Central registration system. (1) Except as provided in subsections (2) and (3) of this section, if any person engages in any business or performs any act upon which a tax is imposed by the preceding chapters, he or she must, under such rules as the department prescribes, apply for and obtain from the department a registration certificate. Such registration certificate is personal and nontransferable and is valid as long as the taxpayer continues in business and pays the tax accrued to the state. In case business is transacted at two or more separate places by one taxpayer, a separate registration certificate for each place at which business is transacted with the public is required. Each certificate must be numbered and must show the name, residence, and place and character of business of the taxpayer and such other information as the department of revenue deems necessary and must be posted in a conspicuous place at the place of business for which it is issued. Where a place of business of the taxpayer is changed, the taxpayer must return to the department the existing certificate, and a new certificate will be issued for the new place of business. No person required to be registered under this section may engage in any business taxable hereunder without first being so registered. The department, by rule, may provide for the issuance of certificates of registration to temporary places of business.

(2) Unless the person is a dealer as defined in RCW 9.41.010, registration under this section is not required if the following conditions are met:

(a) A person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than twelve thousand dollars per year;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than twelve thousand dollars per year;

(c) The person is not required to collect or pay to the department of revenue any other tax or fee that the department is authorized to collect; and

(d) The person is not otherwise required to obtain a license subject to the business license application procedure provided in chapter 19.02 RCW.

(3) All persons who agree to collect and remit sales and use tax to the department under the agreement must register through the central registration system authorized under the agreement. Persons required to register under subsection (1) of this section are not relieved of that requirement because of registration under this subsection (3).

(4) Persons registered under subsection (3) of this section who are not required to register under subsection (1) of this section and who are not otherwise subject to the requirements of chapter 19.02 RCW are not subject to the fees imposed by the department under the authority of RCW 19.02.075. [2017 c 323 § 505; 2011 c 298 § 38; 2007 c 6 § 202; 1996 c 111 § 2. Prior: 1994 sp.s. c 7 § 446; 1994 sp.s. c 2 § 2; 1992 c 206 § 8; 1982 1st ex.s. c 4 § 1; 1979 ex.s. c 95 § 1; 1975 1st ex.s. c 278 § 77; 1961 c 15 § 82.32.030; prior: 1941 c 178 § 19, part; 1937 c 227 § 16, part; 1935 c 180 § 187, part; Rem. Supp. 1941 § 8370-187, part.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Findings—Purpose—1996 c 111: "The legislature finds that small businesses play a vital role in the state's current and future economic health. The legislature also finds that the state's excise tax reporting and registration requirements are unduly burdensome for small businesses incurring little or no tax liability. The legislature recognizes the costs associated in complying with the reporting and registration requirements that are hindering the further development of those businesses. For these reasons the legislature with this act simplifies the tax reporting and registration requirements for certain small businesses." [1996 c 111 § 1.]

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

Additional notes found at www.leg.wa.gov

82.32.047 Taxes—Payable by consumer directly to department—When due. (1) Except as otherwise provided in this section, taxes imposed under chapter 82.08 or 82.12 RCW and payable by a consumer directly to the department are due, on returns prescribed by the department, by the earlier of April 1st of the calendar year immediately following the calendar year in which the sale or use occurred or within thirty days of the date of a notice from the department that tax may be due.

(2) This section does not apply to the reporting and payment of taxes imposed under chapters 82.08 and 82.12 RCW:

(a) On the retail sale or use of motor vehicles, vessels, or aircraft; or

(b) By consumers who are engaged in business, unless the department has relieved the consumer of the requirement to file returns pursuant to RCW 82.32.045(4). [2017 3rd sp.s. c 28 § 209.]

Findings—Intent—2017 3rd sp.s. c 28 §§ 201-214: See note following RCW 82.08.053.

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

82.32.105 Waiver or cancellation of penalties or interest—Rules. (Effective January 1, 2018.) (1) If the department finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the department must waive or cancel any penalties imposed under this chapter with respect to such tax.

(2) The department must waive or cancel the penalty imposed under RCW 82.32.090(1) when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under subsection (1) of this section if:

(a) The taxpayer requests the waiver for a tax return required to be filed under RCW 54.28.040, 82.32.045, 82.14B.061, 82.23B.020, 82.27.060, 82.29A.050, or 84.33.086; and

(b) The taxpayer has timely filed and remitted payment on all tax returns due for that tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested.

(3) The department must waive or cancel interest imposed under this chapter if:

(a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

(4) The department must adopt rules for the waiver or cancellation of penalties and interest imposed by this chapter. [2017 c 323 § 106; 1998 c 304 § 13; 1996 c 149 § 17; 1975 1st ex.s. c 278 § 78; 1965 ex.s. c 141 § 8.]

Effective dates—2017 c 323 §§ 101-109: See note following RCW 54.28.125.

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

Additional notes found at www.leg.wa.gov

82.32.350 Closing agreements authorized. (Effective January 1, 2018.) The department may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the preceding chapters of this title, or any tax in respect to which this section is specifically made applicable, for any taxable period

or periods. [2017 c 323 § 107; 1971 ex.s. c 299 § 23; 1961 c 15 § 82.32.350. Prior: 1945 c 251 § 1; Rem. Supp. 1945 § 8370-225.]

Effective dates—2017 c 323 §§ 101-109: See note following RCW 54.28.125.

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Additional notes found at www.leg.wa.gov

82.32.534 Annual report requirement for tax preferences. (Effective January 1, 2018.) (1)(a)(i) Beginning in calendar year 2018, every person claiming a tax preference that requires an annual tax performance report under this section must file a complete annual report with the department. The report is due by May 31st of the year following any calendar year in which a person becomes eligible to claim the tax preference that requires a report under this section.

(ii) If the tax preference is a deferral of tax, the first annual tax performance report must be filed by May 31st of the calendar year following the calendar year in which the investment project is certified by the department as operationally complete, and an annual tax performance report must be filed by May 31st of each of the seven succeeding calendar years.

(iii) The department may extend the due date for timely filing of annual reports under this section as provided in RCW 82.32.590.

(b) The report must include information detailing employment and wages for employment positions in Washington for the year that the tax preference was claimed. However, persons engaged in manufacturing commercial airplanes or components of such airplanes may report employment, wage, and benefit information per job at the manufacturing site for the year that the tax preference was claimed. The report must not include names of employees. The report must also detail employment by the total number of full-time, part-time, and temporary positions for the year that the tax preference was claimed. In lieu of reporting employment and wage data required under this subsection, taxpayers may instead opt to allow the employment security department to release the same employment and wage information from unemployment insurance records to the department and the joint legislative audit and review committee. This option is intended to reduce the reporting burden for taxpayers, and each taxpayer electing to use this option must affirm that election in accordance with procedures approved by the employment security department.

(c) Persons receiving the benefit of the tax preference provided by RCW 82.16.0421 or claiming any of the tax preferences provided by RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, or 82.12.022(5) must indicate on the annual report the quantity of product produced in this state during the time period covered by the report.

(d) If a person filing a report under this section did not file a report with the department in the previous calendar year, the report filed under this section must also include employment, wage, and benefit information for the calendar year immediately preceding the calendar year for which a tax preference was claimed.

(2)(a) As part of the annual report, the department and the joint legislative audit and review committee may request additional information necessary to measure the results of, or determine eligibility for, the tax preference.

(b) The report must include the amount of the tax preference claimed for the calendar year covered by the report. For a person that claimed an exemption provided in RCW 82.08.025651 or 82.12.025651, the report must include the amount of tax exempted under those sections in the prior calendar year for each general area or category of research and development for which exempt machinery and equipment and labor and services were acquired in the prior calendar year.

(3) Other than information requested under subsection (2)(a) of this section, the information contained in an annual report filed under this section is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(4)(a) Except as otherwise provided by law, if a person claims a tax preference that requires an annual report under this section but fails to submit a complete report by the due date or any extension under RCW 82.32.590, the department must declare:

(i) Thirty-five percent of the amount of the tax preference claimed for the previous calendar year to be immediately due and payable;

(ii) An additional fifteen percent of the amount of the tax preference claimed for the previous calendar year to be immediately due and payable if the person has previously been assessed under this subsection (4) for failure to submit a report under this section for the same tax preference; and

(iii) If the tax preference is a deferral of tax, the amount immediately due under this subsection is twelve and one-half percent of the deferred tax. If the economic benefits of the deferral are passed to a lessee, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(b) The department may not assess interest or penalties on amounts due under this subsection.

(5) The department must use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers may be included in any category. The department must report these statistics to the legislature each year by December 31st.

(6) For the purposes of this section:

(a) "Person" has the meaning provided in RCW 82.04.030 and also includes the state and its departments and institutions.

(b) "Tax preference" has the meaning provided in RCW 43.136.021 and includes only the tax preferences requiring a report under this section. [2017 c 135 § 1; 2016 c 175 § 1; 2014 c 97 § 102; 2010 c 114 § 103.]

Effective date—2017 c 135: "This act takes effect January 1, 2018." [2017 c 135 § 48.]

Effective date—2016 c 175: "This act takes effect July 1, 2016." [2016 c 175 § 4.]

Application—Prospective and retroactive—2016 c 175: "(1) In addition to applying prospectively, sections 1(4) and 2(6) of this act apply retroactively for a taxpayer who has filed an appeal regarding taxes, penalties, and interest owed under RCW 82.32.534 or *82.32.585 before January 1, 2016, and the appeal is pending before the department of revenue or the board of tax appeals as of July 1, 2016.

(2) Except for taxpayers described in subsection (1) of this section, sections 1(4) and 2(6) of this act apply to amounts due and payable under sections 1(4) and 2(6) of this act on or after July 1, 2017." [2016 c 175 § 3.]

***Reviser's note:** RCW 82.32.585 was repealed by 2017 c 135 § 2, effective January 1, 2018.

Annual surveys and reports—Recommendations to update and improve—2013 2nd sp.s. c 13: "By December 1, 2013, the department of revenue, in consultation with the joint legislative audit and review committee, must make recommendations to the appropriate fiscal committees of the legislature on ways to update and improve the annual report and annual survey. The recommendations must include suggested revisions to the report and survey that would make the data more relevant and reduce the administrative burden on the taxpayer." [2013 2nd sp.s. c 13 § 1801.]

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

82.32.537 Silicon smelters—Annual survey or report. (Contingent expiration date.) (1)(a) A silicon smelter operated by a person required to submit an annual survey or report under RCW 82.16.315, 82.04.545, or 82.12.022 must repay an amount equal to the entire economic benefit accruing to the person for the previous two calendar years due to the tax preferences under RCW 82.16.315, 82.04.545, or 82.12.022 if:

(i) The average number of employment positions at a silicon smelter operated by the person is less than one hundred employment positions, as reported to the employment security department for the previous two calendar years; and

(ii) The average annual wage for all employment positions is equal to or less than the average annual wage for the county in which the silicon smelter operation is located for the previous two calendar years. The department must use the finalized 2015 county wage data from the census of employment and wages as reported by the employment security department.

(b) The department must make the determinations under (a)(i) and (ii) of this subsection (1) by August 31, 2023.

(2) If any tax preference amounts must be repaid under subsection (1) of this section, the department must declare the tax preference amounts to be immediately due and payable. The department must assess interest, but not penalties, on the amounts due under this subsection. The department must assess interest at the rate provided for delinquent taxes under this chapter, retroactively to the date the tax preference was claimed, and such interest accrues until the tax preference amounts are repaid.

(3) If any tax preference amounts must be repaid under subsection (1) of this section, the person may not continue to benefit from the tax preferences under RCW 82.16.315, 82.04.545, or 82.12.022. [2017 3rd sp.s. c 37 § 708.]

Contingent expiration date—2017 3rd sp.s. c 37 §§ 701-708: "(1)(a) Except as provided in (b) of this subsection, part VII of this act expires July 1, 2027.

(b)(i) If a person must make repayment under section 708 of this act, part VII of this act expires January 1, 2024.

(ii) Section 706 of this act expires January 1, 2018.

(2) If the contingent expiration date in subsection (1)(b) of this section occurs, the department of revenue must provide written notice of the expiration date of part VII of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department.

(3) If the contingent expiration date in subsection (1)(b) of this section occurs, the joint legislative audit and review committee is not required to perform the evaluation required in section 701 of this act." [2017 3rd sp.s. c 37 § 1407.]

Findings—Intent—Tax preference performance statement—2017 3rd sp.s. c 37 §§ 701-708: See note following RCW 82.16.315.

82.32.580 Sales and use tax deferral—Historic automobile museum. (1) The governing board of a nonprofit organization, corporation, or association may apply for deferral of taxes on an eligible project. Application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the project, estimated or actual costs of the project, time schedules for completion and operation of the project, and other information required by the department. The department must rule on the application within sixty days. All applications for the tax deferral under this section must be received no later than December 31, 2008.

(2) The department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible project.

(3) The nonprofit organization, corporation, or association must begin paying the deferred taxes in the tenth year after the date certified by the department as the date on which the eligible project is operationally complete. The first payment is due on December 31st of the tenth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years. Each payment must equal ten percent of the deferred tax.

(4) The department may authorize an accelerated repayment schedule upon request of the nonprofit organization, corporation, or association.

(5) Except as provided in subsection (6) of this section, interest may not be charged on any taxes deferred under this section for the period of deferral. The debt for deferred taxes is not extinguished by insolvency or other failure of the nonprofit organization, corporation, or association.

(6) If the project is not operationally complete within five calendar years from issuance of the tax deferral or if at any time the department finds that the project is not eligible for tax deferral under this section, the amount of deferred taxes outstanding for the project is immediately due and payable. If deferred taxes must be repaid under this subsection, the department must assess interest, but not penalties, on amounts due under this subsection. Interest must be assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date of deferral, and accrues until the deferred taxes due are repaid.

(7) Applications and any other information received by the department of revenue under this section are not confidential under RCW 82.32.330. This chapter applies to the administration of this section.

(8) This section applies to taxable eligible project activity that occurs on or after July 1, 2007.

(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Eligible project" means a project that is used primarily for a historic automobile museum.

(b) "Historic automobile museum" means a facility owned and operated by a nonprofit organization, corporation, or association that is used to maintain and exhibit to the public a collection of at least five hundred motor vehicles.

(c) "Nonprofit organization, corporation, or association" means an organization, corporation, or association exempt from tax under section 501(c) (3), (4), or (10) of the federal internal revenue code (26 U.S.C. Sec. 501(c) (3), (4), or (10)).

(d) "Project" means the construction of new structures, the acquisition and installation of fixtures that are permanently affixed to and become a physical part of those structures, and site preparation. For purposes of this subsection, structures do not include parking facilities used for motor vehicles that are not on display or part of the museum collection.

(e) "Site preparation" includes soil testing, site clearing and grading, demolition, or any other related activities that are initiated before construction. Site preparation does not include landscaping services or landscaping materials. [2017 3rd sp.s. c 37 § 902; 2005 c 514 § 701.]

Tax preference performance statement—2017 3rd sp.s. c 37 § 902: "(1) This section is the tax preference performance statement for the tax preference contained in section 902, chapter 37, Laws of 2017 3rd sp. sess. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to provide tax relief for certain businesses or individuals and to accomplish a general purpose as indicated in RCW 82.32.808(2) (e) and (f).

(3) It is the legislature's specific public policy objective to increase the fiscal stability of historic automobile museums in Washington state and thereby strengthen the economic vitality of the communities in which the museums are located.

(4) To measure the effectiveness of the tax preference in section 902, chapter 37, Laws of 2017 3rd sp. sess. in achieving the specific public policy objective described in subsection (3) of this section, the joint legislative audit and review committee must evaluate this tax preference. In evaluating the tax preference, the joint legislative audit and review committee may refer to data provided to the department of revenue." [2017 3rd sp.s. c 37 § 901.]

Additional notes found at www.leg.wa.gov

82.32.585 Repealed. (Effective January 1, 2018.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

82.32.590 Annual tax performance reports—Failure to file. (Effective January 1, 2018.) (1) If the department finds that the failure of a taxpayer to file an annual tax performance report under RCW 82.32.534 by the due date was the result of circumstances beyond the control of the taxpayer, the department must extend the time for filing the tax performance report. The extension is for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this section. The department may grant additional extensions as it deems proper.

(2) In making a determination whether the failure of a taxpayer to file an annual tax performance report by the due date was the result of circumstances beyond the control of the taxpayer, the department must be guided by rules adopted by the department for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(3)(a) Subject to the conditions in this subsection (3), a taxpayer who fails to file an annual tax performance report required under subsection (1) of this section by the due date of the report is entitled to an extension of the due date. A

request for an extension under this subsection (3) must be made in writing to the department.

(b) To qualify for an extension under this subsection (3), a taxpayer must have filed all annual tax performance reports, if any, due in prior years under subsection (1) of this section by their respective due dates, beginning with annual reports due in calendar year 2010.

(c) An extension under this subsection (3) is for ninety days from the original due date of the annual tax performance report.

(d) No taxpayer may be granted more than one ninety-day extension under this subsection (3). [2017 c 135 § 3; 2011 c 174 § 306. Prior: 2010 c 137 § 1; 2010 c 114 § 135; 2009 c 461 § 7; prior: 2008 c 81 § 13; 2008 c 15 § 7; prior: 2006 c 354 § 17; 2006 c 300 § 10; 2006 c 177 § 8; 2006 c 112 § 7; 2006 c 84 § 7; 2005 c 514 § 1001.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—2010 c 137: "Section 1 of this act applies to annual surveys and reports due under any of the statutes listed in RCW 82.32.590(1) in calendar year 2011 and thereafter." [2010 c 137 § 2.]

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—Contingent effective date—2009 c 461: See note following RCW 82.04.280.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Effective date—2008 c 15: See note following RCW 82.82.010.

Findings—Intent—2006 c 84: See note following RCW 82.04.2404.

Additional notes found at www.leg.wa.gov

82.32.600 Annual tax performance reports—Electronic filing. (Effective January 1, 2018.) (1) Persons required to file annual tax performance reports under RCW 82.32.534 must electronically file with the department all reports, returns, and any other forms or information the department requires in an electronic format as provided or approved by the department. As used in this section, "returns" has the same meaning as "return" in RCW 82.32.050.

(2) Any report, return, or any other form or information required to be filed in an electronic format under subsection (1) of this section is not filed until received by the department in an electronic format.

(3) The department may waive the electronic filing requirement in subsection (1) of this section for good cause shown. [2017 c 135 § 4; 2010 c 114 § 136; 2009 c 461 § 8. Prior: 2008 c 81 § 14; 2008 c 15 § 8; prior: 2007 c 54 § 23; 2007 c 54 § 22; prior: 2006 c 354 § 16; 2006 c 300 § 11; 2006 c 178 § 9; 2006 c 177 § 9; 2006 c 84 § 8; 2005 c 514 § 1002.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—Contingent effective date—2009 c 461: See note following RCW 82.04.280.

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Effective date—2008 c 15: See note following RCW 82.82.010.

Severability—2007 c 54: See note following RCW 82.04.050.

Findings—Intent—2006 c 84: See note following RCW 82.04.2404.

Additional notes found at www.leg.wa.gov

82.32.605 Annual tax performance report—Hog fuel. (Effective January 1, 2018, until June 30, 2024.) (1) Every taxpayer claiming an exemption under RCW 82.08.956 or 82.12.956 must file with the department a complete annual tax performance report under RCW 82.32.534, except that the taxpayer must file a separate tax performance report for each facility owned or operated in the state of Washington.

(2) This section expires June 30, 2024. [2017 c 135 § 5; 2013 2nd sp.s. c 13 § 1004.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Intent—Effective date—2013 2nd sp.s. c 13: See notes following RCW 82.08.956.

82.32.607 Annual tax performance report for tax exemption for sales of machinery and equipment used in generating electricity. (Effective January 1, 2018.) Every taxpayer claiming an exemption under RCW 82.08.962 or 82.12.962 must file with the department a complete annual tax performance report under RCW 82.32.534, except that the taxpayer must file a separate tax performance report for each facility owned or operated in the state of Washington developed with machinery, equipment, services, or labor for which the exemption under RCW 43.136.058, 82.08.962, and 82.12.962 is claimed. [2017 c 135 § 6; 2013 2nd sp.s. c 13 § 1503.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Intent—2013 2nd sp.s. c 13: See note following RCW 82.08.962.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.08.956.

82.32.670 Tax evasion by electronic means—Seizure and forfeiture. (1)(a) Automated sales suppression devices, phantom-ware, electronic cash registers or point of sale systems used with automated sales suppression devices or phantom-ware, and any property constituting proceeds traceable to any violation of RCW 82.32.290(4) are considered contraband and are subject to seizure and forfeiture.

(b) Property subject to forfeiture under (a) of this subsection (1) may be seized by any agent of the department authorized to assess or collect taxes, or law enforcement officer of this state, upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(i) The seizure is incident to an arrest or a search under a search warrant; or

(ii) The department or the law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of RCW 82.32.290(4) and exigent circumstances exist making procurement of a search warrant impracticable.

(2) Forfeiture authorized by this section is deemed to have commenced by the seizure. Notice of seizure must be given to the department if the seizure is made by a law enforcement officer without the presence of any agent of the department. The department must cause notice of the seizure and intended forfeiture to be served on the owner of the property seized, if known, and on any other person known by the department to have a right or interest in the seized property. Such service must be made within fifteen days following the seizure or the department's receipt of notification of the sei-

zure. The notice may be served by any method authorized by law or court rule, by certified mail with return receipt requested, or electronically in accordance with RCW 82.32.135. Service by certified mail or electronic means is deemed complete upon mailing the notice, electronically sending the notice, or electronically notifying the person or persons entitled to the notice that the notice is available to be accessed by the person or persons, within the fifteen-day period following the seizure or the department's receipt of notification of the seizure.

(3) If no person notifies the department in writing of the person's claim of lawful ownership or right to lawful possession of the item or items seized within thirty days of the date of service of the notice of seizure and intended forfeiture, the item or items seized are deemed forfeited.

(4)(a) If any person notifies the department, in writing, of the person's claim of lawful ownership or lawful right to possession of the item or items seized within thirty days of the date of service of the notice of seizure and intended forfeiture, the person or persons must be afforded a reasonable opportunity to be heard as to the claim. The hearing must be before the director or the director's designee. A hearing and any administrative or judicial review is governed by chapter 34.05 RCW. The burden of proof by a preponderance of the evidence is upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the item or items seized.

(b) The department must return the item or items to the claimant as soon as possible upon a determination that the claimant is the present lawful owner or is lawfully entitled to possession of the item or items seized.

(5) When property is sought to be forfeited on the ground that it constitutes proceeds traceable to a violation of RCW 82.32.290(4), the department must prove by a preponderance of the evidence that the property constitutes proceeds traceable to a violation of RCW 82.32.290(4).

(6)(a) When automated sales suppression devices or phantom-ware voluntarily surrendered to an agent of the department, or property forfeited under this section, other than proceeds traceable to a violation of RCW 82.32.290(4), is no longer required for evidentiary purposes, the department may:

- (i) Destroy or have the property destroyed;
- (ii) Retain the property for training or other official purposes; or
- (iii) Loan or give the property to any law enforcement or tax administration agency of any state, political subdivision or municipal corporation of a state, or the United States for training or other official purposes. For purposes of this subsection (6)(a)(iii), "state" has the same meaning as in RCW 82.04.462.

(b) When proceeds traceable to a violation of RCW 82.32.290(4) forfeited under this section are no longer required for evidentiary purposes, they must be deposited into the general fund.

(7) The definitions in this subsection apply to this section:

(a) "Automated sales suppression device" means a software program that falsifies the electronic records of electronic cash registers or other point of sale systems, including transaction data and transaction reports. The term includes

the software program, any device that carries the software program, or an internet link to the software program.

(b) "Electronic cash register" means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing sales transaction data in whatever manner.

(c) "Phantom-ware" means a programming option that is hidden, preinstalled, or installed-at-a-later-time in the operating system of an electronic cash register or other point of sale device, or hardwired into the electronic cash register or other point of sale device, and that can be used to create a virtual second till or may eliminate or manipulate transaction reports that may or may not be preserved in digital formats to represent the true or manipulated record of transactions in the electronic cash register or other point of sale device.

(d) "Transaction data" means information about sales transactions, including items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.

(e) "Transaction reports" means a report that includes information associated with sales transactions, taxes collected, media totals, and discount voids at an electronic cash register that can be printed on cash register tape at the end of a day or shift, or a report documenting every action at an electronic cash register or other point of sale device and that is stored electronically. [2017 c 323 § 401; 2013 c 309 § 3.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

82.32.710 Professional employer organizations—Eligibility for tax incentives—Responsibility for tax performance reports. (Effective January 1, 2018.) (1) A client under the terms of a professional employer agreement is deemed to be the sole employer of a covered employee for purposes of eligibility for any tax credit, exemption, or other tax incentive, arising as the result of the employment of covered employees, provided in RCW *82.04.4333, 82.04.44525, 82.04.448, 82.04.4483, 82.08.965, 82.12.965, 82.16.0495, or 82.60.049 or chapter 82.62 or 82.70 RCW, or any other provision in this title. A client, and not the professional employer organization, is entitled to the benefit of any tax credit, exemption, or other tax incentive arising as the result of the employment of covered employees of that client.

(2) A client under the terms of a professional employer agreement is deemed to be the sole employer of a covered employee for purposes of tax performance reports that require the reporting of employment information relating to covered employees of the client, as provided in RCW 82.32.534. A client, and not the professional employer organization, is required to complete any tax performance report that requires the reporting of employment information relating to covered employees of that client.

(3) For the purposes of this section, "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in

RCW 82.04.540. [2017 c 135 § 7; 2010 c 114 § 137; 2006 c 301 § 4.]

*Reviser's note: RCW 82.04.4333 was repealed by 2015 c 86 § 101.

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Additional notes found at www.leg.wa.gov

82.32.733 Changes in federal law or the streamlined sales and use tax agreement after July 7, 2017—Conflicts.

(1) If the department determines that a change, taking effect after July 7, 2017, in the streamlined sales and use tax agreement or federal law creates a conflict with any provision of RCW 82.08.053 or 82.08.0531, such conflicting provision or provisions of RCW 82.08.053 or 82.08.0531, including any related provisions that would not function as originally intended, have no further force and effect as of the date the change in the streamlined sales and use tax agreement or federal law becomes effective.

(2) For purposes of this section:

(a) A change in federal law conflicts with RCW 82.08.053 or 82.08.0531 if the change clearly allows states to impose greater sales and use tax collection obligations on remote sellers, referrers, or marketplace facilitators than provided for, or clearly prevents states from imposing sales and use tax collection obligations on remote sellers, referrers, or marketplace facilitators to the extent provided for, under RCW 82.08.053 or 82.08.0531.

(b) A change in the streamlined sales and use tax agreement conflicts with RCW 82.08.053 or 82.08.0531 if one or more provisions of RCW 82.08.053 or 82.08.0531 causes this state to be found out of compliance with the streamlined sales and use tax agreement by its governing board.

(3) If the department makes a determination under this section that a change in federal law or the streamlined sales and use tax agreement conflicts with one or more provisions of RCW 82.08.053 or 82.08.0531, the department:

(a) May adopt rules in accordance with chapter 34.05 RCW that are consistent with the streamlined sales and use tax agreement and that impose sales and use tax collection obligations on remote sellers, referrers, or marketplace facilitators to the fullest extent allowed under state and federal law; and

(b) Must include information on its web site informing taxpayers and the public (i) of the provision or provisions of RCW 82.08.053 or 82.08.0531 that will have no further force and effect, (ii) when such change will become effective, and (iii) about how to participate in any rule making conducted by the department in accordance with (a) of this subsection (3).

(4) For purposes of this section, "remote seller," "referrer," and "marketplace facilitator" have the same meaning as provided in RCW 82.13.010. [2017 3rd sp.s. c 28 § 214.]

Findings—Intent—2017 3rd sp.s. c 28 §§ 201-214: See note following RCW 82.08.053.

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

82.32.763 Remote seller, referrer, and marketplace facilitator—Recovery procedures—Liability. (1) A

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remote seller, referrer, or marketplace facilitator that is subject to RCW 82.08.053 and is complying with the requirements of chapters 82.08 and 82.12 RCW may only seek a recovery of retail sales and use taxes, penalties, or interest from the department by following the recovery procedures established under RCW 82.32.060. However, no claim may be granted on the basis that the taxpayer lacked a physical presence in this state and complied with the tax collection provisions of chapters 82.08 and 82.12 RCW voluntarily.

(2) Neither the state nor any seller who elects under RCW 82.08.053 to collect and remit retail sales or use tax is liable to a purchaser who claims that the retail sales or use tax has been over-collected because a provision of chapter 28, Laws of 2017 3rd sp. sess. is later deemed unlawful.

(3) Nothing in chapter 28, Laws of 2017 3rd sp. sess. affects the obligation of any purchaser from this state to remit retail sales or use tax as to any applicable taxable transaction in which the seller does not collect and remit retail sales or use tax. [2017 3rd sp.s. c 28 § 210.]

Findings—Intent—2017 3rd sp.s. c 28 §§ 201-214: See note following RCW 82.08.053.

Existing rights and liability—Severability—2017 3rd sp.s. c 28: See notes following RCW 82.08.053.

Application—Effective dates—2017 3rd sp.s. c 28: See notes following RCW 82.13.020.

82.32.790 Tax incentives contingent upon semiconductor microchip fabrication facility siting and operation.

(Effective until January 1, 2018; contingent expiration date.) (1)(a) Sections 509, 511, 513, 515, 517, 519, 521, and 523, chapter 37, Laws of 2017 3rd sp. sess., sections 104, 110, 117, 123, 125, 129, 131, and 150, chapter 114, Laws of 2010, and sections 1, 2, 3, and 5 through 10, chapter 149, Laws of 2003 are contingent upon the siting and commercial operation of a significant semiconductor microchip fabrication facility in the state of Washington by January 1, 2024.

(b) For the purposes of this section:

(i) "Commercial operation" means the same as "commencement of commercial production" as used in RCW 82.08.965.

(ii) "Semiconductor microchip fabrication" means "manufacturing semiconductor microchips" as defined in RCW 82.04.426.

(iii) "Significant" means the combined investment of new buildings and new machinery and equipment in the buildings, at the commencement of commercial production, will be at least one billion dollars.

(2) The sections referenced in subsection (1) of this section take effect the first day of the month in which a contract for the construction of a significant semiconductor fabrication facility is signed, if the contract is signed and received by January 1, 2024, as determined by the director of the department of revenue.

(3)(a) The department of revenue must provide notice of the effective date of the sections referenced in subsection (1) of this section to affected taxpayers, the legislature, and others as deemed appropriate by the department.

(b) If, after making a determination that a contract has been signed and the sections referenced in subsection (1) of this section are effective, the department discovers that commencement of commercial production did not take place

within three years of the date the contract was signed, the department must make a determination that chapter 149, Laws of 2003 is no longer effective, and all taxes that would have been otherwise due are deemed deferred taxes and are immediately assessed and payable from any person reporting tax under RCW 82.04.240(2) or claiming an exemption or credit under RCW 82.04.426, 82.04.448, 82.08.965, 82.12.965, 82.08.970, 82.12.970, or 84.36.645. The department is not authorized to make a second determination regarding the effective date of the sections referenced in subsection (1) of this section.

(4)(a) This section expires January 1, 2024, if the contingency in subsection (2) of this section does not occur by January 1, 2024, as determined by the department.

(b) The department must provide written notice of the expiration date of this section and the sections referenced in subsection (1) of this section to affected taxpayers, the legislature, and others as deemed appropriate by the department. [2017 3rd sp.s. c 37 § 525; 2017 c 323 § 509. Prior: 2010 c 114 § 201; 2010 c 106 § 401; 2009 c 461 § 9; 2006 c 300 § 12; 2003 c 149 § 12.]

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

82.32.790 Tax incentives contingent upon semiconductor microchip fabrication facility siting and operation. (Effective January 1, 2018; contingent expiration date.)

(1)(a) Sections 510, 512, 514, 516, 518, 520, 522, and 524, chapter 37, Laws of 2017 3rd sp. sess., sections 9, 13, 17, 22, 24, 30, 32, and 45, chapter 135, Laws of 2017, sections 104, 110, 117, 123, 125, 129, 131, and 150, chapter 114, Laws of 2010, and sections 1, 2, 3, and 5 through 10, chapter 149, Laws of 2003 are contingent upon the siting and commercial operation of a significant semiconductor microchip fabrication facility in the state of Washington by January 1, 2024.

(b) For the purposes of this section:

(i) "Commercial operation" means the same as "commencement of commercial production" as used in RCW 82.08.965.

(ii) "Semiconductor microchip fabrication" means "manufacturing semiconductor microchips" as defined in RCW 82.04.426.

(iii) "Significant" means the combined investment of new buildings and new machinery and equipment in the buildings, at the commencement of commercial production, will be at least one billion dollars.

(2) The sections referenced in subsection (1) of this section take effect the first day of the month in which a contract for the construction of a significant semiconductor fabrication facility is signed, if the contract is signed and received by January 1, 2024, as determined by the director of the department of revenue.

(3)(a) The department of revenue must provide notice of the effective date of the sections referenced in subsection (1) of this section to affected taxpayers, the legislature, and others as deemed appropriate by the department.

(b) If, after making a determination that a contract has been signed and the sections referenced in subsection (1) of this section are effective, the department discovers that commencement of commercial production did not take place within three years of the date the contract was signed, the department must make a determination that chapter 149, Laws of 2003 is no longer effective, and all taxes that would have been otherwise due are deemed deferred taxes and are immediately assessed and payable from any person reporting tax under RCW 82.04.240(2) or claiming an exemption or credit under RCW 82.04.426, 82.04.448, 82.08.965, 82.12.965, 82.08.970, 82.12.970, or 84.36.645. The department is not authorized to make a second determination regarding the effective date of the sections referenced in subsection (1) of this section.

(4)(a) This section expires January 1, 2024, if the contingency in subsection (2) of this section does not occur by January 1, 2024, as determined by the department.

(b) The department must provide written notice of the expiration date of this section and the sections referenced in subsection (1) of this section to affected taxpayers, the legislature, and others as deemed appropriate by the department. [2017 3rd sp.s. c 37 § 526. Prior: 2017 c 323 § 509; 2017 c 135 § 47; prior: 2010 c 114 § 201; 2010 c 106 § 401; 2009 c 461 § 9; 2006 c 300 § 12; 2003 c 149 § 12.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Effective date—2017 c 135: See note following RCW 82.32.534.

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

82.32.808 Tax preferences—Performance statement requirement. (Effective January 1, 2018.)

(1) As provided in this section, every bill enacting a new tax preference must include a tax preference performance statement, unless the legislation enacting the new tax preference contains an explicit exemption from the requirements of this section.

(2) A tax preference performance statement must state the legislative purpose for the new tax preference. The tax preference performance statement must indicate one or more of the following general categories, by reference to the applicable category specified in this subsection, as the legislative purpose of the new tax preference:

(a) Tax preferences intended to induce certain designated behavior by taxpayers;

(b) Tax preferences intended to improve industry competitiveness;

(c) Tax preferences intended to create or retain jobs;

(d) Tax preferences intended to reduce structural inefficiencies in the tax structure;

(e) Tax preferences intended to provide tax relief for certain businesses or individuals; or

(f) A general purpose not identified in (a) through (e) of this subsection.

(3) In addition to identifying the general legislative purpose of the tax preference under subsection (2) of this section, the tax preference performance statement must provide

additional detailed information regarding the legislative purpose of the new tax preference.

(4) A new tax preference performance statement must specify clear, relevant, and ascertainable metrics and data requirements that allow the joint legislative audit and review committee and the legislature to measure the effectiveness of the new tax preference in achieving the purpose designated under subsection (2) of this section.

(5) If the tax preference performance statement for a new tax preference indicates a legislative purpose described in subsection (2)(b) or (c) of this section, any taxpayer claiming the new tax preference must file an annual tax performance report in accordance with RCW 82.32.534.

(6)(a) Taxpayers claiming a new tax preference must report the amount of the tax preference claimed by the taxpayer to the department as otherwise required by statute or determined by the department as part of the taxpayer's regular tax reporting responsibilities. For new tax preferences allowing certain types of gross income of the business to be excluded from business and occupation or public utility taxation, the tax return must explicitly report the amount of the exclusion, regardless of whether it is structured as an exemption or deduction, if the taxpayer is otherwise required to report taxes to the department on a monthly or quarterly basis. For a new sales and use tax exemption, the total purchase price or value of the exempt product or service subject to the exemption claimed by the buyer must be reported on an addendum to the buyer's tax return if the buyer is otherwise required to report taxes to the department on a monthly or quarterly basis and the buyer is required to submit an exemption certificate, or similar document, to the seller.

(b) This subsection does not apply to:

- (i) Property tax exemptions;
- (ii) Tax preferences required by constitutional law;
- (iii) Tax preferences for which the tax benefit to the taxpayer is less than one thousand dollars per calendar year; or
- (iv) Taxpayers who are annual filers.

(c) The department may waive the filing requirements of this subsection for taxpayers who are not required to file electronically any return or report under this chapter.

(7)(a) Except as otherwise provided in this subsection, the amount claimed by a taxpayer for any new tax preference is subject to public disclosure and is not considered confidential tax information under RCW 82.32.330, if the reporting periods subject to disclosure ended at least twenty-four months prior to the date of disclosure and the taxpayer is required to report the amount of the tax preference claimed by the taxpayer to the department under subsection (6) of this section.

(b)(i) The department may waive the public disclosure requirement under (a) of this subsection (7) for good cause. Good cause may be demonstrated by a reasonable showing of economic harm to a taxpayer if the information specified under this subsection is disclosed. The waiver under this subsection (7)(b)(i) only applies to the new tax preferences provided in chapter 13, Laws of 2013 2nd sp. sess.

(ii) The amount of the tax preference claimed by a taxpayer during a calendar year is confidential under RCW 82.32.330 and may not be disclosed under this subsection if the amount for the calendar year is less than ten thousand dollars.

(c) In lieu of the disclosure and waiver requirements under this subsection, the requirements under RCW 82.32.534 apply to any tax preference that requires a tax performance report.

(8) If a new tax preference does not include the information required under subsections (2) through (4) of this section, the joint legislative audit and review committee is not required to perform a tax preference review under chapter 43.136 RCW, and it is legislatively presumed that it is the intent of the legislature to allow the new tax preference to expire upon its scheduled expiration date.

(9) For the purposes of this section, "tax preference" and "new tax preference" have the same meaning as provided in RCW 82.32.805. [2017 c 135 § 8; 2013 2nd sp.s. c 13 § 1702.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Chapter 82.42 RCW AIRCRAFT FUEL TAX

Sections

82.42.090 Tax proceeds—Disposition—Aeronautics account.

82.42.090 Tax proceeds—Disposition—Aeronautics account. All moneys collected by the director from the aircraft fuel excise tax as provided in RCW 82.42.020 shall be transmitted to the state treasurer and shall be credited to the aeronautics account hereby created in the state treasury. Moneys collected from the consumer or user of aircraft fuel from either the use tax imposed by RCW 82.12.020 or the retail sales tax imposed by RCW 82.08.020 shall be transmitted to the state treasurer and credited to the state general fund. [2017 3rd sp.s. c 25 § 42; (2013 c 225 § 305 repealed by 2015 c 228 § 39); 1995 c 170 § 1; 1991 sp.s. c 13 § 37; 1985 c 57 § 86; 1982 1st ex.s. c 25 § 8; 1967 ex.s. c 10 § 9.]

Effective date—2013 c 225: See note following RCW 82.38.010.

Additional notes found at www.leg.wa.gov

Chapter 82.44 RCW MOTOR VEHICLE EXCISE TAX

Sections

82.44.180 Repealed.

82.44.190 Transportation infrastructure account—Deposits and distributions—Subaccounts.

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

82.44.190 Transportation infrastructure account—Deposits and distributions—Subaccounts. The transportation infrastructure account is hereby created in the state treasury. Public and private entities may deposit moneys in the transportation infrastructure account from federal, state, local, or private sources. Proceeds from bonds or other financial instruments sold to finance surface transportation projects from the transportation infrastructure account shall be deposited into the account. Principal and interest payments made on loans from the transportation infrastructure account

shall be deposited into the account. Moneys in the account shall be available for purposes specified in RCW 82.44.195. Expenditures from the transportation infrastructure account shall be subject to appropriation by the legislature. To the extent required by federal law or regulations promulgated by the United States secretary of transportation, the state treasurer is authorized to create separate subaccounts within the transportation infrastructure account. [2017 3rd sp.s. c 25 § 49; 1996 c 262 § 2.]

Additional notes found at www.leg.wa.gov

Chapter 82.45 RCW

EXCISE TAX ON REAL ESTATE SALES

Sections

82.45.060 Tax on sale of property.
82.45.090 Payment of tax and fee—Evidence of payment—Recording—Sale of beneficial interest.

82.45.060 Tax on sale of property. There is imposed an excise tax upon each sale of real property at the rate of one and twenty-eight one-hundredths percent of the selling price. Beginning July 1, 2013, and ending June 30, 2023, an amount equal to two percent of the proceeds of this tax must be deposited in the public works assistance account created in RCW 43.155.050, and an amount equal to four and one-tenth percent must be deposited in the education legacy trust account created in RCW 83.100.230. Thereafter, an amount equal to six and one-tenth percent of the proceeds of this tax to the state treasurer must be deposited in the public works assistance account created in RCW 43.155.050. Except as otherwise provided in this section, an amount equal to one and six-tenths percent of the proceeds of this tax to the state treasurer must be deposited in the city-county assistance account created in RCW 43.08.290. [2017 3rd sp.s. c 10 § 13; 2013 2nd sp.s. c 9 § 6. Prior: 2011 1st sp.s. c 50 § 975; 2011 1st sp.s. c 48 § 7035; 2005 c 450 § 1; 2000 c 103 § 15; 1987 c 472 § 14; 1983 2nd ex.s. c 3 § 20; 1982 1st ex.s. c 35 § 14; 1980 c 154 § 2; 1969 ex.s. c 223 § 28A.45.060; prior: 1951 1st ex.s. c 11 § 5. Formerly RCW 28A.45.060, 28.45.060.]

Intent—Effective dates—2013 2nd sp.s. c 9: See notes following RCW 28A.150.220.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

Additional notes found at www.leg.wa.gov

82.45.090 Payment of tax and fee—Evidence of payment—Recording—Sale of beneficial interest. (1) Except for a sale of a beneficial interest in real property where no instrument evidencing the sale is recorded in the official real property records of the county in which the property is located, the tax imposed by this chapter must be paid to and collected by the treasurer of the county within which is located the real property that was sold. In collecting the tax the county treasurer must act as agent for the state. The county treasurer must cause a verification of payment evidencing satisfaction of the lien to be affixed to the instrument

of sale or conveyance prior to its recording or to the real estate excise tax affidavit in the case of used mobile home sales and used floating home sales. A receipt issued by the county treasurer for the payment of the tax imposed under this chapter is evidence of the satisfaction of the lien imposed in this section and may be recorded in the manner prescribed for recording satisfactions of mortgages. No instrument of sale or conveyance evidencing a sale subject to the tax may be accepted by the county auditor for filing or recording until the tax is paid and the verification of payment affixed thereto; in case the tax is not due on the transfer, the instrument may not be so accepted until suitable notation of such fact has been made on the instrument by the treasurer. At the sale of a used mobile home, used manufactured home, used park model, or used floating home that has not been title eliminated, property taxes must be current in order to complete the processing of the real estate excise tax affidavit or other documents transferring title. Verification that the property taxes are current must be noted on the mobile home real estate excise tax affidavit or on a form approved by the county treasurer. For the purposes of this subsection, "mobile home," "manufactured home," and "park model" have the same meaning as provided in RCW 59.20.030.

(2) For a sale of a beneficial interest in real property where a tax is due under this chapter and where no instrument is recorded in the official real property records of the county in which the property is located, the sale must be reported to the department of revenue within five days from the sale date on such returns or forms and according to such procedures as the department may prescribe. Such forms or returns must be signed or electronically signed by both the transferor and the transferee and must be accompanied by payment of the tax due.

(3) Any person who intentionally makes a false statement on any return or form required to be filed with the department under this chapter is guilty of perjury under chapter 9A.72 RCW. [2017 c 142 § 3; 2009 c 350 § 8; 2003 c 53 § 404; 1993 sp.s. c 25 § 506; 1991 c 327 § 6; 1990 c 171 § 7; 1984 c 192 § 2; 1980 c 154 § 4; 1979 ex.s. c 266 § 2; 1969 ex.s. c 223 § 28A.45.090. Prior: 1951 2nd ex.s. c 19 § 4; 1951 1st ex.s. c 11 § 11. Formerly RCW 28A.45.090, 28.45.090.]

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

Findings—Intent—1993 sp.s. c 25: See note following RCW 82.45.010.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter digest.

Additional notes found at www.leg.wa.gov

Chapter 82.46 RCW

COUNTIES AND CITIES—EXCISE TAX ON REAL ESTATE SALES

Sections

82.46.037 Maintenance of capital projects—Use of additional tax funds.

82.46.037 Maintenance of capital projects—Use of additional tax funds. (1) A city or county that meets the requirements of subsection (2) of this section may use the greater of one hundred thousand dollars or twenty-five per-

cent of available funds, but not to exceed one million dollars per year, from revenues collected under RCW 82.46.035 for:

(a) The maintenance of capital projects, as defined in RCW 82.46.035(5);

(b) From July 1, 2017, until June 30, 2019, the acquisition, construction, improvement, or rehabilitation of facilities to provide housing for the homeless; or

(c) The planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, improvement, or maintenance of capital projects as defined in RCW 82.46.010(6)(b) that are not also included within the definition of capital projects in RCW 82.46.035(5).

(2) A city or county may use revenues pursuant to subsection (1) of this section if:

(a) The city or county prepares a written report demonstrating that it has or will have adequate funding from all sources of public funding to pay for all capital projects, as defined in RCW 82.46.035(5), identified in its capital facilities plan for the succeeding two-year period; and

(b)(i) The city or county has not enacted, after June 9, 2016, any requirement on the listing or sale of real property; or any requirement on landlords, at the time of executing a lease, to perform or provide physical improvements or modifications to real property or fixtures, except if necessary to address an immediate threat to health or safety;

(ii) Any local requirement adopted by the city or county under (b)(i) of this subsection is: Specifically authorized by RCW 35.80.030, 35A.11.020, chapter 7.48 RCW, or chapter 19.27 RCW; specifically authorized by other state or federal law; or a seller or landlord disclosure requirement pursuant to RCW 64.06.080; or

(iii) For a city or county using funds under subsection (1)(b) of this section, the requirements of this subsection apply, except that the date for such enactment under (b)(i) of this subsection is ninety days after October 19, 2017.

(3) The report prepared under subsection (2)(a) of this section must: (a) Include information necessary to determine compliance with the requirements of subsection (2)(a) of this section; (b) identify how revenues collected under RCW 82.46.035 were used by the city or county during the prior two-year period; (c) identify how funds authorized under subsection (1) of this section will be used during the succeeding two-year period; and (d) identify what percentage of funding for capital projects within the city or county is attributable to revenues under RCW 82.46.035 compared to all other sources of capital project funding. The city or county must prepare and adopt the report as part of its regular, public budget process.

(4) For purposes of this section, "maintenance" means the use of funds for labor and materials that will preserve, prevent the decline of, or extend the useful life of a capital project. "Maintenance" does not include labor or material costs for routine operations of a capital project. [2017 3rd sp.s. c 16 § 6; 2016 c 138 § 4; 2015 2nd sp.s. c 10 § 3.]

Chapter 82.50 RCW

TRAVEL TRAILERS AND CAMPERS EXCISE TAX

Sections

82.50.510 Repealed.

[2017 RCW Supp—page 1034]

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

Chapter 82.60 RCW TAX DEFERRALS FOR INVESTMENT PROJECTS IN RURAL COUNTIES

Sections

82.60.070 Annual tax performance report by recipients—Assessment of taxes, interest. (*Effective January 1, 2018.*)

82.60.070 Annual tax performance report by recipients—Assessment of taxes, interest. (*Effective January 1, 2018.*) (1)(a) Each recipient of a deferral of taxes granted under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.025, the lessee must file a complete annual tax performance report, and the applicant is not required to file a complete annual tax performance report.

(b) The department must use the information reported on the annual tax performance report required by this section to study the tax deferral program authorized under this chapter. The department must report to the legislature by December 1, 2018. The report must measure the effect of the program on job creation, the number of jobs created for residents of eligible areas, company growth, and such other factors as the department selects.

(2) Except as provided in RCW 82.60.063, if, on the basis of a tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is not eligible for tax deferral under this chapter, the amount of deferred taxes outstanding for the project, according to the repayment schedule in RCW 82.60.060, is immediately due. For purposes of this subsection (2), the repayment schedule in RCW 82.60.060 is tolled during the period of time that a taxpayer is receiving relief from repayment of deferred taxes under RCW 82.60.063.

(3) A recipient who must repay deferred taxes under subsection (2) of this section because the department has found that an investment project is not eligible for tax deferral under this chapter is no longer required to file annual tax performance reports under RCW 82.32.534 beginning on the date an investment project is used for nonqualifying purposes.

(4) Notwithstanding any other provision of this section or RCW 82.32.534, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [2017 c 135 § 36; 2010 1st sp.s. c 16 § 9; 2010 c 114 § 139; 2004 c 25 § 7; 1999 c 164 § 303; 1995 1st sp.s. c 3 § 9; 1994 sp.s. c 1 § 5; 1985 c 232 § 6.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Effective date—2010 1st sp.s. c 16: See note following RCW 82.60.010.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Additional notes found at www.leg.wa.gov

Chapter 82.63 RCW TAX DEFERRALS FOR HIGH-TECHNOLOGY BUSINESSES

Sections

- 82.63.020 Application—Annual tax performance report—Reports. (*Effective January 1, 2018.*)
- 82.63.045 Repayment not required—Repayment schedule for unqualified investment project—Exceptions. (*Effective January 1, 2018.*)

82.63.020 Application—Annual tax performance report—Reports. (*Effective January 1, 2018.*) (1) Application for deferral of taxes under this chapter must be made before initiation of construction of, or acquisition of equipment or machinery for the investment project. In the case of an investment project involving multiple qualified buildings, applications must be made for, and before the initiation of construction of, each qualified building. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within sixty days.

(2) Each recipient of a deferral of taxes under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee must file a complete annual tax performance report, and the applicant is not required to file the annual tax performance report.

(3) A recipient who must repay deferred taxes under RCW 82.63.045 because the department has found that an investment project is used for purposes other than research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology is no longer required to file annual tax performance reports under RCW 82.32.534 beginning on the date an investment project is used for nonqualifying purposes. [2017 c 135 § 37; 2010 c 114 § 140; 2009 c 268 § 3; 2004 c 2 § 4; 1994 sp.s. c 5 § 4.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Policy—Application—2009 c 268: See notes following RCW 82.63.090.

82.63.045 Repayment not required—Repayment schedule for unqualified investment project—Exceptions. (*Effective January 1, 2018.*) (1) Except as provided in sub-

section (2) of this section and RCW 82.32.534, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of the tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is used for purposes other than qualified research and development or pilot scale manufacturing at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes is immediately due according to the following schedule:

Year in which use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

(b) If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(3)(a) Notwithstanding subsection (2) of this section, in the case of an investment project consisting of multiple qualified buildings, the lessee is solely liable for payment of any deferred tax determined by the department to be due and payable under this section beginning on the date the department certifies that the project is operationally complete.

(b) This subsection does not relieve the lessors of its obligation to the lessee under RCW 82.63.010(7) to pass the economic benefit of the deferral to the lessee.

(4) The department must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(5) Notwithstanding subsection (2) of this section or RCW 82.32.534, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [2017 c 135 § 38; 2010 c 114 § 141; 2009 c 268 § 5; 2004 c 2 § 6; 2000 c 106 § 10; 1995 1st sp.s. c 3 § 13.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Policy—Application—2009 c 268: See notes following RCW 82.63.090.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

Additional notes found at www.leg.wa.gov

Chapter 82.73 RCW

WASHINGTON MAIN STREET PROGRAM TAX INCENTIVES

Sections

- 82.73.020 Application for credit. (*Effective January 1, 2018; contingent expiration date.*)
- 82.73.025 Approved contribution deadline for tax credit. (*Effective January 1, 2018; contingent expiration date.*)
- 82.73.030 Credit authorized—Limitations. (*Effective January 1, 2018; contingent expiration date.*)

82.73.020 Application for credit. (*Effective January 1, 2018; contingent expiration date.*) (1) Application for tax credits under this chapter must be submitted to the department before making a contribution to a program or the main street trust fund. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the proposed amount of contribution to a program or the main street trust fund, and other information required by the department to determine eligibility under this chapter. The department must rule on the application within forty-five days. Except as provided in RCW 82.73.030(5), applications must be approved on a first-come basis.

(2) The department may not accept any applications before the second Monday in January of each calendar year. [2017 3rd sp.s. c 37 § 102; 2005 c 514 § 903.]

Contingent expiration date—2017 3rd sp.s. c 37 §§ 101-104: "(1) Part I of this act expires January 1, 2028, if a review by the joint legislative audit and review committee under section 101 of this act finds that the number of businesses that are a part of main street communities is not equal to or more than the number that were a part of main street communities prior to the enactment of the tax preference in section 103, chapter 37, Laws of 2017 3rd sp. sess.

(2) The joint legislative audit and review committee must provide written notice of the expiration date of part I of this act to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the committee." [2017 3rd sp.s. c 37 § 1406.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Additional notes found at www.leg.wa.gov

82.73.025 Approved contribution deadline for tax credit. (*Effective January 1, 2018; contingent expiration date.*) (1) A person that was approved for credit as provided in RCW 82.73.020 must make the total approved contribution by November 15th of the calendar year in which the application is approved. If November 15th falls upon a Saturday, Sunday, or legal holiday, the payment of the contribution will be considered timely if made on the next business day.

(2)(a) A person that does not make a contribution as required in subsection (1) of this section forfeits all credits for the approved contribution.

(b) The department must make credits forfeited as provided in (a) of this subsection available to new applicants.

(3) A person that was approved for credit as provided in RCW 82.73.020 after November 15th must make the total

approved contribution by the end of the calendar year in which the contribution was approved. [2017 3rd sp.s. c 37 § 104.]

Contingent expiration date—2017 3rd sp.s. c 37 §§ 101-104: See note following RCW 82.73.020.

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

82.73.030 Credit authorized—Limitations. (*Effective January 1, 2018; contingent expiration date.*) (1) Subject to the limitations in this chapter, a credit is allowed against the tax imposed by chapters 82.04 and 82.16 RCW for approved contributions that are made by a person to a program or the main street trust fund.

(2) The credit allowed under this section is limited to an amount equal to:

(a) Seventy-five percent of the approved contribution made by a person to a program; or

(b) Fifty percent of the approved contribution made by a person to the main street trust fund.

(3) The department may not approve credit with respect to a program in a city or town with a population of one hundred ninety thousand persons or more.

(4) The department must keep a running total of all credits approved under this chapter for each calendar year. The department may not approve any credits under this section that would cause the total amount of approved credits statewide to exceed two million five hundred thousand dollars in any calendar year.

(5)(a)(i) The total credits allowed under this chapter for contributions made to each program may not exceed one hundred thousand dollars in a calendar year.

(ii) Between the second Monday in January and March 31st of the same calendar year, the department must evenly allocate the amount of statewide credits allowed under subsection (4) of this section based on the total number of programs and the main street trust fund as of January 1st in the same calendar year. The department may not approve contributions for a program or the main street trust fund that would cause the total amount of approved credits for a program or the main street trust fund to exceed the allocated amount.

(b) The total credits allowed under this chapter for a person may not exceed two hundred fifty thousand dollars in a calendar year.

(6) The credit may be claimed against any tax due under chapters 82.04 and 82.16 RCW only in the calendar year immediately following the calendar year in which the credit was approved by the department and the contribution was made to the program or the main street trust fund. Credits may not be carried over to subsequent years. No refunds may be granted for credits under this chapter.

(7) The total amount of the credit claimed in any calendar year by a person may not exceed the lesser amount of:

(a) The approved credit; or

(b) Seventy-five percent of the amount of the contribution that is made by the person to a program and fifty percent of the amount of the contribution that is made by the person to the main street trust fund, in the prior calendar year. [2017 3rd sp.s. c 37 § 103; 2005 c 514 § 904.]

Tax preference performance statement—2017 3rd sp.s. c 37 § 103: "This section is the tax preference performance statement for the tax preference contained in section 103, chapter 37, Laws of 2017 3rd sp. sess. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to promote contributions to main street programs and to enhance community and economic revitalization and development of main street business districts under categories as indicated in RCW 82.32.808(2) (a) and (f).

(2) It is the legislature's specific public policy objective to support and work in concert with main street programs to accomplish community and economic revitalization of business districts as specified in RCW 43.360.005. It is the legislature's intent to provide tax credits to businesses in main street communities to promote contributions to such programs as provided in RCW 82.73.030, in order to maintain the economic viability of rural downtown areas (main streets), thereby ensuring the growth and retention of businesses in rural communities.

(3) If a review finds that the number of businesses that are a part of main street communities has increased or stayed the same, then the legislature intends to extend the expiration date of the tax preference.

(4) In order to obtain the data necessary to perform the review in subsection (3) of this section, the joint legislative audit and review committee may refer to data collected by the department of archaeology and historic preservation." [2017 3rd sp.s. c 37 § 101.]

Contingent expiration date—2017 3rd sp.s. c 37 §§ 101-104: See note following RCW 82.73.020.

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Additional notes found at www.leg.wa.gov

**Chapter 82.74 RCW
TAX DEFERRALS FOR FRUIT
AND VEGETABLE BUSINESSES**

Sections

82.74.040 Annual tax performance report. (*Effective January 1, 2018.*)
82.74.050 Repayment of deferred taxes. (*Effective January 1, 2018.*)

82.74.040 Annual tax performance report. (*Effective January 1, 2018.*) (1) Each recipient of a deferral of taxes granted under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.74.010(6), the lessee must file a complete annual tax performance report, and the applicant is not required to file the annual tax performance report.

(2) A recipient who must repay deferred taxes under RCW 82.74.050(2) because the department has found that an investment project is used for purposes other than fresh fruit and vegetable processing, dairy product manufacturing, seafood product manufacturing, cold storage warehousing, or research and development is no longer required to file annual tax performance reports under RCW 82.32.534 beginning on the date an investment project is used for nonqualifying purposes. [2017 c 135 § 39; 2010 c 114 § 142; 2006 c 354 § 8; 2005 c 513 § 7.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Additional notes found at www.leg.wa.gov

82.74.050 Repayment of deferred taxes. (*Effective January 1, 2018.*) (1) Except as provided in subsection (2) of this section and RCW 82.32.534, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of the tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is used for purposes other than fresh fruit and vegetable processing, dairy product manufacturing, seafood product manufacturing, cold storage warehousing, or research and development at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes is immediately due according to the following schedule:

Year in which nonqualifying use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

(b) If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.74.010(6), the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(3) The department must assess interest, but not penalties, on the deferred taxes under subsection (2) of this section. The interest must be assessed at the rate provided for delinquent taxes under chapter 82.32 RCW, retroactively to the date of deferral, and will accrue until the deferred taxes are repaid. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(4) Notwithstanding subsection (2) of this section or RCW 82.32.534, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [2017 c 135 § 40; 2010 c 114 § 143; 2006 c 354 § 9; 2005 c 513 § 8.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Additional notes found at www.leg.wa.gov

Chapter 82.75 RCW

TAX DEFERRALS FOR BIOTECHNOLOGY AND
MEDICAL DEVICE MANUFACTURING
BUSINESSES

Sections

82.75.040	Repayment of deferred taxes. (<i>Effective January 1, 2018.</i>)
82.75.070	Annual tax performance report requirement. (<i>Effective January 1, 2018.</i>)

82.75.040 Repayment of deferred taxes. (*Effective January 1, 2018.*) (1) Except as provided in subsection (2) of this section and RCW 82.32.534, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of the tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is used for purposes other than qualified biotechnology product manufacturing or medical device manufacturing activities at any time during the calendar year in which the eligible investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes is immediately due and payable according to the following schedule:

Year in which use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

(b) If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.75.010, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(3) For a violation of subsection (2)(a) of this section, the department must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(4) Notwithstanding subsection (2) of this section or RCW 82.32.534, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [2017 c 135 § 41; 2010 c 114 § 147; 2006 c 178 § 5.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Additional notes found at www.leg.wa.gov

82.75.070 Annual tax performance report requirement. (*Effective January 1, 2018.*) (1) Each recipient of a deferral of taxes granted under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.75.010(5), the lessee must file a complete annual tax performance report, and the applicant is not required to file the annual tax performance report.

(2) A recipient who must repay deferred taxes under RCW 82.75.040(2) because the department has found that an investment project is used for purposes other than qualified biotechnology product manufacturing or medical device manufacturing activities is no longer required to file annual tax performance reports under RCW 82.32.534 beginning on the date an investment project is used for nonqualifying purposes. [2017 c 135 § 42; 2010 c 114 § 144.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Chapter 82.80 RCW

LOCAL OPTION TRANSPORTATION TAXES

Sections

82.80.040	Repealed.
82.80.050	Repealed.
82.80.060	Repealed.
82.80.070	Use of revenues.

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

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

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

82.80.070 Use of revenues. (1) The proceeds collected pursuant to the exercise of the local option authority of RCW 82.80.010 and 82.80.030 (hereafter called "local option transportation revenues") shall be used for transportation purposes only, including but not limited to the following: The operation and preservation of roads, streets, and other transportation improvements; new construction, reconstruction, and expansion of city streets, county roads, and state highways and other transportation improvements; development and implementation of public transportation and high capacity transit improvements and programs; and planning, design, and acquisition of right-of-way and sites for such transportation purposes. The proceeds collected from excise taxes on the sale, distribution, or use of motor vehicle fuel and special fuel under RCW 82.80.010 shall be used exclusively for "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.

(2) The local option transportation revenues shall be expended for transportation uses consistent with the adopted

transportation and land use plans of the jurisdiction expending the funds and consistent with any applicable and adopted regional transportation plan for metropolitan planning areas.

(3) Each local government with a population greater than eight thousand that levies or expends local option transportation funds, is also required to develop and adopt a specific transportation program that contains the following elements:

(a) The program shall identify the geographic boundaries of the entire area or areas within which local option transportation revenues will be levied and expended.

(b) The program shall be based on an adopted transportation plan for the geographic areas covered and shall identify the proposed operation and construction of transportation improvements and services in the designated plan area intended to be funded in whole or in part by local option transportation revenues and shall identify the annual costs applicable to the program.

(c) The program shall indicate how the local transportation plan is coordinated with applicable transportation plans for the region and for adjacent jurisdictions.

(d) The program shall include at least a six-year funding plan, updated annually, identifying the specific public and private sources and amounts of revenue necessary to fund the program. The program shall include a proposed schedule for construction of projects and expenditure of revenues. The funding plan shall consider the additional local tax revenue estimated to be generated by new development within the plan area if all or a portion of the additional revenue is proposed to be earmarked as future appropriations for transportation improvements in the program.

(4) Local governments with a population greater than eight thousand exercising the authority for local option transportation funds shall periodically review and update their transportation program to ensure that it is consistent with applicable local and regional transportation and land use plans and within the means of estimated public and private revenue available.

(5) In the case of expenditure for new or expanded transportation facilities, improvements, and services, priorities in the use of local option transportation revenues shall be identified in the transportation program and expenditures shall be made based upon the following criteria, which are stated in descending order of weight to be attributed:

(a) First, the project serves a multijurisdictional function;

(b) Second, it is necessitated by existing or reasonably foreseeable congestion;

(c) Third, it has the greatest person-carrying capacity;

(d) Fourth, it is partially funded by other government funds, such as from the state transportation improvement board, or by private sector contributions, such as those from the local transportation act, chapter 39.92 RCW; and

(e) Fifth, it meets such other criteria as the local government determines is appropriate.

(6) It is the intent of the legislature that as a condition of levying, receiving, and expending local option transportation revenues, no local government agency use the revenues to replace, divert, or loan any revenues currently being used for transportation purposes to nontransportation purposes.

(7) Local governments are encouraged to enter into inter-local agreements to jointly develop and adopt with other local governments the transportation programs required by this

section for the purpose of accomplishing regional transportation planning and development.

(8) Local governments may use all or a part of the local option transportation revenues for the amortization of local government general obligation and revenue bonds issued for transportation purposes consistent with the requirements of this section.

(9) Subsections (1) through (8) of this section do not apply to a regional transportation investment district imposing a tax or fee under the local option authority of this chapter. Proceeds collected under the exercise of local option authority under this chapter by a district must be used in accordance with chapter 36.120 RCW. [2017 3rd sp.s. c 25 § 43; 2005 c 319 § 139; 2002 c 56 § 413; 1991 c 141 § 4. Prior: 1990 c 42 § 212.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Chapter 82.82 RCW

COMMUNITY EMPOWERMENT ZONES—TAX DEFERRAL PROGRAM

Sections

82.82.020	Application for deferral—Annual tax performance report. <i>(Effective January 1, 2018.)</i>
82.82.040	Repayment of deferred taxes. <i>(Effective January 1, 2018.)</i>

82.82.020 Application for deferral—Annual tax performance report. *(Effective January 1, 2018.)* (1) Application for deferral of taxes under this chapter can be made at any time prior to completion of construction of a qualified building or buildings, but tax liability incurred prior to the department's receipt of an application may not be deferred. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within sixty days.

(2) Applications for deferral of taxes under this section may not be made after December 31, 2020.

(3) Each recipient of a deferral of taxes under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.82.010(5), the lessee must file a complete annual tax performance report, and the applicant is not required to file the annual tax performance report.

(4) A recipient who must repay deferred taxes under RCW 82.82.040 because the department has found that an investment project is no longer an eligible investment project is no longer required to file annual tax performance reports under RCW 82.32.534 beginning on the date an investment project is used for nonqualifying purposes. [2017 c 135 § 43; 2010 c 114 § 148; 2008 c 15 § 2.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—2008 c 15: See note following RCW 82.82.010.

82.82.040 Repayment of deferred taxes. (Effective January 1, 2018.) (1) Except as provided in subsection (2) of this section and RCW 82.32.534, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of the tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is no longer an "eligible investment project" under RCW 82.82.010 at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes are immediately due according to the following schedule:

Year in which use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

(b) If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.82.010(5), the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(3) The department must assess interest at the rate provided for delinquent taxes under chapter 82.32 RCW, but not penalties, retroactively to the date of deferral. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. [2017 c 135 § 44; 2010 c 114 § 149; 2008 c 15 § 5.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Effective date—2008 c 15: See note following RCW 82.82.010.

Chapter 82.85 RCW

JOB CREATION AND ECONOMIC DEVELOPMENT INVESTMENT INCENTIVES—PILOT PROGRAM

Sections

82.85.010	Findings—Tax preference performance statement. (<i>Effective January 1, 2018, until January 1, 2026.</i>)
82.85.020	Definitions. (<i>Effective January 1, 2018, until January 1, 2026.</i>)
82.85.040	Deferral application. (<i>Effective January 1, 2018, until January 1, 2026.</i>)

82.85.010 Findings—Tax preference performance statement. (Effective January 1, 2018, until January 1, 2026.) (1) Businesses that invest capital create jobs and gen-

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erate economic activity that supports a healthy Washington economy. The legislature finds that these investments result in future revenues that support schools and our communities. Therefore, the legislature finds that a pilot program must be conducted to evaluate the effectiveness of a program that invests business taxes from new investments into workforce training programs that support manufacturing businesses in the state of Washington thereby creating jobs and capital investments in the state for the benefit of its citizens.

(2)(a) This subsection is the tax preference performance statement for the sales and use tax deferral provided in RCW 82.85.040 on expenditures made to build or expand qualified investment projects and purchases of machinery and equipment. This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes the tax preference as one intended to create or retain jobs and to provide funding to support job readiness training, professional development, or apprenticeship programs in manufacturing or production occupations, as indicated in RCW 82.32.808(2) (c) and (f).

(c) It is the legislature's specific public policy objective to provide a pilot program that would provide a sales tax deferral on the construction and expenditure costs of up to two new manufacturing facilities per calendar year, one of which must be located in eastern Washington and one of which must be located in western Washington. When deferred taxes are repaid, the deferred taxes are reinvested to support job readiness training, professional development, or apprenticeship programs in manufacturing or production occupations.

(d) To measure the effectiveness of the deferral provided in this part in achieving the specific public policy objective described in (c) of this subsection, the joint legislative audit and review committee should refer to information available from the employment security department and department of revenue. If a review finds that each eligible investment project generated at least twenty full-time jobs and increased training opportunities for manufacturing and production jobs, then the legislature intends for the legislative auditor to recommend extending the expiration date of the tax preference. For purposes of this subsection (2)(d), the term full-time jobs include both temporary construction jobs and permanent full-time employment positions created at the eligible investment project within one year of the date that the facility became operationally complete as determined by the department of revenue.

(3) This section expires January 1, 2026. [2017 3rd sp.s. c 37 § 801; 2015 3rd sp.s. c 6 § 401.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

82.85.020 Definitions. (Effective January 1, 2018, until January 1, 2026.) (1) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "Applicant" means a person applying for a tax deferral under this chapter.

(b) "Eligible investment project" means an investment project for qualified buildings and machinery and equipment on two new, renovated, or expanded manufacturing operations per calendar year, one of which must be located east of the crest of the Cascade mountains and one of which must be located west of the crest of the Cascade mountains. The deferral provided in this section only applies to the state and local sales and use taxes due on the first ten million dollars in costs for qualified buildings and machinery and equipment.

(c) "Initiation of construction" has the same meaning as in RCW 82.63.010.

(d) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(e) "Manufacturing" has the same meaning as provided in RCW 82.04.120.

(f) "Person" has the same meaning as provided in RCW 82.04.030.

(g) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing, including plant offices and warehouses or other buildings for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing. If a qualified building is used partly for manufacturing and partly for other purposes, the applicable tax deferral must be determined by apportionment of the costs of construction under rules adopted by the department.

(h) "Qualified machinery and equipment" means all new industrial fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control, monitor, or operate the machinery.

(i) "Recipient" means a person receiving a tax deferral under this chapter.

(2) This section expires January 1, 2026. [2017 3rd sp.s. c 37 § 802; 2015 3rd sp.s. c 6 § 402.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

82.85.040 Deferral application. (Effective January 1, 2018, until January 1, 2026.) (1) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery. The application must be made to the department in a form and manner prescribed by the department. The deferrals are available on a first-in-time basis. The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual

new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within sixty days.

(2) The department may not approve applications for more than two eligible investment projects per calendar year.

(3) This section expires January 1, 2026. [2017 3rd sp.s. c 37 § 803; 2015 3rd sp.s. c 6 § 404.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Title 83 ESTATE TAXATION

Chapters

83.100 Estate and transfer tax act.

Chapter 83.100 RCW

ESTATE AND TRANSFER TAX ACT

Sections

83.100.050 Tax returns—Filing dates—Extensions—Extensions during state of emergency.
83.100.230 Education legacy trust account.

83.100.050 Tax returns—Filing dates—Extensions—Extensions during state of emergency. (1) A Washington return must be filed if the gross estate equals or exceeds the applicable exclusion amount.

(2) If a Washington return is required as provided in subsection (1) of this section:

(a) A person required to file a federal return must file with the department on or before the date the federal return is required to be filed, including any extension of time for filing under subsection (4) or (6) of this section, a Washington return for the tax due under this chapter.

(b) If no federal return is required to be filed, a taxpayer shall file with the department on or before the date a federal return would have been required to be filed, including any extension of time for filing under subsection (5) or (6) of this section, a Washington return for the tax due under this chapter.

(3) A Washington return delivered to the department by United States mail is considered to have been received by the department on the date of the United States postmark stamped on the cover in which the return is mailed, if the postmark date is within the time allowed for filing the Washington return, including extensions.

(4) In addition to the Washington return required to be filed in subsection (2) of this section, a person must file with the department on or before the date the federal return is or would have been required to be filed all supporting documentation for completed Washington return schedules, and, if a federal return has been filed, a copy of the federal return. If the person required to file the federal return has obtained an extension of time for filing the federal return, the person must file the Washington return within the same time period and in the same manner as provided for the federal return. A copy of

the federal extension must be filed with the department on or before the date the Washington return is due, not including any extension of time for filing, or within thirty days of issuance, whichever is later.

(5) A person may obtain an extension of time for filing the Washington return as provided by rule of the department, if the person is required to file a Washington return under subsection (2) of this section, but is not required to file a federal return.

(6) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the time for filing a Washington return under this section as the department deems proper. [2017 c 323 § 601; 2008 c 181 § 504; 2005 c 516 § 5; 1988 c 64 § 6; 1986 c 44 § 1; 1981 2nd ex.s. c 7 § 83.100.050 (Initiative Measure No. 402, approved November 3, 1981).]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Part headings not law—2008 c 181: See note following RCW 43.06.220.

Finding—Intent—Application—Severability—Effective date—2005 c 516: See notes following RCW 83.100.040.

83.100.230 Education legacy trust account. The education legacy trust account is created in the state treasury. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for support of the common schools, and for expanding access to higher education through funding for new enrollments and financial aid, and other educational improvement efforts. During the 2015-2017 and 2017-2019 fiscal biennia appropriations from the account may be made for support of early learning programs. It is the intent of the legislature that this policy will be continued in subsequent fiscal biennia. [2017 3rd sp.s. c 1 § 991; 2015 3rd sp.s. c 4 § 977; 2012 1st sp.s. c 10 § 7; 2010 1st sp.s. c 37 § 953; 2008 c 329 § 924; 2005 c 514 § 1101.]

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Purpose—Construction—2012 1st sp.s. c 10: See note following RCW 84.52.0531.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Additional notes found at www.leg.wa.gov

Title 84 PROPERTY TAXES

Chapters

- 84.08** General powers and duties of department of revenue.
- 84.09** General provisions.
- 84.12** Assessment and taxation of public utilities.
- 84.14** New and rehabilitated multiple-unit dwellings in urban centers.
- 84.16** Assessment and taxation of private car companies.
- 84.33** Timber and forestlands.

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- 84.34** Open space, agricultural, timberlands—Current use—Conservation futures.
- 84.36** Exemptions.
- 84.40** Listing of property.
- 84.41** Revaluation of property.
- 84.48** Equalization of assessments.
- 84.52** Levy of taxes.
- 84.55** Limitations upon regular property taxes.
- 84.56** Collection of taxes.
- 84.69** Refunds.

Chapter 84.08 RCW GENERAL POWERS AND DUTIES OF DEPARTMENT OF REVENUE

Sections

- 84.08.220 Electronic communication of confidential property tax information.

84.08.220 Electronic communication of confidential property tax information. (1) The department may provide electronically any assessment, notice, or other information that is subject to the confidentiality provisions of RCW 84.08.210 or 84.40.340, to any person authorized to receive the information.

(2) The department must use methods reasonably designed to protect information provided electronically as authorized in subsection (1) of this section from unauthorized disclosure. However, the provisions of this subsection (2) may be waived by a taxpayer. The waiver must be in writing and may be provided to the department electronically. A waiver continues until revoked in writing by the taxpayer. Such revocation may be provided to the department electronically in a manner provided or approved by the department. [2017 c 323 § 1001.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Chapter 84.09 RCW GENERAL PROVISIONS

Sections

- 84.09.030 Taxing district boundaries—Establishment.

84.09.030 Taxing district boundaries—Establishment. (1)(a) Except as provided in (b), (c), and (d) of this subsection (1), for the purposes of property taxation and the levy of property taxes, the boundaries of counties, cities, and all other taxing districts shall be the established official boundaries of such districts existing on the first day of August of the year in which the property tax levy is made.

(b) The boundaries for a newly incorporated port district or regional fire protection service authority shall be established on the first day of October if the boundaries of the newly incorporated port district or regional fire protection service authority are coterminous with the boundaries of another taxing district or districts, as they existed on the first day of August of that year.

(c) The boundaries of a school district that is required to receive or annex territory due to the dissolution of a financially insolvent school district under RCW 28A.315.225

must be the established official boundaries of such districts existing on the first day of September of the year in which the property tax levy is made.

(d) The boundaries of a newly established fire protection district authorized under RCW 52.02.160 are the established official boundaries of the district as of the date that the voter-approved proposition required under RCW 52.02.160 is certified.

(2) In any case where any instrument setting forth the official boundaries of any newly established taxing district, or setting forth any change in the boundaries, is required by law to be filed in the office of the county auditor or other county official, the instrument shall be filed in triplicate. The officer with whom the instrument is filed shall transmit two copies of the instrument to the county assessor.

(3) No property tax levy shall be made for any taxing district whose boundaries are not established as of the dates provided in this section. [2017 c 328 § 9; 2012 c 186 § 17; 2008 c 86 § 501; 2007 c 285 § 3; 2004 c 129 § 19; 1996 c 230 § 1613; 1994 c 292 § 4. Prior: 1989 c 378 § 8; 1989 c 217 § 1; prior: 1987 c 358 § 1; 1987 c 82 § 1; 1984 c 203 § 9; 1981 c 26 § 4; 1961 c 15 § 84.09.030; prior: 1951 c 116 § 1; 1949 c 65 § 1; 1943 c 182 § 1; 1939 c 136 § 1; Rem. Supp. 1949 § 11106-1. Formerly RCW 84.08.160.]

Effective date—2012 c 186: See note following RCW 28A.315.025.

Rule-making authority—2012 c 186: See RCW 28A.315.902.

Severability—Savings—Part headings not law—2008 c 86: See notes following RCW 82.14.030.

Findings—Intent—1994 c 292: See note following RCW 57.04.050.

Additional notes found at www.leg.wa.gov

Chapter 84.12 RCW

ASSESSMENT AND TAXATION OF PUBLIC UTILITIES

Sections

- 84.12.270 Annual assessment—Sources of information.
84.12.330 Assessment roll—Notice of valuation.

84.12.270 Annual assessment—Sources of information. The department of revenue must annually make an assessment of the operating property of all companies. Between the fifteenth day of March and the first day of July of each year the department must prepare an initial assessment roll upon which the department must enter and assess the true and fair value of all the operating property of each of such companies as of the first day of January of the year in which the assessment is made. The department must finalize the assessment roll by the twentieth day of August of each year. For the purpose of determining the true and fair value of such property the department of revenue may inspect the property belonging to the companies and may take into consideration any information or knowledge obtained by the department from an examination and inspection of such property, or of the books, records, and accounts of such companies, the statements filed as required by this chapter, the reports, statements, or returns of such companies filed in the office of any board, office, or commission of this state or any county thereof, the earnings and earning power of such companies, the franchises owned or used by such companies, the true and fair valuation of any and all property of such compa-

nies, whether operating or nonoperating property, and whether situated within or outside the state, and any other facts, evidence, or information that may be obtainable bearing upon the value of the operating property. However, in no event may any statement or report required from any company by this chapter be conclusive upon the department of revenue in determining the amount, character, and true and fair value of the operating property of such company. [2017 c 323 § 529; 2001 c 187 § 3; 1997 c 3 § 113 (Referendum Bill No. 47, approved November 4, 1997); 1994 c 301 § 20; 1975 1st ex.s. c 278 § 165; 1961 c 15 § 84.12.270. Prior: 1939 c 206 § 19; 1935 c 123 § 7; 1925 ex.s. c 130 § 43; 1907 c 131 § 8; 1907 c 78 § 7; 1891 c 140 §§ 28-31; 1890 p 541 §§ 26-33; RRS § 11156-7. Formerly RCW 84.12.040.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Additional notes found at www.leg.wa.gov

84.12.330 Assessment roll—Notice of valuation.

Upon the assessment roll must be placed after the name of each company a general description of the operating property of the company, which is considered sufficient if described in the language of RCW 84.12.200(8), as applied to the company, following which must be entered the true and fair value of the operating property as determined by the department of revenue. No assessment may be invalidated by reason of a mistake in the name of the company assessed, or the omission of the name of the owner or by the entry as owner of a name other than that of the true owner. When the department of revenue has prepared the assessment roll and entered thereon the true and fair value of the operating property of the company, as herein required, the department must notify the company by mail of the valuation determined by it and entered upon the roll. [2017 c 323 § 530; 2001 c 187 § 6; 1998 c 335 § 3; 1997 c 3 § 116 (Referendum Bill No. 47, approved November 4, 1997); 1994 c 301 § 22; 1975 1st ex.s. c 278 § 168; 1961 c 15 § 84.12.330. Prior: 1935 c 123 § 12; 1925 ex.s. c 130 § 44; 1907 c 78 § 8; 1891 c 140 § 35; 1890 p 543 § 35; RRS § 11156-12. Formerly RCW 84.12.110.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Additional notes found at www.leg.wa.gov

Chapter 84.14 RCW

NEW AND REHABILITATED MULTIPLE-UNIT DWELLINGS IN URBAN CENTERS

Sections

- 84.14.010 Definitions.

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

(1) "Affordable housing" means residential housing that is rented by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household's monthly income. For the purposes of housing intended for owner occupancy, "afford-

able housing" means residential housing that is within the means of low or moderate-income households.

(2) "Campus facilities master plan" means the area that is defined by the University of Washington as necessary for the future growth and development of its campus facilities for campuses authorized under RCW 28B.45.020.

(3) "City" means either (a) a city or town with a population of at least fifteen thousand, (b) the largest city or town, if there is no city or town with a population of at least fifteen thousand, located in a county planning under the growth management act, or (c) a city or town with a population of at least five thousand located in a county subject to the provisions of RCW 36.70A.215.

(4) "County" means a county with an unincorporated population of at least three hundred fifty thousand.

(5) "Governing authority" means the local legislative authority of a city or a county having jurisdiction over the property for which an exemption may be applied for under this chapter.

(6) "Growth management act" means chapter 36.70A RCW.

(7) "High cost area" means a county where the third quarter median house price for the previous year as reported by the Washington center for real estate research at Washington State University is equal to or greater than one hundred thirty percent of the statewide median house price published during the same time period.

(8) "Household" means a single person, family, or unrelated persons living together.

(9) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below eighty percent of the median family income adjusted for family size, for the county where the project is located, as reported by the United States department of housing and urban development. For cities located in high-cost areas, "low-income household" means a household that has an income at or below one hundred percent of the median family income adjusted for family size, for the county where the project is located.

(10) "Moderate-income household" means a single person, family, or unrelated persons living together whose adjusted income is more than eighty percent but is at or below one hundred fifteen percent of the median family income adjusted for family size, for the county where the project is located, as reported by the United States department of housing and urban development. For cities located in high-cost areas, "moderate-income household" means a household that has an income that is more than one hundred percent, but at or below one hundred fifty percent, of the median family income adjusted for family size, for the county where the project is located.

(11) "Multiple-unit housing" means a building having four or more dwelling units not designed or used as transient accommodations and not including hotels and motels. Multifamily units may result from new construction or rehabilitated or conversion of vacant, underutilized, or substandard buildings to multifamily housing.

(12) "Owner" means the property owner of record.

(13) "Permanent residential occupancy" means multiunit housing that provides either rental or owner occupancy on a nontransient basis. This includes owner-occupied or rental

accommodation that is leased for a period of at least one month. This excludes hotels and motels that predominately offer rental accommodation on a daily or weekly basis.

(14) "Rehabilitation improvements" means modifications to existing structures, that are vacant for twelve months or longer, that are made to achieve a condition of substantial compliance with existing building codes or modification to existing occupied structures which increase the number of multifamily housing units.

(15) "Residential targeted area" means an area within an urban center or urban growth area that has been designated by the governing authority as a residential targeted area in accordance with this chapter. With respect to designations after July 1, 2007, "residential targeted area" may not include a campus facilities master plan.

(16) "Rural county" means a county with a population between fifty thousand and seventy-one thousand and bordering Puget Sound.

(17) "Substantial compliance" means compliance with local building or housing code requirements that are typically required for rehabilitation as opposed to new construction.

(18) "Urban center" means a compact identifiable district where urban residents may obtain a variety of products and services. An urban center must contain:

(a) Several existing or previous, or both, business establishments that may include but are not limited to shops, offices, banks, restaurants, governmental agencies;

(b) Adequate public facilities including streets, sidewalks, lighting, transit, domestic water, and sanitary sewer systems; and

(c) A mixture of uses and activities that may include housing, recreation, and cultural activities in association with either commercial or office, or both, use. [2017 c 52 § 16; 2014 c 96 § 3. Prior: 2012 c 194 § 2; prior: 2007 c 430 § 3; 2007 c 185 § 1; 2002 c 146 § 1; 2000 c 242 § 1; 1997 c 429 § 40; 1995 c 375 § 3.]

Effective date—2007 c 185: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 185 § 3.]

Additional notes found at www.leg.wa.gov

Chapter 84.16 RCW

ASSESSMENT AND TAXATION OF PRIVATE CAR COMPANIES

Sections

- 84.16.040 Annual assessment—Sources of information.
84.16.090 Assessment roll—Notice of valuation.

84.16.040 Annual assessment—Sources of information. The department of revenue must annually make an assessment of the operating property of each private car company. Between the first day of May and the first day of July of each year the department must prepare an initial assessment roll upon which the department must enter and assess the true and fair value of all the operating property of each of such companies as of the first day of January of the year in which the assessment is made. The department must finalize the assessment roll by the twentieth day of August of each year. For the purpose of determining the true and fair value of

such property the department of revenue may take into consideration any information or knowledge obtained by the department from an examination and inspection of such property, or of the books, records, and accounts of such companies, the statements filed as required by this chapter, the reports, statements, or returns of such companies filed in the office of any board, office, or commission of this state or any county thereof, the earnings and earning power of such companies, the franchises owned or used by such companies, the true and fair valuation of any and all property of such companies, whether operating property or nonoperating property, and whether situated within or without the state, and any other facts, evidences, or information that may be obtainable bearing upon the value of the operating property. However, in no event may any statement or report required from any company by this chapter be conclusive upon the department of revenue in determining the amount, character, and true and fair value of the operating property of such company. [2017 c 323 § 531; 2001 c 187 § 9; 1997 c 3 § 119 (Referendum Bill No. 47, approved November 4, 1997); 1994 c 301 § 26; 1975 1st ex.s. c 278 § 179; 1961 c 15 § 84.16.040. Prior: 1939 c 206 § 22; 1933 c 146 § 7; RRS § 11172-7; prior: 1907 c 36 § 7.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Additional notes found at www.leg.wa.gov

84.16.090 Assessment roll—Notice of valuation.

Upon the assessment roll must be placed after the name of each company a general description of the operating property of the company, which is considered sufficient if described in the language of RCW 84.16.010(3) or otherwise, following which must be entered the true and fair value of the operating property as determined by the department of revenue. No assessment is invalid by a mistake in the name of the company assessed, by omission of the name of the owner or by the entry of a name other than that of the true owner. When the department of revenue has prepared the initial assessment roll and entered thereon the true and fair value of the operating property of the company, as required, the department must notify the company by mail of the valuation determined by it and entered upon the roll; and thereupon such valuation must become the true and fair value of the operating property of the company, subject to revision or correction by the department of revenue as hereinafter provided; and must be the valuation upon which, after equalization by the department of revenue as hereinafter provided, the taxes of such company are based and computed. [2017 c 323 § 532; 2001 c 187 § 11; 1997 c 3 § 121 (Referendum Bill No. 47, approved November 4, 1997); 1994 c 301 § 28; 1975 1st ex.s. c 278 § 181; 1961 c 15 § 84.16.090. Prior: 1933 c 146 § 9; RRS § 11172-9; prior: 1907 c 36 § 4.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Additional notes found at www.leg.wa.gov

**Chapter 84.33 RCW
TIMBER AND FORESTLANDS**

Sections

- 84.33.088 Reporting requirements on timber purchase. *(Expires July 1, 2021.)*
- 84.33.089 Estimates of harvestable public forestland—Adjustments.
- 84.33.140 Forestland valuation—Notation of forestland designation upon assessment and tax rolls—Notice of continuance—Removal of designation—Compensating tax.

84.33.088 Reporting requirements on timber purchase. (Expires July 1, 2021.) (1) A purchaser of privately owned timber in an amount in excess of two hundred thousand board feet in a voluntary sale made in the ordinary course of business must, on or before the last day of the month following the purchase of the timber, report the particulars of the purchase to the department as required in subsection (2) of this section.

(2) The report required in subsection (1) of this section must contain all information relevant to the value of the timber purchased including, but not limited to, the following, as applicable: Purchaser's name, address, and contact information; seller's name, address, and contact information; sale date; termination date in sale agreement; total sale price; legal description of sale area, sale name if applicable; forest practice application/harvest permit number if available; total acreage involved in the sale; estimated net volume of timber purchased by tree species and log grade; and description and value of property improvements. For the purposes of this subsection property improvements may include, but are not limited to: Road construction or road improvements, reforestation, land clearing, stock piling of rock, or any other agreed upon property improvement. A report may be submitted in any reasonable form or, at the purchaser's option, by submitting relevant excerpts of the timber sales contract. A purchaser may comply by submitting the information in the following form:

- Purchaser's name, address, and contact information:
- Seller's name, address, and contact information:
- Sale date:
- Termination date:
- Total sale price:
- Legal description of sale area:
- Sale name (if applicable):
- Forest practice application/Harvest permit number (if available):
- Total acreage involved:
- Estimated net volume of timber purchased by tree species and log grade:
- Description and value of property improvements, such as road construction or road improvements, reforestation, land clearing, stock piling of rock, or any other agreed upon property improvement:

(3) A purchaser of privately owned timber involved in a purchase described in subsection (1) of this section, who fails to report a purchase as required, may be liable for a penalty of two hundred fifty dollars for each failure to report, as determined by the department.

(4) Privately purchased timber reports are confidential taxpayer information under RCW 82.32.330.

(5) This section expires July 1, 2021. [2017 c 55 § 1; 2014 c 152 § 1; 2010 c 197 § 1; 2007 c 47 § 1; 2003 c 315 § 1; 2001 c 320 § 16.]

Effective date—2007 c 47: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 47 § 2.]

Additional notes found at www.leg.wa.gov

84.33.089 Estimates of harvestable public forestland—Adjustments. (1) The department must estimate the number of acres of public forestland that are available for timber harvesting. The department must provide the estimates for each county and for each taxing district within each county by October 1st of each year except that the department may authorize a county, at the county's option, to make its own estimates for public forestland in that county. In estimating the number of acres, the department must use the best available information to include public land comparable to private land that qualifies as forestland for assessment purposes and exclude other public lands. The department is not required to update the estimates unless improved information becomes available. The department of natural resources must assist the department with these determinations by providing any data and information in the possession of the department of natural resources on public forestlands, broken out by county and legal description, including a detailed map of each county showing the location of the described lands. The data and information must be provided to the department by July 15th of each year. In addition, the department may contract with other parties to provide data or assistance necessary to implement this section.

(2) To accommodate the phase-in of the county forest excise tax on the harvest of timber from public lands as provided in RCW 84.33.051, the department must adjust its actual estimates of the number of acres of public forestland that are available for timber harvesting. The department must reduce its estimates for the following years by the following amounts:

- (a) For calendar year 2005, 70 percent;
- (b) For calendar year 2006, 62.5 percent;
- (c) For calendar year 2007, 55 percent;
- (d) For calendar year 2008, 47.5 percent;
- (e) For calendar year 2009, 40 percent;
- (f) For calendar year 2010, 32.5 percent;
- (g) For calendar year 2011, 22.5 percent;
- (h) For calendar year 2012, 15 percent;
- (i) For calendar year 2013, 7.5 percent; and
- (j) For calendar year 2014 and thereafter, the department

may not reduce its estimates of the number of acres of public forestland that are available for timber harvesting. [2017 c 323 § 901; 2004 c 177 § 6.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Additional notes found at www.leg.wa.gov

84.33.140 Forestland valuation—Notation of forestland designation upon assessment and tax rolls—Notice of continuance—Removal of designation—Compensating tax. (1) When land has been designated as forestland under RCW 84.33.130, a notation of the designation must be made

each year upon the assessment and tax rolls. A copy of the notice of approval together with the legal description or assessor's parcel numbers for the land must, at the expense of the applicant, be filed by the assessor in the same manner as values are recorded.

(2) In preparing the assessment roll as of January 1, 2002, for taxes payable in 2003 and each January 1st thereafter, the assessor must list each parcel of designated forestland at a value with respect to the grade and class provided in this subsection and adjusted as provided in subsection (3) of this section. The assessor must compute the assessed value of the land using the same assessment ratio applied generally in computing the assessed value of other property in the county. Values for the several grades of bare forestland are as follows:

LAND GRADE	OPERABILITY CLASS	VALUES PER ACRE
	1	\$234
1	2	229
	3	217
	4	157
	1	198
2	2	190
	3	183
	4	132
	1	154
3	2	149
	3	148
	4	113
	1	117
4	2	114
	3	113
	4	86
	1	85
5	2	78
	3	77
	4	52
	1	43
6	2	39
	3	39
	4	37
	1	21
7	2	21
	3	20
	4	20
	1	1
8		

(3) On or before December 31, 2001, the department must adjust by rule under chapter 34.05 RCW, the forestland values contained in subsection (2) of this section in accordance with this subsection, and must certify the adjusted values to the assessor who will use these values in preparing the assessment roll as of January 1, 2002. For the adjustment to

be made on or before December 31, 2001, for use in the 2002 assessment year, the department must:

(a) Divide the aggregate value of all timber harvested within the state between July 1, 1996, and June 30, 2001, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(b) Divide the aggregate value of all timber harvested within the state between July 1, 1995, and June 30, 2000, by the aggregate harvest volume for the same period, as determined from the harvester excise tax returns filed with the department under RCW 84.33.074; and

(c) Adjust the forestland values contained in subsection (2) of this section by a percentage equal to one-half of the percentage change in the average values of harvested timber reflected by comparing the resultant values calculated under (a) and (b) of this subsection.

(4) For the adjustments to be made on or before December 31, 2002, and each succeeding year thereafter, the same procedure described in subsection (3) of this section must be followed using harvester excise tax returns filed under RCW 84.33.074. However, this adjustment must be made to the prior year's adjusted value, and the five-year periods for calculating average harvested timber values must be successively one year more recent.

(5) Land graded, assessed, and valued as forestland must continue to be so graded, assessed, and valued until removal of designation by the assessor upon the occurrence of any of the following:

(a) Receipt of notice of request to withdraw land classified under RCW 84.34.020(3) within two years before the date of the merger under RCW 84.34.400. Land previously classified under chapter 84.34 RCW will be removed under the provisions of this chapter when two assessment years have passed following receipt of the notice as described in RCW 84.34.070(1);

(b) Receipt of notice from the owner to remove the designation;

(c) Sale or transfer to an ownership making the land exempt from ad valorem taxation;

(d) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of forestland designation continuance, except transfer to an owner who is an heir or devisee of a deceased owner or transfer by a transfer on death deed, does not, by itself, result in removal of designation. The signed notice of continuance must be attached to the real estate excise tax affidavit provided for in RCW 82.45.150. The notice of continuance must be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all compensating taxes calculated under subsection (11) of this section are due and payable by the seller or transferor at time of sale. The auditor may not accept an instrument of conveyance regarding designated forestland for filing or recording unless the new owner has signed the notice of continuance or the compensating tax has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (11) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is

hereby conferred on the county board of equalization to hear these appeals;

(e) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that:

(i) The land is no longer primarily devoted to and used for growing and harvesting timber. However, land may not be removed from designation if a governmental agency, organization, or other recipient identified in subsection (13) or (14) of this section as exempt from the payment of compensating tax has manifested its intent in writing or by other official action to acquire a property interest in the designated forestland by means of a transaction that qualifies for an exemption under subsection (13) or (14) of this section. The governmental agency, organization, or recipient must annually provide the assessor of the county in which the land is located reasonable evidence in writing of the intent to acquire the designated land as long as the intent continues or within sixty days of a request by the assessor. The assessor may not request this evidence more than once in a calendar year;

(ii) The owner has failed to comply with a final administrative or judicial order with respect to a violation of the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW or any applicable rules under Title 76 RCW; or

(iii) Restocking has not occurred to the extent or within the time specified in the application for designation of such land.

(6) Land may not be removed from designation if there is a governmental restriction that prohibits, in whole or in part, the owner from harvesting timber from the owner's designated forestland. If only a portion of the parcel is impacted by governmental restrictions of this nature, the restrictions cannot be used as a basis to remove the remainder of the forestland from designation under this chapter. For the purposes of this section, "governmental restrictions" includes: (a) Any law, regulation, rule, ordinance, program, or other action adopted or taken by a federal, state, county, city, or other governmental entity; or (b) the land's zoning or its presence within an urban growth area designated under RCW 36.70A.110.

(7) The assessor has the option of requiring an owner of forestland to file a timber management plan with the assessor upon the occurrence of one of the following:

(a) An application for designation as forestland is submitted;

(b) Designated forestland is sold or transferred and a notice of continuance, described in subsection (5)(d) of this section, is signed; or

(c) The assessor has reason to believe that forestland sized less than twenty acres is no longer primarily devoted to and used for growing and harvesting timber. The assessor may require a timber management plan to assist with determining continuing eligibility as designated forestland.

(8) If land is removed from designation because of any of the circumstances listed in subsection (5)(a) through (d) of this section, the removal applies only to the land affected. If land is removed from designation because of subsection (5)(e) of this section, the removal applies only to the actual area of land that is no longer primarily devoted to the growing and harvesting of timber, without regard to any other land that may have been included in the application and approved

for designation, as long as the remaining designated forestland meets the definition of forestland contained in RCW 84.33.035.

(9) Within thirty days after the removal of designation as forestland, the assessor must notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038.

(10) Unless the removal is reversed on appeal a copy of the notice of removal with a notation of the action, if any, upon appeal, together with the legal description or assessor's parcel numbers for the land removed from designation must, at the expense of the applicant, be filed by the assessor in the same manner as deeds are recorded and a notation of removal from designation must immediately be made upon the assessment and tax rolls. The assessor must revalue the land to be removed with reference to its true and fair value as of January 1st of the year of removal from designation. Both the assessed value before and after the removal of designation must be listed. Taxes based on the value of the land as forestland are assessed and payable up until the date of removal and taxes based on the true and fair value of the land are assessed and payable from the date of removal from designation.

(11) Except as provided otherwise in this section, a compensating tax is imposed on land removed from designation as forestland. The compensating tax is due and payable to the treasurer thirty days after the owner is notified of the amount of this tax. As soon as possible after the land is removed from designation, the assessor must compute the amount of compensating tax, and the treasurer must mail a notice to the owner of the amount of compensating tax owed and the date on which payment of this tax is due. The amount of compensating tax is equal to the difference between the amount of tax last levied on the land as designated forestland and an amount equal to the new assessed value of the land multiplied by the dollar rate of the last levy extended against the land, multiplied by a number, in no event greater than nine, equal to the number of years for which the land was designated as forestland, plus compensating taxes on the land at forestland values up until the date of removal and the prorated taxes on the land at true and fair value from the date of removal to the end of the current tax year.

(12) Compensating tax, together with applicable interest thereon, becomes a lien on the land, which attaches at the time the land is removed from designation as forestland and has priority and must be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable. The lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any compensating tax unpaid on its due date will thereupon become delinquent. From the date of delinquency until paid, interest is charged at the same rate applied by law to delinquent ad valorem property taxes.

(13) The compensating tax specified in subsection (11) of this section may not be imposed if the removal of designation under subsection (5) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other forestland located within the state of Washington;

(b)(i) A taking through the exercise of the power of eminent domain, or (ii) a sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power based on official action taken by the entity and confirmed in writing;

(c) A donation of fee title, development rights, or the right to harvest timber, to a government agency or organization qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections, or the sale or transfer of fee title to a governmental entity or a nonprofit nature conservancy corporation, as defined in RCW 64.04.130, exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan as defined in chapter 79.70 RCW or approved for state natural resources conservation area purposes as defined in chapter 79.71 RCW, or for acquisition and management as a community forest trust as defined in chapter 79.155 RCW. At such time as the land is not used for the purposes enumerated, the compensating tax specified in subsection (11) of this section is imposed upon the current owner;

(d) The sale or transfer of fee title to the parks and recreation commission for park and recreation purposes;

(e) Official action by an agency of the state of Washington or by the county or city within which the land is located that disallows the present use of the land;

(f) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(g) The creation, sale, or transfer of a conservation easement of private forestlands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(h) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forestland, designated as forestland under this chapter, or classified under chapter 84.34 RCW continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (13)(h); or

(i)(i) The discovery that the land was designated under this chapter in error through no fault of the owner. For purposes of this subsection (13)(i), "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of designation under this chapter or the failure of the assessor to remove the land from designation under this chapter.

(ii) For purposes of this subsection (13), the discovery that land was designated under this chapter in error through no fault of the owner is not the sole reason for removal of designation under subsection (5) of this section if an independent basis for removal exists. An example of an independent basis for removal includes the land no longer being devoted to and used for growing and harvesting timber.

(14) In a county with a population of more than six hundred thousand inhabitants or in a county with a population of at least two hundred forty-five thousand inhabitants that borders Puget Sound as defined in RCW 90.71.010, the compensating tax specified in subsection (11) of this section may not

be imposed if the removal of designation as forestland under subsection (5) of this section resulted solely from:

(a) An action described in subsection (13) of this section; or

(b) A transfer of a property interest to a government entity, or to a nonprofit historic preservation corporation or nonprofit nature conservancy corporation, as defined in RCW 64.04.130, to protect or enhance public resources, or to preserve, maintain, improve, restore, limit the future use of, or otherwise to conserve for public use or enjoyment, the property interest being transferred. At such time as the property interest is not used for the purposes enumerated, the compensating tax is imposed upon the current owner.

(15) Compensating tax authorized in this section may not be imposed on land removed from designation as forestland solely as a result of a natural disaster such as a flood, windstorm, earthquake, wildfire, or other such calamity rather than by virtue of the act of the landowner changing the use of the property. [2017 3rd sp.s. c 37 § 1002. Prior: 2014 c 137 § 3; 2014 c 97 § 309; 2014 c 58 § 27; 2013 2nd sp.s. c 11 § 13; 2012 c 170 § 1; prior: 2009 c 354 § 2; 2009 c 255 § 3; 2009 c 246 § 2; 2007 c 54 § 24; 2005 c 303 § 13; 2003 c 170 § 5; prior: 2001 c 305 § 2; 2001 c 249 § 3; 2001 c 185 § 5; 1999 sp.s. c 4 § 703; 1999 c 233 § 21; 1997 c 299 § 2; 1995 c 330 § 2; 1992 c 69 § 2; 1986 c 238 § 2; 1981 c 148 § 9; 1980 c 134 § 3; 1974 ex.s. c 187 § 7; 1973 1st ex.s. c 195 § 93; 1972 ex.s. c 148 § 6; 1971 ex.s. c 294 § 14.]

Tax preference performance statement and expiration—2017 3rd sp.s. c 37 §§ 1001 and 1002: See note following RCW 84.34.108.

Effective date—2017 3rd sp.s. c 37 §§ 301, 302, and 1001-1003: See note following RCW 82.04.628.

Uniformity of application and construction—Relation to electronic signatures in global and national commerce act—2014 c 58: See RCW 64.80.903 and 64.80.904.

Finding—Intent—2009 c 354: "(1) The legislature finds that the revenue generated from state forestlands is a vital component of the operating budget in many rural counties. The dependence on a natural resource-based economy is especially underscored in counties with lower population levels and large holdings of public land. The high cost of compliance with the federal endangered species act on state forestlands within these smaller counties is disproportionately burdensome when compared to their total county budgets.

(2) The intent of this act is to provide sustainable revenue to smaller counties that are heavily dependent on state forestland revenues while promoting long-term protection, conservation, and recovery of marbled murrelets and northern spotted owls. This act provides the necessary tools for the state to maintain long-term working forests by replacing state forestlands with endangered species-based harvest encumbrances with productive, working forestlands." [2009 c 354 § 6.]

Severability—2007 c 54: See note following RCW 82.04.050.

Purpose—Intent—2003 c 170: See note following RCW 84.33.130.

Purpose—Severability—Effective dates—1981 c 148: See notes following RCW 84.33.130.

Additional notes found at www.leg.wa.gov

Chapter 84.34 RCW

OPEN SPACE, AGRICULTURAL, TIMBERLANDS— CURRENT USE—CONSERVATION FUTURES

Sections

84.34.070	Withdrawal from classification.
84.34.108	Removal of classification—Factors—Notice of continuance—Additional tax—Lien—Delinquencies—Exemptions.

84.34.240 Acquisition of open space, etc., land or rights to future development by certain entities—Conservation futures fund—Additional requirements, authority.

84.34.070 Withdrawal from classification. (1)(a)

When land has once been classified under this chapter, it must remain under such classification and must not be applied to other use except as provided by subsection (2) of this section for at least ten years from the date of classification. It must continue under such classification until and unless withdrawn from classification after notice of request for withdrawal is made by the owner. After the initial ten-year classification period has elapsed, notice of request for withdrawal of all or a portion of the land may be given by the owner to the assessor or assessors of the county or counties in which the land is situated. If a portion of a parcel is removed from classification, the remaining portion must meet the same requirements as did the entire parcel when the land was originally granted classification under this chapter unless the remaining parcel has different income criteria. Within seven days the assessor must transmit one copy of the notice to the legislative body that originally approved the application. The assessor or assessors, as the case may be, must withdraw the land from the classification and the land is subject to the additional tax and applicable interest due under RCW 84.34.108. Agreement to tax according to use is not considered to be a contract and can be abrogated at any time by the legislature in which event no additional tax or penalty may be imposed.

(b) If the assessor gives written notice of removal as provided in RCW 84.34.108(1)(d)(i) of all or a portion of land classified under this chapter before the owner gives a notice of request for withdrawal in (a) of this subsection, the provisions of RCW 84.34.108 apply.

(2)(a) The following reclassifications are not considered withdrawals or removals and are not subject to additional tax under RCW 84.34.108:

(i) Reclassification between lands under RCW 84.34.020 (2) and (3);

(ii) Reclassification of land classified under RCW 84.34.020 (2) or (3) or designated under chapter 84.33 RCW to open space land under RCW 84.34.020(1);

(iii) Reclassification of land classified under RCW 84.34.020 (2) or (3) to forestland designated under chapter 84.33 RCW; and

(iv) Reclassification of land classified as open space land under RCW 84.34.020(1)(c) and reclassified to farm and agricultural land under RCW 84.34.020(2) if the land had been previously classified as farm and agricultural land under RCW 84.34.020(2).

(b) Designation as forestland under RCW 84.33.130(1) as a result of a merger adopted under RCW 84.34.400 is not considered a withdrawal or removal and is not subject to additional tax under RCW 84.34.108.

(3) Applications for reclassification are subject to applicable provisions of RCW 84.34.037, 84.34.035, 84.34.041, and chapter 84.33 RCW.

(4) The income criteria for land classified under RCW 84.34.020(2) (b) and (c) may be deferred for land being reclassified from land classified under RCW 84.34.020 (1)(c) or (3), or chapter 84.33 RCW into RCW 84.34.020(2) (b) or (c) for a period of up to five years from the date of reclassifi-

cation. [2017 c 251 § 1; 2014 c 137 § 8; 1992 c 69 § 10; 1984 c 111 § 2; 1973 1st ex.s. c 212 § 8; 1970 ex.s. c 87 § 7.]

84.34.108 Removal of classification—Factors—Notice of continuance—Additional tax—Lien—Delinquencies—Exemptions. (1) When land has once been classified under this chapter, a notation of the classification must be made each year upon the assessment and tax rolls and the land must be valued pursuant to RCW 84.34.060 or 84.34.065 until removal of all or a portion of the classification by the assessor upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove all or a portion of the classification;

(b) Sale or transfer to an ownership, except a transfer that resulted from a default in loan payments made to or secured by a governmental agency that intends to or is required by law or regulation to resell the property for the same use as before, making all or a portion of the land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of classification continuance, except transfer to an owner who is an heir or devisee of a deceased owner or transfer by a transfer on death deed does not, by itself, result in removal of classification. The notice of continuance must be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all additional taxes, applicable interest, and penalty calculated pursuant to subsection (4) of this section become due and payable by the seller or transferor at time of sale. The auditor may not accept an instrument of conveyance regarding classified land for filing or recording unless the new owner has signed the notice of continuance or the additional tax, applicable interest, and penalty has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (4) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d)(i) Determination by the assessor, after giving the owner written notice and an opportunity to be heard, that all or a portion of the land no longer meets the criteria for classification under this chapter. The criteria for classification pursuant to this chapter continue to apply after classification has been granted.

(ii) The granting authority, upon request of an assessor, must provide reasonable assistance to the assessor in making a determination whether the land continues to meet the qualifications of RCW 84.34.020 (1) or (3). The assistance must be provided within thirty days of receipt of the request.

(2) Land may not be removed from classification because of:

(a) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120; or

(b) The creation, sale, or transfer of a fee interest or a conservation easement for the riparian open space program under RCW 76.09.040.

(3) Within thirty days after the removal of all or a portion of the land from current use classification under subsection

(1) of this section, the assessor must notify the owner in writing, setting forth the reasons for the removal. The seller, transferor, or owner may appeal the removal to the county board of equalization in accordance with the provisions of RCW 84.40.038. The removal notice must explain the steps needed to appeal the removal decision, including when a notice of appeal must be filed, where the forms may be obtained, and how to contact the county board of equalization.

(4) Unless the removal is reversed on appeal, the assessor must revalue the affected land with reference to its true and fair value on January 1st of the year of removal from classification. Both the assessed valuation before and after the removal of classification must be listed and taxes must be allocated according to that part of the year to which each assessed valuation applies. Except as provided in subsection (6) of this section, an additional tax, applicable interest, and penalty must be imposed, which are due and payable to the treasurer thirty days after the owner is notified of the amount of the additional tax, applicable interest, and penalty. As soon as possible, the assessor must compute the amount of additional tax, applicable interest, and penalty and the treasurer must mail notice to the owner of the amount thereof and the date on which payment is due. The amount of the additional tax, applicable interest, and penalty must be determined as follows:

(a) The amount of additional tax is equal to the difference between the property tax paid as "open space land," "farm and agricultural land," or "timberland" and the amount of property tax otherwise due and payable for the seven years last past had the land not been so classified;

(b) The amount of applicable interest is equal to the interest upon the amounts of the additional tax paid at the same statutory rate charged on delinquent property taxes from the dates on which the additional tax could have been paid without penalty if the land had been assessed at a value without regard to this chapter;

(c) The amount of the penalty is as provided in RCW 84.34.080. The penalty may not be imposed if the removal satisfies the conditions of RCW 84.34.070.

(5) Additional tax, applicable interest, and penalty become a lien on the land. The lien attaches at the time the land is removed from classification under this chapter and has priority to and must be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which the land may become charged or liable. This lien may be foreclosed upon expiration of the same period after delinquency and in the same manner provided by law for foreclosure of liens for delinquent real property taxes as provided in RCW 84.64.050. Any additional tax unpaid on the due date is delinquent as of the due date. From the date of delinquency until paid, interest must be charged at the same rate applied by law to delinquent ad valorem property taxes.

(6) The additional tax, applicable interest, and penalty specified in subsection (4) of this section may not be imposed if the removal of classification pursuant to subsection (1) of this section resulted solely from:

(a) Transfer to a government entity in exchange for other land located within the state of Washington;

(b)(i) A taking through the exercise of the power of eminent domain, or (ii) sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power, said entity having manifested its intent in writing or by other official action;

(c) A natural disaster such as a flood, windstorm, earthquake, wildfire, or other such calamity rather than by virtue of the act of the landowner changing the use of the property;

(d) Official action by an agency of the state of Washington or by the county or city within which the land is located which disallows the present use of the land;

(e) Transfer of land to a church when the land would qualify for exemption pursuant to RCW 84.36.020;

(f) Acquisition of property interests by state agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections. At such time as these property interests are not used for the purposes enumerated in RCW 84.34.210 and 64.04.130 the additional tax specified in subsection (4) of this section must be imposed;

(g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(f);

(h) Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification;

(i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(j) The creation, sale, or transfer of a conservation easement of private forestlands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(k) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forestland, designated as forestland under chapter 84.33 RCW, or classified under this chapter continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (6)(k); or

(l)(i) The discovery that the land was classified under this chapter in error through no fault of the owner. For purposes of this subsection (6)(l), "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of classification under this chapter or the failure of the assessor to remove the land from classification under this chapter.

(ii) For purposes of this subsection (6), the discovery that land was classified under this chapter in error through no fault of the owner is not the sole reason for removal of classification pursuant to subsection (1) of this section if an independent basis for removal exists. Examples of an independent basis for removal include the owner changing the use of the land or failing to meet any applicable income criteria required for classification under this chapter. [2017 3rd sp.s. c 37 § 1001; 2017 c 323 § 506. Prior: 2014 c 97 § 311; 2014 c 58 § 28; prior: 2009 c 513 § 2; 2009 c 354 § 3; 2009 c 255 § 2; 2009 c 246 § 3; 2007 c 54 § 25; 2003 c 170 § 6; prior: 2001 c 305 § 3; 2001 c 249 § 14; 2001 c 185 § 7; prior: 1999 sp.s. c 4 § 706; 1999 c 233 § 22; 1999 c 139 § 2; 1992 c 69 § 12; 1989 c 378 § 35; 1985 c 319 § 1; 1983 c 41 § 1; 1980 c 134 § 5; 1973 1st ex.s. c 212 § 12.]

Tax preference performance statement and expiration—2017 3rd sp.s. c 37 §§ 1001 and 1002: "The provisions of RCW 82.32.805 and 82.32.808 do not apply to this part." [2017 3rd sp.s. c 37 § 1003.]

Effective date—2017 3rd sp.s. c 37 §§ 301, 302, and 1001-1003: See note following RCW 82.04.628.

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Uniformity of application and construction—Relation to electronic signatures in global and national commerce act—2014 c 58: See RCW 64.80.903 and 64.80.904.

Finding—Intent—2009 c 354: See note following RCW 84.33.140.

Severability—2007 c 54: See note following RCW 82.04.050.

Purpose—2003 c 170 § 6: "During the regular session of the 2001 legislature, RCW 84.34.108 was amended by section 7, chapter 185, by section 14, chapter 249, and by section 3, chapter 305, each without reference to the other. The purpose of section 6 of this act is to reenact and amend RCW 84.34.108 so that it reflects all amendments made by the legislature and to clarify any misunderstanding as to how the exemption contained in chapter 305, Laws of 2001 is to be applied." [2003 c 170 § 3.]

Purpose—Intent—2003 c 170: See note following RCW 84.33.130.

Additional notes found at www.leg.wa.gov

84.34.240 Acquisition of open space, etc., land or rights to future development by certain entities—Conservation futures fund—Additional requirements, authority.

Conservation futures are a useful tool for counties to preserve lands of public interest for future generations. Counties are encouraged to use some conservation futures as one tool for salmon preservation purposes.

(1) Any board of county commissioners may establish by resolution a special fund which may be termed a conservation futures fund to which it may credit all taxes levied pursuant to RCW 84.34.230. Amounts placed in this fund may be used for the purpose of acquiring rights and interests in real property pursuant to the terms of RCW 84.34.210 and 84.34.220, and for the maintenance and operation of any property acquired with these funds.

(2)(a) Generally, the amount of revenue used for maintenance and operations of real property, the rights or interests of which were acquired pursuant to the terms of RCW 84.34.210 and 84.34.220, may not exceed fifteen percent of the total amount collected from the tax levied under RCW 84.34.230 in the preceding calendar year. Revenues from this tax may not be used to supplant existing maintenance and operation funding.

(b) A county may use up to twenty-five percent of the total amount for maintenance and operations of real property, the rights and interests of which were acquired pursuant to the terms of RCW 84.34.210 and 84.34.220, which may not be used to supplant existing maintenance and operation funding, if the county has:

(i) Acquired rights and interests in four hundred or more acres of real property under RCW 84.34.210 and 84.34.220; and

(ii) Collected a conservation futures levy for twenty or more years.

(3) Any rights or interests in real property acquired under this section must be located within the assessing county. The county must determine if the rights or interests in real property acquired with these funds would reduce the capacity of land suitable for development necessary to accommodate the allocated housing and employment growth, as adopted in the

countywide planning policies. When actions are taken that reduce capacity to accommodate planned growth, the jurisdiction must adopt reasonable measures to increase the capacity lost by such actions.

(4) In counties greater than one hundred thousand in population, the board of county commissioners or county legislative authority shall develop a process to help ensure distribution of the tax levied under RCW 84.34.230, over time, throughout the county.

(5)(a) Between July 24, 2005, and July 1, 2008, the county legislative authority of a county with a population density of fewer than four persons per square mile may enact an ordinance offering a ballot proposal to the people of the county to determine whether or not the county legislative authority may make a one-time emergency reallocation of unspent conservation futures funds to pay for other county government purposes, where such conservation futures funds were originally levied under RCW 84.34.230 but never spent to acquire rights and interests in real property.

(b) Upon adoption by the county legislative authority of a ballot proposal ordinance under (a) of this subsection the county auditor shall: (i) Confer with the county legislative authority and review any proposal to the people as to form and style; (ii) give the ballot proposal a number, which thereafter must be the identifying number for the proposal; (iii) transmit a copy of the proposal to the prosecuting attorney; and (iv) submit the proposal to the people at the next general or special election that is not less than ninety days after the adoption of the ordinance by the county legislative authority.

(c) The county prosecuting attorney must within fifteen working days of receipt of the proposal compose a concise statement, posed as a positive question, not to exceed twenty-five words, which shall express and give a true and impartial statement of the proposal. Such concise statement must be the ballot title.

(d) If the measure is affirmed by a majority voting on the issue it shall become effective ten days after the results of the election are certified.

(6) Nothing in this section may be construed as limiting in any manner methods and funds otherwise available to a county for financing the acquisition of such rights and interests in real property. [2017 c 148 § 1; 2005 c 449 § 2; 1971 ex.s. c 243 § 5.]

**Chapter 84.36 RCW
EXEMPTIONS**

Sections

84.36.381	Residences—Property tax exemptions—Qualifications.
84.36.630	Farming machinery and equipment.
84.36.645	Semiconductor materials. <i>(Effective until January 1, 2018; contingent effective date; contingent expiration date.)</i>
84.36.645	Semiconductor materials. <i>(Effective January 1, 2018; contingent effective date; contingent expiration date.)</i>
84.36.655	Property related to the manufacture of superefficient airplanes. <i>(Effective January 1, 2018, until July 1, 2040.)</i>
84.36.670	Senior citizen organizations—Property used for operation of a multipurpose senior citizen center.

84.36.381 Residences—Property tax exemptions—Qualifications. A person is exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the

year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of the time of filing. However, any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant may receive an exemption on more than one residence in any year. Moreover, confinement of the person to a hospital, nursing home, assisted living facility, or adult family home does not disqualify the claim of exemption if:

(a) The residence is temporarily unoccupied;

(b) The residence is occupied by a spouse or a domestic partner and/or a person financially dependent on the claimant for support; or

(c) The residence is rented for the purpose of paying nursing home, hospital, assisted living facility, or adult family home costs;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or state registered domestic partnership or owned by cotenants is deemed to be owned by each spouse or each domestic partner or each cotenant, and any lease for life is deemed a life estate;

(3)(a) The person claiming the exemption must be:

(i) Sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of disability; or

(ii) A veteran of the armed forces of the United States entitled to and receiving compensation from the United States department of veterans affairs at a total disability rating for a service-connected disability.

(b) However, any surviving spouse or surviving domestic partner of a person who was receiving an exemption at the time of the person's death will qualify if the surviving spouse or surviving domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person is exempt from an obligation to pay is calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the assessment year, the combined disposable income of such person must be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve. If the income of the person claiming exemption is reduced for two or more months of the assessment year by reason of the death of the person's spouse or the person's domestic partner, or when other substantial changes occur in disposable income that are likely to continue for an indefinite period of time, the combined disposable income of such person must be calculated by multiplying the average monthly combined disposable income of such person after such occurrences by twelve. If it

is necessary to estimate income to comply with this subsection, the assessor may require confirming documentation of such income prior to May 31 of the year following application;

(5)(a) A person who otherwise qualifies under this section and has a combined disposable income of forty thousand dollars or less is exempt from all excess property taxes and the additional state property tax imposed under RCW 84.52.065(2); and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of thirty-five thousand dollars or less but greater than thirty thousand dollars is exempt from all regular property taxes on the greater of fifty thousand dollars or thirty-five percent of the valuation of his or her residence, but not to exceed seventy thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of thirty thousand dollars or less is exempt from all regular property taxes on the greater of sixty thousand dollars or sixty percent of the valuation of his or her residence;

(6)(a) For a person who otherwise qualifies under this section and has a combined disposable income of forty thousand dollars or less, the valuation of the residence is the assessed value of the residence on the later of January 1, 1995, or January 1st of the assessment year the person first qualifies under this section. If the person subsequently fails to qualify under this section only for one year because of high income, this same valuation must be used upon requalification. If the person fails to qualify for more than one year in succession because of high income or fails to qualify for any other reason, the valuation upon requalification is the assessed value on January 1st of the assessment year in which the person requalifies. If the person transfers the exemption under this section to a different residence, the valuation of the different residence is the assessed value of the different residence on January 1st of the assessment year in which the person transfers the exemption.

(b) In no event may the valuation under this subsection be greater than the true and fair value of the residence on January 1st of the assessment year.

(c) This subsection does not apply to subsequent improvements to the property in the year in which the improvements are made. Subsequent improvements to the property must be added to the value otherwise determined under this subsection at their true and fair value in the year in which they are made. [2017 3rd sp.s. c 13 § 311; 2015 3rd sp.s. c 30 § 2; 2012 c 10 § 73; 2011 c 174 § 105; 2010 c 106 § 306; 2008 c 6 § 706; 2005 c 248 § 2; 2004 c 270 § 1; 1998 c 333 § 1; 1996 c 146 § 1; 1995 1st sp.s. c 8 § 1; 1994 sp.s. c 8 § 1; 1993 c 178 § 1; 1992 c 187 § 1. Prior: 1991 c 213 § 3; 1991 c 203 § 1; 1987 c 301 § 1; 1983 1st ex.s. c 11 § 5; 1983 1st ex.s. c 11 § 2; 1980 c 185 § 4; 1979 ex.s. c 214 § 1; 1977 ex.s. c 268 § 1; 1975 1st ex.s. c 291 § 14; 1974 ex.s. c 182 § 1.]

Application—Tax preference performance statement and expiration—2017 3rd sp.s. c 13 §§ 301-314: See notes following RCW 84.52.065.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Tax preference performance statement—2017 c 323; 2015 3rd sp.s. c 30: "This section is the tax preference performance statement for the tax preference contained in section 2, chapter 30, Laws of 2015 3rd sp. sess. This

performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(1) The legislature categorizes this tax preference as one intended to provide tax relief for certain businesses or individuals, as indicated in RCW 82.32.808(2)(e).

(2) It is the legislature's specific public policy objective to provide tax relief to senior citizens, disabled persons, and veterans. The legislature recognizes that property taxes impose a substantial financial burden on those with fixed incomes and that property tax relief programs have considerable value in addressing this burden. It is the legislature's intent to increase the current statutory static income thresholds which were last modified in 2004.

(3) This tax preference is meant to be permanent and, therefore, not subject to the ten-year expiration provision in RCW 82.32.805(1)(a)." [2017 c 323 § 304; 2015 3rd sp.s. c 30 § 1.]

Application—2015 3rd sp.s. c 30: "This act applies to taxes levied for collection in 2016 and thereafter." [2015 3rd sp.s. c 30 § 4.]

Application—2012 c 10: See note following RCW 18.20.010.

Effective date—2010 c 106: See note following RCW 35.102.145.

Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.

Intent—1983 1st ex.s. c 11: "The legislature finds that inflation has significant detrimental effects on the senior citizen property tax relief program. Inflation increases incomes without increasing real buying power. Inflation also raises the values of homes, and thus the taxes on those homes. This act addresses the problem of inflation in two ways. First, the assessed value exemption is tied to home value so it will increase as values rise. Secondly, though the income of most senior citizens does not keep pace with inflation, it is the legislature's intent that inflationary increases in incomes will not result in program disqualification. Therefore, the income levels are adjusted to reflect the forecasted increase in inflation. The legislature also recommends that similar adjustments be examined by future legislatures." [1983 1st ex.s. c 11 § 1.]

Additional notes found at www.leg.wa.gov

84.36.630 Farming machinery and equipment. (1)

All machinery and equipment owned by a farmer that is personal property is exempt from property taxes levied for any state purpose, including the additional state property tax imposed under RCW 84.52.065(2), if it is used exclusively in growing and producing agricultural products during the calendar year for which the claim for exemption is made.

(2) "Farmer" and "agricultural product" have the same meaning as defined in RCW 82.04.213.

(3) A claim for exemption under this section must be filed with the county assessor together with the statement required under RCW 84.40.190, for exemption from taxes payable the following year. The claim must be made solely upon forms as prescribed and furnished by the department of revenue. [2017 3rd sp.s. c 13 § 312; 2014 c 140 § 28; 2003 c 302 § 7; 2001 2nd sp.s. c 24 § 1.]

Application—Tax preference performance statement and expiration—2017 3rd sp.s. c 13 §§ 301-314: See notes following RCW 84.52.065.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Additional notes found at www.leg.wa.gov

84.36.645 Semiconductor materials. (Effective until January 1, 2018; contingent effective date; contingent expiration date.) (1)

Machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 used in manufacturing semiconductor materials at a building exempt from sales and use tax and in compliance with the employment requirement under RCW 82.08.965 and 82.12.965 are exempt from property taxation. "Semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person seeking this exemption must make application to the county assessor, on forms prescribed by the department.

(3) A person claiming an exemption under this section must file a complete annual report with the department under RCW 82.32.534.

(4) This section is effective for taxes levied for collection one year after *the effective date of section 150, chapter 114, Laws of 2010 and thereafter.

(5) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 513; 2010 c 114 § 150; 2003 c 149 § 10.]

Expiration date—2017 3rd sp.s. c 37 §§ 502, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, and 525: See note following RCW 82.04.2404.

***Contingent effective date**—2010 c 114: See RCW 82.32.790.

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

84.36.645 Semiconductor materials. (Effective January 1, 2018; contingent effective date; contingent expiration date.)

(1) Machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 used in manufacturing semiconductor materials at a building exempt from sales and use tax and in compliance with the employment requirement under RCW 82.08.965 and 82.12.965 are exempt from property taxation. "Semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person seeking this exemption must make application to the county assessor, on forms prescribed by the department.

(3) A person claiming an exemption under this section must file a complete annual tax performance report with the department under RCW 82.32.534.

(4) This section is effective for taxes levied for collection one year after *the effective date of section 150, chapter 114, Laws of 2010 and thereafter.

(5) This section expires January 1, 2024, unless the contingency in RCW 82.32.790(2) occurs. [2017 3rd sp.s. c 37 § 514; 2017 c 135 § 45; 2010 c 114 § 150; 2003 c 149 § 10.]

Effective date—2017 3rd sp.s. c 37 §§ 101-104, 403, 503, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 703, 705, 707, and 801-803: See note following RCW 82.04.2404.

***Contingent effective date**—2017 c 135; 2010 c 114: See RCW 82.32.790.

Effective date—2017 c 135: See note following RCW 82.32.534.

Finding—Intent—2010 c 114: See note following RCW 82.32.585.

Findings—Intent—2003 c 149: See note following RCW 82.04.426.

84.36.655 Property related to the manufacture of superefficient airplanes. (Effective January 1, 2018, until July 1, 2040.)

(1) Effective January 1, 2005, all buildings, machinery, equipment, and other personal property of a lessee of a port district eligible under RCW 82.08.980 and 82.12.980, used exclusively in manufacturing superefficient airplanes, are exempt from property taxation. A person taking the credit under RCW 82.04.4463 is not eligible for the exemption under this section. For the purposes of this section, "superefficient airplane" and "component" have the meanings given in RCW 82.32.550.

(2) In addition to all other requirements under this title, a person claiming the exemption under this section must file a

complete annual tax performance report with the department under RCW 82.32.534.

(3) Claims for exemption authorized by this section must be filed with the county assessor on forms prescribed by the department and furnished by the assessor. The assessor must verify and approve claims as the assessor determines to be justified and in accordance with this section. No claims may be filed after December 31, 2039. The department may adopt rules, under the provisions of chapter 34.05 RCW, as necessary to properly administer this section.

(4) This section applies to taxes levied for collection in 2006 and thereafter.

(5) This section expires July 1, 2040. [2017 c 135 § 46; 2013 3rd sp.s. c 2 § 14; 2010 c 114 § 151; 2003 2nd sp.s. c 1 § 14.]

Effective date—2017 c 135: See note following RCW 82.32.534.

Contingent effective date—2013 3rd sp.s. c 2: See RCW 82.32.850.

Findings—Intent—2013 3rd sp.s. c 2: See note following RCW 82.32.850.

Application—Finding—Intent—2010 c 114: See notes following RCW 82.32.585.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

84.36.670 Senior citizen organizations—Property used for operation of a multipurpose senior citizen center.

(1) One or more contiguous real property parcels and personal property owned by a senior citizen organization are exempt from taxation, if the property is used for the actual operation of a multipurpose senior citizen center.

(2) The exemption in this section is not nullified by the use of the exempt property as provided in this subsection.

(a) The exempt property may be loaned or rented, if the rent and donations received for the use of the multipurpose senior citizen center are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented.

(b) The exempt property may be used for fund-raising events and activities, including the operation of a farmers market or a thrift store, with the purpose of providing financial support for the multipurpose senior citizen center or providing services and activities for senior citizens. If the exempt property is loaned or rented to conduct a fund-raising event for other purposes:

(i) Such event or activities must be conducted by a non-profit organization eligible for exemption under this chapter; and

(ii) The requirements of (a) of this subsection (2) apply.

(c) An inadvertent use of the exempt property in a manner inconsistent with the purposes of the exemption granted under this section does not nullify the exemption, if the inadvertent use is not part of a pattern of use. A pattern of use is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive years.

(3) Multipurpose senior citizen centers must be available to all regardless of race, color, religion, creed, gender, gender expression, national origin, ancestry, the presence of any sensory, mental, or physical disability, marital status, sexual orientation, or honorably discharged veteran or military status.

(4) The use of the exempt property, other than as specifically authorized by this section, nullifies the exemption from

taxation otherwise available for the property for the assessment year.

(5) This section is not subject to the provisions of RCW 84.36.805.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Farmers market" means a regular assembly of vendors at a location for the main purpose of promoting the sale of agricultural products grown, raised, or produced in this state directly to the consumer.

(b) "Multipurpose senior citizen center" means a community facility that provides for a broad spectrum of services to senior citizens, whether provided directly by the nonprofit senior citizen organization that owns the facility or by another person. Such services may include the provision of health, social, nutritional, educational services and the provision of facilities for recreational activities for senior citizens.

(c) "Senior citizen" means a person age sixty or older.

(d) "Senior citizen organization" means a private organization that:

(i) Has a mission, in whole or in part, to support senior citizens;

(ii) Is exempt from federal income tax under section 501(c)(3) of the internal revenue code; and

(iii) Operates a multipurpose senior citizen center.

(e) "Thrift store" means a retail establishment that:

(i) Is operated by a senior citizen organization;

(ii) Is located on the same parcel of real property as the senior citizen organization's multipurpose senior citizen center, or on a contiguous parcel of real property;

(iii) Sells goods, including but not limited to donated goods, as part of the senior citizen organization's fund-raising efforts for the operation of its multipurpose senior citizen center and the provision of services and activities for senior citizens; and

(iv) If the establishment sells nondonated goods, its gross annual sales of nondonated goods does not exceed ten percent of its total combined gross annual sales of all goods. [2017 c 301 § 2.]

Tax preference performance statement—2017 c 301 § 1: "(1) This section is the tax preference performance statement for the tax preference contained in chapter 301, Laws of 2017. This preference statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to provide tax relief as indicated in RCW 82.32.808(2)(e), to provide tax relief to senior citizen centers that do not qualify for a property tax exemption under current law.

(3) The joint legislative audit and review committee will review the number of senior citizen centers that received the tax preference provided in this act that would not have qualified for a property tax exemption prior to the enactment of this preference. In order to obtain the data necessary to perform the review, the joint legislative audit and review committee may refer to data sources including county assessor property records and property tax information from the department of revenue." [2017 c 301 § 1.]

Chapter 84.40 RCW

LISTING OF PROPERTY

Sections

84.40.042 Valuation and assessment of divided or combined property.

84.40.042 Valuation and assessment of divided or combined property. (1) When real property is divided in accordance with chapter 58.17 RCW, the assessor shall carefully investigate and ascertain the true and fair value of each lot and assess each lot on that same basis, unless specifically provided otherwise by law. For purposes of this section, "lot" has the same definition as in RCW 58.17.020.

(a) The assessor must establish the true and fair value by October 30th of the year following the recording of the plat, replat, or altered plat. The value established must be the value of the lot as of January 1st of the year the original parcel of real property was last revalued.

(b) For purposes of this section, "subdivision" means a division of land into two or more lots.

(c) For each subdivision, all current year and delinquent taxes and assessments on the entire tract must be paid in full in accordance with RCW 58.17.160 and 58.08.030 except when property is being acquired by a government for public use. For purposes of this section, "current year taxes" means taxes that are collectible under RCW 84.56.010 subsequent to completing the tax roll for current year collection.

(2) When the assessor is required by law to segregate any part or parts of real property, assessed before or after July 27, 1997, as one parcel or when the assessor is required by law to combine parcels of real property assessed before or after July 27, 1997, as two or more parcels, the assessor must carefully investigate and ascertain the true and fair value of each part or parts of the real property and each combined parcel and assess each part or parts or each combined parcel on that same basis. [2017 c 109 § 3; 2009 c 350 § 1; 2008 c 17 § 1; 2002 c 168 § 8; 1997 c 393 § 17.]

Chapter 84.41 RCW

REVALUATION OF PROPERTY

Sections

84.41.041 Physical inspection and valuation of taxable property required—Adjustments during intervals based on statistical data.

84.41.041 Physical inspection and valuation of taxable property required—Adjustments during intervals based on statistical data. (1) Each county assessor must cause taxable real property to be physically inspected and valued at least once every six years in accordance with RCW 84.41.030, and in accordance with a plan filed with and approved by the department of revenue. Such revaluation plan must provide that all taxable real property within a county must be revalued and these newly determined values placed on the assessment rolls each year. Property must be valued at one hundred percent of its true and fair value and assessed on the same basis, in accordance with RCW 84.40.030, unless specifically provided otherwise by law. During the intervals between each physical inspection of real property, the valuation of such property must be adjusted to its current true and fair value, such adjustments to be made once each year and to be based upon appropriate statistical data.

(2) The assessor may require property owners to submit pertinent data respecting taxable property in their control including data respecting any sale or purchase of said prop-

erty within the past five years, the cost and characteristics of any improvement on the property and other facts necessary for appraisal of the property. [2017 c 323 § 507; 2015 c 86 § 103; 2009 c 308 § 2; 2001 c 187 § 21; 1997 c 3 § 108 (Referendum Bill No. 47, approved November 4, 1997); 1987 c 319 § 4; 1982 1st ex.s. c 46 § 2; 1979 ex.s. c 214 § 9; 1974 ex.s. c 131 § 2.]

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW 82.04.040.

Additional notes found at www.leg.wa.gov

Chapter 84.48 RCW

EQUALIZATION OF ASSESSMENTS

Sections

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| 84.48.010 | County board of equalization—Formation—Per diem—Meetings—Duties—Records—Correction of rolls—Extending taxes—Change in valuation, release or commutation of taxes by county legislative authority prohibited. |
| 84.48.080 | Equalization of assessments—Taxes for state purposes—Procedure—Levy and apportionment—Rules—Record. |
| 84.48.110 | Transcript of proceedings to county assessors—Delinquent tax for certain preceding years included. |

84.48.010 County board of equalization—Formation—Per diem—Meetings—Duties—Records—Correction of rolls—Extending taxes—Change in valuation, release or commutation of taxes by county legislative authority prohibited. (1) Prior to July 15th, the county legislative authority must form a board for the equalization of the assessment of the property of the county. The members of the board must receive a per diem amount as set by the county legislative authority for each day of actual attendance of the meeting of the board of equalization to be paid out of the current expense fund of the county. However, when the county legislative authority constitutes the board they may only receive their compensation as members of the county legislative authority. The board of equalization must meet in open session for this purpose annually on the 15th day of July or within fourteen days of certification of the county assessment rolls, whichever is later, and, having each taken an oath fairly and impartially to perform their duties as members of such board, they must examine and compare the returns of the assessment of the property of the county and proceed to equalize the same, so that each tract or lot of real property and each article or class of personal property must be entered on the assessment list at its true and fair value, according to the measure of value used by the county assessor in such assessment year, which is presumed to be correct under RCW 84.40.0301, and subject to the following rules:

(a) They must raise the valuation of each tract or lot or item of real property which is returned below its true and fair value to such price or sum as to be the true and fair value thereof, after at least five days' notice must have been given in writing to the owner or agent.

(b) They must reduce the valuation of each tract or lot or item which is returned above its true and fair value to such price or sum as to be the true and fair value thereof.

(c) They must raise the valuation of each class of personal property which is returned below its true and fair value to such price or sum as to be the true and fair value thereof, and they must raise the aggregate value of the personal prop-

erty of each individual whenever the aggregate value is less than the true valuation of the taxable personal property possessed by such individual, to such sum or amount as to be the true value thereof, after at least five days' notice must have been given in writing to the owner or agent thereof.

(d) They must reduce the valuation of each class of personal property enumerated on the detail and assessment list of the current year, which is returned above its true and fair value, to such price or sum as to be the true and fair value thereof; and they must reduce the aggregate valuation of the personal property of such individual who has been assessed at too large a sum to such sum or amount as was the true and fair value of the personal property.

(e) The board may review all claims for either real or personal property tax exemption as determined by the county assessor, and must consider any taxpayer appeals from the decision of the assessor thereon to determine (i) if the taxpayer is entitled to an exemption, and (ii) if so, the amount thereof.

(2) The board must notify the taxpayer and assessor of the board's decision within forty-five days of any hearing on the taxpayer's appeal of the assessor's valuation of real or personal property.

(3) The clerk of the board must keep an accurate journal or record of the proceedings and orders of the board showing the facts and evidence upon which their action is based, and the record must be published the same as other proceedings of county legislative authority, and must make a true record of the changes of the descriptions and assessed values ordered by the county board of equalization. The assessor must correct the real and personal assessment rolls in accordance with the changes made by the county board of equalization.

(4) The county board of equalization must meet on the 15th day of July or within fourteen days of certification of the county assessment rolls, whichever is later, and may continue in session and adjourn from time to time during a period not to exceed four weeks, but must remain in session not less than three days. However, the county board of equalization with the approval of the county legislative authority may convene at any time when petitions filed exceed twenty-five, or ten percent of the number of appeals filed in the preceding year, whichever is greater.

(5) No taxes, except special taxes, may be extended upon the tax rolls until the property valuations are equalized by the department of revenue for the purpose of raising the state revenue.

(6) County legislative authorities as such have at no time any authority to change the valuation of the property of any person or to release or commute in whole or in part the taxes due on the property of any person. [2017 c 155 § 1; 2001 c 187 § 22; 1997 c 3 § 109 (Referendum Bill No. 47, approved November 4, 1997); 1988 c 222 § 20; 1979 c 13 § 1. Prior: 1977 ex.s. c 290 § 2; 1977 c 33 § 1; 1970 ex.s. c 55 § 2; 1961 c 15 § 84.48.010; prior: 1939 c 206 § 35; 1925 ex.s. c 130 § 68; RRS § 11220; prior: 1915 c 122 § 1; 1907 c 129 § 1; 1897 c 71 § 58; 1893 c 124 § 59; 1890 p 555 § 73; Code 1881 §§ 2873-2879. Formerly RCW 84.48.010, 84.48.020, 84.48.030, 84.48.040, and 84.48.060.]

Additional notes found at www.leg.wa.gov

84.48.080 Equalization of assessments—Taxes for state purposes—Procedure—Levy and apportionment—Rules—Record. (1) Annually during the months of September and October, the department of revenue shall examine and compare the returns of the assessment of the property in the several counties of the state, and the assessment of the property of railroad and other companies assessed by the department, and proceed to equalize the same, so that each county in the state shall pay its due and just proportion of the taxes for state purposes for such assessment year, according to the ratio the valuation of the property in each county bears to the total valuation of all property in the state.

(a) The department shall classify all property, real and personal, and shall raise and lower the valuation of any class of property in any county to a value that shall be equal, so far as possible, to the true and fair value of such class as of January 1st of the current year for the purpose of ascertaining the just amount of tax due from each county for state purposes. In equalizing personal property as of January 1st of the current year, the department shall use valuation data with respect to personal property from the three years immediately preceding the current assessment year in a manner it deems appropriate. Such classification may be on the basis of types of property, geographical areas, or both. For purposes of this section, for each county that has not provided the department with an assessment return by December 1st, the department shall proceed, using facts and information and in a manner it deems appropriate, to estimate the value of each class of property in the county.

(b) The department shall keep a full record of its proceedings and the same shall be published annually by the department.

(2) The department shall levy the state taxes authorized by law. The amount levied in any one year for general state purposes shall not exceed the lawful dollar rate on the dollar of the assessed value of the property of the entire state, which assessed value shall be one hundred percent of the true and fair value of the property in money.

(a) The department shall apportion the amount of tax for state purposes levied under RCW 84.52.065 (1) and (2) by the department, among the several counties, in proportion to the valuation of the taxable property of the county for the year as equalized by the department; however, for purposes of this apportionment, the department shall recompute the previous year's levies imposed under RCW 84.52.065 (1) and (2) and the apportionment thereof to correct for changes and errors in taxable values reported to the department after October 1 of the preceding year and shall adjust the apportioned amount of the current year's state levy under RCW 84.52.065 (1) and (2) for each county by the difference between the apportioned amounts established by the original and revised levy computations for the previous year's levies under RCW 84.52.065 (1) and (2).

(b) For purposes of this section, changes in taxable values mean a final adjustment made by a county board of equalization, the state board of tax appeals, or a court of competent jurisdiction and shall include additions of omitted property, other additions or deletions from the assessment or tax rolls, any assessment return provided by a county to the department subsequent to December 1st, or a change in the indicated

ratio of a county. Errors in taxable values mean errors corrected by a final reviewing body.

(3) The department has authority to adopt rules and regulations to enforce obedience to its orders in all matters in relation to the returns of county assessments, the equalization of values, and the apportionment of the state levy by the department.

(4) After the completion of the duties prescribed in this section, the director of the department shall certify the record of the proceedings of the department under this section, the tax levies made for state purposes and the apportionment thereof among the counties, and the certification shall be available for public inspection. [2017 3rd sp.s. c 13 § 305; 2008 c 86 § 502; 2001 c 185 § 12; 1997 c 3 § 112 (Referendum Bill No. 47, approved November 4, 1997); 1995 2nd sp.s. c 13 § 3; 1994 c 301 § 43; 1990 c 283 § 1; 1988 c 222 § 24; 1982 1st ex.s. c 28 § 1; 1979 ex.s. c 86 § 3; 1973 1st ex.s. c 195 § 99; 1971 ex.s. c 288 § 9; 1961 c 15 § 84.48.080. Prior: 1949 c 66 § 1; 1939 c 206 § 36; 1925 ex.s. c 130 § 70; Rem. Supp. 1949 § 11222; prior: 1917 c 55 § 1; 1915 c 7 § 1; 1907 c 215 § 1; 1899 c 141 § 4; 1897 c 71 § 60; 1893 c 124 § 61; 1890 p 557 § 75. Formerly RCW 84.48.080, 84.48.090, and 84.48.100.]

Application—Tax preference performance statement and expiration—2017 3rd sp.s. c 13 §§ 301-314: See notes following RCW 84.52.065.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Severability—Savings—Part headings not law—2008 c 86: See notes following RCW 82.14.030.

Reviser's note: No proposed amendment to Article VII, section 1 of the state Constitution was submitted to the voters.

Intent—1995 2nd sp.s. c 13: "With property valuations continuing to increase, property taxes have been steadily increasing. At the same time, personal incomes have not continued to rise at the same rate. Property taxes are becoming increasingly more difficult to pay. Many residential property owners complain about the overall level of taxes and about the continuing increase in tax from year to year. Taxpayers want property tax relief. The legislature intends to establish an ongoing program of state property tax reductions the amount of which is to be determined by the legislature on a yearly basis based on the level of general fund tax revenues." [1995 2nd sp.s. c 13 § 1.]

Additional notes found at www.leg.wa.gov

84.48.110 Transcript of proceedings to county assessors—Delinquent tax for certain preceding years included. After certifying the record of the proceedings of the department in accordance with RCW 84.48.080, the department shall transmit to each county assessor a copy of the record of the proceedings of the department, specifying the amount to be levied and collected for state purposes for such year, and in addition thereto it shall certify to each county assessor the amount due to each state fund and unpaid from such county for the fifth preceding year, and such delinquent state taxes shall be added to the amount levied for the current year. The department shall close the account of each county for the fifth preceding year and charge the amount of such delinquency to the tax levies of the current year. These delinquent taxes are not subject to chapter 84.55 RCW. All taxes collected on and after the first day of July last preceding such certificate, on account of delinquent state taxes for the fifth preceding year shall belong to the county and by the county treasurer be credited to the current expense fund of the county in which collected. [2017 3rd sp.s. c 13 § 306. Prior: 1994 c 301 § 44; 1994 c 124 § 32; 1987 c 168 § 1; 1984 c 132

§ 4; 1981 c 260 § 17; prior: 1979 ex.s. c 86 § 4; 1979 c 151 § 185; 1973 c 95 § 11; 1961 c 15 § 84.48.110; prior: 1925 ex.s. c 130 § 71; RRS § 11223; prior: 1899 c 141 § 5; 1897 c 71 § 61; 1893 c 124 § 62; 1890 p 558 § 76.]

Application—Tax preference performance statement and expiration—2017 3rd sp.s. c 13 §§ 301-314: See notes following RCW 84.52.065.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Additional notes found at www.leg.wa.gov

Chapter 84.52 RCW LEVY OF TAXES

Sections

84.52.010	Taxes levied or voted in specific amounts—Effect of constitutional and statutory limitations. (<i>Effective until January 1, 2018.</i>)
84.52.010	Taxes levied or voted in specific amounts—Effect of constitutional and statutory limitations. (<i>Effective January 1, 2018.</i>)
84.52.043	Limitations upon regular property tax levies. (<i>Effective until January 1, 2018.</i>)
84.52.043	Limitations upon regular property tax levies. (<i>Effective January 1, 2018.</i>)
84.52.053	Levies by school districts authorized—When—Procedure. (<i>Effective January 1, 2019.</i>)
84.52.0531	Levies by school districts—Maximum dollar amount for maintenance and operation support—Restrictions—Maximum levy percentage—Levy reduction funds—Rules. (<i>Effective until January 1, 2019.</i>)
84.52.0531	Enrichment levies by school districts—Maximum dollar amount—Definitions—Enrichment levy expenditure plan approval—Rules—Deposit of funds. (<i>Effective January 1, 2019.</i>)
84.52.065	State levy for support of common schools.
84.52.067	State levy for support of common schools—Disposition of funds.
84.52.070	Certification of levies to assessor.
84.52.125	Fire protection districts and regional fire protection service authorities—Protection from levy prorationing.
84.52.825	Tax preferences—Expiration dates.

84.52.010 Taxes levied or voted in specific amounts—Effect of constitutional and statutory limitations. (*Effective until January 1, 2018.*) (1) Except as is permitted under RCW 84.55.050, all taxes must be levied or voted in specific amounts.

(2) The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, must be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county must be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

(3) When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, exceeds the limitations provided in either of these sections, the assessor must recompute and establish a consolidated levy in the following manner:

(a) The full certified rates of tax levy for state, county, county road district, regional transit authority, and city or town purposes must be extended on the tax rolls in amounts not exceeding the limitations established by law; however

any state levy takes precedence over all other levies and may not be reduced for any purpose other than that required by RCW 84.55.010. If, as a result of the levies imposed under RCW 36.54.130, 84.34.230, 84.52.069, 84.52.105, the portion of the levy by a metropolitan park district that was protected under RCW 84.52.120, 84.52.125, 84.52.135, 84.52.140, and the protected portion of the levy under RCW 86.15.160 by flood control zone districts in a county with a population of seven hundred seventy-five thousand or more that are coextensive with a county, the combined rate of regular property tax levies that are subject to the one percent limitation exceeds one percent of the true and fair value of any property, then these levies must be reduced as follows:

(i) The portion of the levy by a metropolitan park district that has a population of less than one hundred fifty thousand and is located in a county with a population of one million five hundred thousand or more that is protected under RCW 84.52.120 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(ii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the protected portion of the levy imposed under RCW 86.15.160 by a flood control zone district in a county with a population of seven hundred seventy-five thousand or more that is coextensive with a county must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(iii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a county under RCW 84.52.140 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(iv) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a fire protection district or regional fire protection service authority that is protected under RCW 84.52.125 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(v) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a county under RCW 84.52.135 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(vi) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a ferry district under RCW 36.54.130 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(vii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a metropolitan park district with a population of one hundred fifty thousand or more that is protected under

RCW 84.52.120 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(viii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230, 84.52.105, and any portion of the levy imposed under RCW 84.52.069 that is in excess of thirty cents per thousand dollars of assessed value, must be reduced on a pro rata basis until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated; and

(ix) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the thirty cents per thousand dollars of assessed value of tax levy imposed under RCW 84.52.069 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated.

(b) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property must be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(i) First, the certified property tax levy authorized under RCW 84.52.821 must be reduced on a pro rata basis or eliminated;

(ii) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, 35.95A.100, and 67.38.130 must be reduced on a pro rata basis or eliminated;

(iii) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts other than the portion of a levy protected under RCW 84.52.815 must be reduced on a pro rata basis or eliminated;

(iv) Fourth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, regional fire protection service authorities, library districts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, must be reduced on a pro rata basis or eliminated;

(v) Fifth, if the consolidated tax levy rate still exceeds these limitations, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts created on or after January 1, 2002, must be reduced on a pro rata basis or eliminated;

(vi) Sixth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to fire protection districts under RCW 52.16.140 and 52.16.160 and regional fire protection service authorities under RCW 52.26.140(1) (b) and (c) must be reduced on a pro rata basis or eliminated; and

(vii) Seventh, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW

52.26.140(1)(a), library districts, metropolitan park districts created before January 1, 2002, under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, must be reduced on a pro rata basis or eliminated. [2017 c 196 § 9. Prior: 2015 3rd sp.s. c 44 § 324; 2015 3rd sp.s. c 24 § 404; 2011 1st sp.s. c 28 § 2; 2011 c 275 § 1; 2009 c 551 § 7; 2007 c 54 § 26; 2005 c 122 § 2; prior: 2004 c 129 § 21; 2004 c 80 § 3; 2003 c 83 § 310; prior: 2002 c 248 § 15; 2002 c 88 § 7; 1995 2nd sp.s. c 13 § 4; 1995 c 99 § 2; 1994 c 124 § 36; 1993 c 337 § 4; 1990 c 234 § 4; 1988 c 274 § 7; 1987 c 255 § 1; 1973 1st ex.s. c 195 § 101; 1973 1st ex.s. c 195 § 146; 1971 ex.s. c 243 § 6; 1970 ex.s. c 92 § 4; 1961 c 15 § 84.52.010; prior: 1947 c 270 § 1; 1925 ex.s. c 130 § 74; Rem. Supp. 1947 § 11235; prior: 1920 ex.s. c 3 § 1; 1897 c 71 § 62; 1893 c 124 § 63.]

Expiration date—2017 c 196 § 9: "Section 9 of this act expires January 1, 2018." [2017 c 196 § 16.]

Effective date—2017 c 196 §§ 1-9, 11, 13, and 14: See note following RCW 52.26.220.

Application—2017 c 196 §§ 3 and 9-13: See note following RCW 84.52.092.

Expiration date—2015 3rd sp.s. c 44 §§ 322 and 324: See note following RCW 84.52.043.

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Expiration date—2015 3rd sp.s. c 24 § 404: "Section 404 of this act expires January 1, 2018." [2015 3rd sp.s. c 24 § 805.]

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.

Contingent effective date—2011 1st sp.s. c 28 § 2: "(1) Section 1 of this act takes effect if section 1, chapter 275, Laws of 2011 is not enacted into law.

(2) Section 2 of this act takes effect if section 1, chapter 275, Laws of 2011 is enacted into law." [2011 1st sp.s. c 28 § 6.]

Application—2011 1st sp.s. c 28: "This act applies to taxes levied for collection in 2012 through 2017." [2011 1st sp.s. c 28 § 5.]

Expiration date—2011 1st sp.s. c 28: "This act expires January 1, 2018." [2011 1st sp.s. c 28 § 7.]

Application—Expiration date—2011 c 275: See notes following RCW 84.52.043.

Severability—2007 c 54: See note following RCW 82.04.050.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Intent—1995 2nd sp.s. c 13: See note following RCW 84.48.080.

Finding—1993 c 337: See note following RCW 84.52.105.

Purpose—1988 c 274: "The legislature finds that, due to statutory and constitutional limitations, the interdependence of the regular property tax levies of the state, counties, county road districts, cities and towns, and junior taxing districts can cause significant reductions in the otherwise authorized levies of those taxing districts, resulting in serious disruptions to essential services provided by those taxing districts. The purpose of this act is to avoid unnecessary reductions in regular property tax revenue without exceeding existing statutory and constitutional tax limitations on cumulative regular property tax levy rates. The legislature declares that it is a purpose of the state, counties, county road districts, cities and towns, public hospital districts, library districts, fire protection districts, metropolitan park districts, and other taxing districts to participate in the methods provided by this act by which revenue levels supporting the services provided by all taxing districts might be maintained." [1988 c 274 § 1.]

Intent—1970 ex.s. c 92: "It is the intent of this 1970 amendatory act to prevent a potential doubling of property taxes that might otherwise result from the enforcement of the constitutionally required fifty percent assessment ratio as of January 1, 1970, and to adjust property tax millage rates for subsequent years to levels which will conform to the requirements of any constitutional amendment imposing a one percent limitation on property

taxes. It is the further intent of this 1970 amendatory act that the statutory authority of any taxing district to impose excess levies shall not be impaired by reason of the reduction in millage rates for regular property tax levies. This 1970 amendatory act shall be construed to effectuate the legislative intent expressed in this section." [1970 ex.s. c 92 § 1.]

Additional notes found at www.leg.wa.gov

84.52.010 Taxes levied or voted in specific amounts—Effect of constitutional and statutory limitations. (*Effective January 1, 2018.*) (1) Except as is permitted under RCW 84.55.050, all taxes must be levied or voted in specific amounts.

(2) The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, must be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county must be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

(3) When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, exceeds the limitations provided in either of these sections, the assessor must recompute and establish a consolidated levy in the following manner:

(a) The full certified rates of tax levy for state, county, county road district, regional transit authority, and city or town purposes must be extended on the tax rolls in amounts not exceeding the limitations established by law; however any state levy takes precedence over all other levies and may not be reduced for any purpose other than that required by RCW 84.55.010. If, as a result of the levies imposed under RCW 36.54.130, 84.34.230, 84.52.069, 84.52.105, the portion of the levy by a metropolitan park district that was protected under RCW 84.52.120, 84.52.125, 84.52.135, and 84.52.140, and the portion of the levy by a flood control zone district that was protected under RCW 84.52.816, the combined rate of regular property tax levies that are subject to the one percent limitation exceeds one percent of the true and fair value of any property, then these levies must be reduced as follows:

(i) The portion of the levy by a flood control zone district that was protected under RCW 84.52.816 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(ii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a county under RCW 84.52.140 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(iii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a fire protection district or regional fire protection service authority that is protected under RCW 84.52.125 must be reduced until the combined rate no longer exceeds

one percent of the true and fair value of any property or must be eliminated;

(iv) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a county under RCW 84.52.135 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(v) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a ferry district under RCW 36.54.130 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(vi) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a metropolitan park district that is protected under RCW 84.52.120 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(vii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230, 84.52.105, and any portion of the levy imposed under RCW 84.52.069 that is in excess of thirty cents per thousand dollars of assessed value, must be reduced on a pro rata basis until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated; and

(viii) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the thirty cents per thousand dollars of assessed value of tax levy imposed under RCW 84.52.069 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or eliminated.

(b) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property must be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(i) First, the certified property tax levy authorized under RCW 84.52.821 must be reduced on a pro rata basis or eliminated;

(ii) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, 35.95A.100, and 67.38.130 must be reduced on a pro rata basis or eliminated;

(iii) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts other than the portion of a levy protected under RCW 84.52.816 must be reduced on a pro rata basis or eliminated;

(iv) Fourth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, regional fire protection service authorities, library districts, the first fifty cent per thousand dollars of assessed val-

uation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, must be reduced on a pro rata basis or eliminated;

(v) Fifth, if the consolidated tax levy rate still exceeds these limitations, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts created on or after January 1, 2002, must be reduced on a pro rata basis or eliminated;

(vi) Sixth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for fire protection districts under RCW 52.16.140 and 52.16.160 and regional fire protection service authorities under RCW 52.26.140(1) (b) and (c) must be reduced on a pro rata basis or eliminated; and

(vii) Seventh, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140(1)(a), library districts, metropolitan park districts created before January 1, 2002, under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, must be reduced on a pro rata basis or eliminated. [2017 c 196 § 10. Prior: 2015 3rd sp.s. c 44 § 325; 2015 3rd sp.s. c 24 § 405; 2015 c 170 § 2; 2009 c 551 § 7; 2007 c 54 § 26; 2005 c 122 § 2; prior: 2004 c 129 § 21; 2004 c 80 § 3; 2003 c 83 § 310; prior: 2002 c 248 § 15; 2002 c 88 § 7; 1995 2nd sp.s. c 13 § 4; 1995 c 99 § 2; 1994 c 124 § 36; 1993 c 337 § 4; 1990 c 234 § 4; 1988 c 274 § 7; 1987 c 255 § 1; 1973 1st ex.s. c 195 § 101; 1973 1st ex.s. c 195 § 146; 1971 ex.s. c 243 § 6; 1970 ex.s. c 92 § 4; 1961 c 15 § 84.52.010; prior: 1947 c 270 § 1; 1925 ex.s. c 130 § 74; Rem. Supp. 1947 § 11235; prior: 1920 ex.s. c 3 § 1; 1897 c 71 § 62; 1893 c 124 § 63.]

Effective date—2017 c 196 § 10: "Section 10 of this act takes effect January 1, 2018." [2017 c 196 § 17.]

Application—2017 c 196 §§ 3 and 9-13: See note following RCW 84.52.092.

Effective date—2015 3rd sp.s. c 44 §§ 323 and 325: See note following RCW 84.52.043.

Effective date—2015 3rd sp.s. c 24 § 405: "Section 405 of this act takes effect January 1, 2018." [2015 3rd sp.s. c 24 § 806.]

Construction—2015 3rd sp.s. c 24: See note following RCW 36.160.030.

Effective date—Findings—Intent—Application—2015 c 170: See notes following RCW 84.52.816.

Severability—2007 c 54: See note following RCW 82.04.050.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Intent—1995 2nd sp.s. c 13: See note following RCW 84.48.080.

Finding—1993 c 337: See note following RCW 84.52.105.

Purpose—1988 c 274: "The legislature finds that, due to statutory and constitutional limitations, the interdependence of the regular property tax levies of the state, counties, county road districts, cities and towns, and junior taxing districts can cause significant reductions in the otherwise authorized levies of those taxing districts, resulting in serious disruptions to essential services provided by those taxing districts. The purpose of this act is to avoid unnecessary reductions in regular property tax revenue without exceeding existing statutory and constitutional tax limitations on cumulative regular property tax levy rates. The legislature declares that it is a purpose of the state, counties, county road districts, cities and towns, public hospital districts, library districts, fire protection districts, metropolitan park districts,

and other taxing districts to participate in the methods provided by this act by which revenue levels supporting the services provided by all taxing districts might be maintained." [1988 c 274 § 1.]

Intent—1970 ex.s. c 92: "It is the intent of this 1970 amendatory act to prevent a potential doubling of property taxes that might otherwise result from the enforcement of the constitutionally required fifty percent assessment ratio as of January 1, 1970, and to adjust property tax millage rates for subsequent years to levels which will conform to the requirements of any constitutional amendment imposing a one percent limitation on property taxes. It is the further intent of this 1970 amendatory act that the statutory authority of any taxing district to impose excess levies shall not be impaired by reason of the reduction in millage rates for regular property tax levies. This 1970 amendatory act shall be construed to effectuate the legislative intent expressed in this section." [1970 ex.s. c 92 § 1.]

Additional notes found at www.leg.wa.gov

84.52.043 Limitations upon regular property tax levies. (Effective until January 1, 2018.) Within and subject to the limitations imposed by RCW 84.52.050 as amended, the regular ad valorem tax levies upon real and personal property by the taxing districts hereafter named are as follows:

(1) Levies of the senior taxing districts are as follows: (a) The levies by the state may not exceed the applicable aggregate rate limit specified in RCW 84.52.065 (2) or (4) adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue to be used exclusively for the support of the common schools; (b) the levy by any county may not exceed one dollar and eighty cents per thousand dollars of assessed value; (c) the levy by any road district may not exceed two dollars and twenty-five cents per thousand dollars of assessed value; and (d) the levy by any city or town may not exceed three dollars and thirty-seven and one-half cents per thousand dollars of assessed value. However any county is hereby authorized to increase its levy from one dollar and eighty cents to a rate not to exceed two dollars and forty-seven and one-half cents per thousand dollars of assessed value for general county purposes if the total levies for both the county and any road district within the county do not exceed four dollars and five cents per thousand dollars of assessed value, and no other taxing district has its levy reduced as a result of the increased county levy.

(2) The aggregate levies of junior taxing districts and senior taxing districts, other than the state, may not exceed five dollars and ninety cents per thousand dollars of assessed valuation. The term "junior taxing districts" includes all taxing districts other than the state, counties, road districts, cities, towns, port districts, and public utility districts. The limitations provided in this subsection do not apply to: (a) Levies at the rates provided by existing law by or for any port or public utility district; (b) excess property tax levies authorized in Article VII, section 2 of the state Constitution; (c) levies for acquiring conservation futures as authorized under RCW 84.34.230; (d) levies for emergency medical care or emergency medical services imposed under RCW 84.52.069; (e) levies to finance affordable housing for very low-income housing imposed under RCW 84.52.105; (f) the portions of levies by metropolitan park districts that are protected under RCW 84.52.120; (g) levies imposed by ferry districts under RCW 36.54.130; (h) levies for criminal justice purposes under RCW 84.52.135; (i) the portions of levies by fire protection districts and regional fire protection service authorities that are protected under RCW 84.52.125; (j) levies by

counties for transit-related purposes under RCW 84.52.140; (k) the protected portion of the levies imposed under RCW 86.15.160 by flood control zone districts in a county with a population of seven hundred seventy-five thousand or more that are coextensive with a county; and (l) levies imposed by a regional transit authority under RCW 81.104.175. [2017 3rd sp.s. c 13 § 303; 2017 c 196 § 11; 2015 3rd sp.s. c 44 § 322; 2011 c 275 § 2; 2009 c 551 § 6; 2005 c 122 § 3; 2004 c 80 § 4; 2003 c 83 § 311; 1995 c 99 § 3; 1993 c 337 § 3; 1990 c 234 § 1; 1989 c 378 § 36; 1988 c 274 § 5; 1973 1st ex.s. c 195 § 134.]

Expiration date—2017 3rd sp.s. c 13 § 303: "Section 303 of this act expires January 1, 2018." [2017 3rd sp.s. c 13 § 318.]

Application—Tax preference performance statement and expiration—2017 3rd sp.s. c 13 §§ 301-314: See notes following RCW 84.52.065.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Expiration date—2017 c 196 § 11: "Section 11 of this act expires January 1, 2018." [2017 c 196 § 19.]

Effective date—2017 c 196 §§ 1-9, 11, 13, and 14: See note following RCW 52.26.220.

Application—2017 c 196 §§ 3 and 9-13: See note following RCW 84.52.092.

Expiration date—2015 3rd sp.s. c 44 §§ 322 and 324: "Sections 322 and 324 of this act expire January 1, 2018." [2015 3rd sp.s. c 44 § 431.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Application—2011 c 275: "This act applies to taxes levied for collection in 2012 through 2017." [2011 c 275 § 4.]

Expiration date—2011 c 275: "This act expires January 1, 2018." [2011 c 275 § 5.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Finding—1993 c 337: See note following RCW 84.52.105.

Purpose—Severability—1988 c 274: See notes following RCW 84.52.010.

Additional notes found at www.leg.wa.gov

84.52.043 Limitations upon regular property tax levies. (Effective January 1, 2018.) Within and subject to the limitations imposed by RCW 84.52.050 as amended, the regular ad valorem tax levies upon real and personal property by the taxing districts hereafter named are as follows:

(1) Levies of the senior taxing districts are as follows: (a) The levies by the state may not exceed the applicable aggregate rate limit specified in RCW 84.52.065 (2) or (4) adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue to be used exclusively for the support of the common schools; (b) the levy by any county may not exceed one dollar and eighty cents per thousand dollars of assessed value; (c) the levy by any road district may not exceed two dollars and twenty-five cents per thousand dollars of assessed value; and (d) the levy by any city or town may not exceed three dollars and thirty-seven and one-half cents per thousand dollars of assessed value. However any county is hereby authorized to increase its levy from one dollar and eighty cents to a rate not to exceed two dollars and forty-seven and one-half cents per thousand dollars of assessed value for general county purposes if the total levies for both the county and any road district within the county do not exceed four dollars and five cents per thousand dollars of assessed value, and no other

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taxing district has its levy reduced as a result of the increased county levy.

(2) The aggregate levies of junior taxing districts and senior taxing districts, other than the state, may not exceed five dollars and ninety cents per thousand dollars of assessed valuation. The term "junior taxing districts" includes all taxing districts other than the state, counties, road districts, cities, towns, port districts, and public utility districts. The limitations provided in this subsection do not apply to: (a) Levies at the rates provided by existing law by or for any port or public utility district; (b) excess property tax levies authorized in Article VII, section 2 of the state Constitution; (c) levies for acquiring conservation futures as authorized under RCW 84.34.230; (d) levies for emergency medical care or emergency medical services imposed under RCW 84.52.069; (e) levies to finance affordable housing for very low-income housing imposed under RCW 84.52.105; (f) the portions of levies by metropolitan park districts that are protected under RCW 84.52.120; (g) levies imposed by ferry districts under RCW 36.54.130; (h) levies for criminal justice purposes under RCW 84.52.135; (i) the portions of levies by fire protection districts and regional fire protection service authorities that are protected under RCW 84.52.125; (j) levies by counties for transit-related purposes under RCW 84.52.140; (k) the portion of the levy by flood control zone districts that are protected under RCW 84.52.816; and (l) levies imposed by a regional transit authority under RCW 81.104.175. [2017 3rd sp.s. c 13 § 304; 2017 c 196 § 12; 2015 3rd sp.s. c 44 § 323; 2015 c 170 § 4; 2009 c 551 § 6; 2005 c 122 § 3; 2004 c 80 § 4; 2003 c 83 § 311; 1995 c 99 § 3; 1993 c 337 § 3; 1990 c 234 § 1; 1989 c 378 § 36; 1988 c 274 § 5; 1973 1st ex.s. c 195 § 134.]

Effective date—2017 3rd sp.s. c 13 § 304: "Section 304 of this act takes effect January 1, 2018." [2017 3rd sp.s. c 13 § 319.]

Application—Tax preference performance statement and expiration—2017 3rd sp.s. c 13 §§ 301-314: See notes following RCW 84.52.065.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2017 c 196 § 12: "Section 12 of this act takes effect January 1, 2018." [2017 c 196 § 20.]

Application—2017 c 196 §§ 3 and 9-13: See note following RCW 84.52.092.

Effective date—2015 3rd sp.s. c 44 §§ 323 and 325: "Sections 323 and 325 of this act take effect January 1, 2018." [2015 3rd sp.s. c 44 § 432.]

Effective date—Findings—Intent—Application—2015 c 170: See notes following RCW 84.52.816.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

Finding—1993 c 337: See note following RCW 84.52.105.

Purpose—Severability—1988 c 274: See notes following RCW 84.52.010.

Additional notes found at www.leg.wa.gov

84.52.053 Levies by school districts authorized—When—Procedure. (Effective January 1, 2019.) (1) The limitations imposed by RCW 84.52.050 through 84.52.056, and 84.52.043 shall not prevent the levy of taxes by school districts, when authorized so to do by the voters of such school district in the manner and for the purposes and number of years allowable under Article VII, section 2(a) and Article IX, section 1 of the Constitution of this state. Elections for such taxes shall be held in the year in which the levy is made or, in the case of propositions authorizing two-year through

four-year levies for enrichment funding for a school district, authorizing two-year levies for transportation vehicle funds established in RCW 28A.160.130 through calendar year 2019, authorizing two-year levies for transportation vehicle enrichment beginning with calendar year 2020, or authorizing two-year through six-year levies to support the construction, modernization, or remodeling of school facilities, which includes the purposes of RCW 28A.320.330(2) (f) and (g), in the year in which the first annual levy is made.

(2)(a) Once additional tax levies have been authorized for enrichment funding for a school district for a two-year through four-year period as provided under subsection (1) of this section, no further additional tax levies for enrichment funding for the district for that period may be authorized, except for additional levies to provide for subsequently enacted increases affecting the district's maximum levy.

(b) Notwithstanding (a) of this subsection, any school district that is required to annex or receive territory pursuant to a dissolution of a financially insolvent school district pursuant to RCW 28A.315.225 may call either a replacement or supplemental levy election within the school district, including the territory annexed or transferred, as follows:

(i) An election for a proposition authorizing two-year through four-year levies for enrichment funding for a school district may be called and held before the effective date of dissolution to replace existing enrichment levies and to provide for increases due to the dissolution.

(ii) An election for a proposition authorizing additional tax levies may be called and held before the effective date of dissolution to provide for increases due to the dissolution.

(iii) In the event a replacement levy election under (b)(i) of this subsection is held but does not pass, the affected school district may subsequently hold a supplemental levy election pursuant to (b)(ii) of this subsection if the supplemental levy election is held before the effective date of dissolution. In the event a supplemental levy election is held under (b)(ii) of this subsection but does not pass, the affected school district may subsequently hold a replacement levy election pursuant to (b)(i) of this subsection if the replacement levy election is held before the effective date of dissolution. Failure of a replacement levy or supplemental levy election does not affect any previously approved and existing enrichment levy within the affected school district or districts.

(c) For the purpose of applying the limitation of this subsection (2), a two-year through six-year levy to support the construction, modernization, or remodeling of school facilities shall not be deemed to be a tax levy for enrichment funding for a school district.

(3) A special election may be called and the time therefor fixed by the board of school directors, by giving notice thereof by publication in the manner provided by law for giving notices of general elections, at which special election the proposition authorizing such excess levy shall be submitted in such form as to enable the voters favoring the proposition to vote "yes" and those opposed thereto to vote "no."

(4)(a) Beginning September 1, 2019, school districts may use enrichment levies and transportation vehicle enrichment levies solely to enrich the state's statutory program of basic education as authorized under RCW 28A.150.276.

(b) Beginning with propositions for enrichment levies and transportation vehicle enrichment levies for collection in

calendar year 2020 and thereafter, a district must receive approval of an enrichment levy expenditure plan from the superintendent of public instruction under RCW 28A.505.240 before submission of the proposition to the voters. [2017 3rd sp.s. c 13 § 201; 2012 c 186 § 18; 2010 c 237 § 4; 2009 c 460 § 2; 2007 c 129 § 3; 1997 c 260 § 1; 1994 c 116 § 1; 1987 1st ex.s. c 2 § 103; 1986 c 133 § 1; 1977 ex.s. c 325 § 3.]

Effective date—2017 3rd sp.s. c 13 §§ 201, 203, 206, and 207: See note following RCW 84.52.0531.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2012 c 186: See note following RCW 28A.315.025.

Rule-making authority—2012 c 186: See RCW 28A.315.902.

Intent—2010 c 237: See note following RCW 84.52.0531.

Effective date—2010 c 237 §§ 1 and 3-9: See note following RCW 84.52.0531.

Intent—2007 c 129: See note following RCW 28A.320.330.

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

School district boundary changes: RCW 84.09.037.

School funds enumerated—Local revenue subfunds—Deposits—Uses: RCW 28A.320.330.

Additional notes found at www.leg.wa.gov

84.52.0531 Levies by school districts—Maximum dollar amount for maintenance and operation support—Restrictions—Maximum levy percentage—Levy reduction funds—Rules. (Effective until January 1, 2019.) The maximum dollar amount which may be levied by or for any school district for maintenance and operation support under the provisions of RCW 84.52.053 shall be determined as follows:

(1) For excess levies for collection in calendar year 1997, the maximum dollar amount shall be calculated pursuant to the laws and rules in effect in November 1996.

(2) For excess levies for collection in calendar year 1998 and thereafter, the maximum dollar amount shall be the sum of (a) plus or minus (b), (c), and (d) of this subsection minus (e) of this subsection:

(a) The district's levy base as defined in subsections (3) and (4) of this section multiplied by the district's maximum levy percentage as defined in subsection (7) of this section;

(b) For districts in a high/nonhigh relationship, the high school district's maximum levy amount shall be reduced and the nonhigh school district's maximum levy amount shall be increased by an amount equal to the estimated amount of the nonhigh payment due to the high school district under RCW 28A.545.030(3) and 28A.545.050 for the school year commencing the year of the levy;

(c) Except for nonhigh districts under (d) of this subsection, for districts in an interdistrict cooperative agreement, the nonresident school district's maximum levy amount shall be reduced and the resident school district's maximum levy amount shall be increased by an amount equal to the per pupil basic education allocation included in the nonresident district's levy base under subsection (3) of this section multiplied by:

(i) The number of full-time equivalent students served from the resident district in the prior school year; multiplied by:

(ii) The serving district's maximum levy percentage determined under subsection (7) of this section; increased by:

(iii) The percent increase per full-time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year divided by fifty-five percent;

(d) The levy bases of nonhigh districts participating in an innovation academy cooperative established under RCW 28A.340.080 shall be adjusted by the office of the superintendent of public instruction to reflect each district's proportional share of student enrollment in the cooperative;

(e) The district's maximum levy amount shall be reduced by the maximum amount of state matching funds for which the district is eligible under RCW 28A.500.010.

(3) For excess levies for collection in calendar year 2005 and thereafter, a district's levy base shall be the sum of allocations in (a) through (c) of this subsection received by the district for the prior school year and the amounts determined under subsection (4) of this section, including allocations for compensation increases, plus the sum of such allocations multiplied by the percent increase per full time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year and divided by fifty-five percent. A district's levy base shall not include local school district property tax levies or other local revenues, or state and federal allocations not identified in (a) through (c) of this subsection.

(a) The district's basic education allocation as determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

(b) State and federal categorical allocations for the following programs:

(i) Pupil transportation;

(ii) Special education;

(iii) Education of highly capable students;

(iv) Compensatory education, including but not limited to learning assistance, migrant education, Indian education, refugee programs, and bilingual education;

(v) Food services; and

(vi) Statewide block grant programs; and

(c) Any other federal allocations for elementary and secondary school programs, including direct grants, other than federal impact aid funds and allocations in lieu of taxes.

(4) For levy collections in calendar years 2005 through 2018, in addition to the allocations included under subsection (3)(a) through (c) of this section, a district's levy base shall also include the following:

(a)(i) For levy collections in calendar year 2010, the difference between the allocation the district would have received in the current school year had *RCW 84.52.068 not been amended by chapter 19, Laws of 2003 1st sp. sess. and the allocation the district received in the current school year pursuant to **RCW 28A.505.220;

(ii) For levy collections in calendar years 2011 through 2018, the allocation rate the district would have received in the prior school year using the Initiative 728 rate multiplied by the full-time equivalent student enrollment used to calculate the Initiative 728 allocation for the prior school year; and

(b) The difference between the allocations the district would have received the prior school year using the Initiative

732 base and the allocations the district actually received the prior school year pursuant to RCW 28A.400.205.

(5) For levy collections in calendar years 2011 through 2018, in addition to the allocations included under subsections (3)(a) through (c) and (4)(a) and (b) of this section, a district's levy base shall also include the difference between an allocation of fifty-three and two-tenths certificated instructional staff units per thousand full-time equivalent students in grades kindergarten through four enrolled in the prior school year and the allocation of certificated instructional staff units per thousand full-time equivalent students in grades kindergarten through four that the district actually received in the prior school year, except that the levy base for a school district whose allocation in the 2009-10 school year was less than fifty-three and two-tenths certificated instructional staff units per thousand full-time equivalent students in grades kindergarten through four shall include the difference between the allocation the district actually received in the 2009-10 school year and the allocation the district actually received in the prior school year.

(6) For levy collections beginning in calendar year 2014 and thereafter, in addition to the allocations included under subsections (3)(a) through (c), (4)(a) and (b), and (5) of this section, a district's levy base shall also include the funds allocated by the superintendent of public instruction under RCW 28A.715.040 to a school that is the subject of a state-tribal education compact and that formerly contracted with the school district to provide educational services through an interlocal agreement and received funding from the district.

(7)(a) A district's maximum levy percentage shall be twenty-four percent in 2010 and twenty-eight percent in 2011 through 2018;

(b) For qualifying districts, in addition to the percentage in (a) of this subsection the grandfathered percentage determined as follows:

(i) For 1997, the difference between the district's 1993 maximum levy percentage and twenty percent; and

(ii) For 2011 through 2018, the percentage calculated as follows:

(A) Multiply the grandfathered percentage for the prior year times the district's levy base determined under subsection (3) of this section;

(B) Reduce the result of (b)(ii)(A) of this subsection by any levy reduction funds as defined in subsection (8) of this section that are to be allocated to the district for the current school year;

(C) Divide the result of (b)(ii)(B) of this subsection by the district's levy base; and

(D) Take the greater of zero or the percentage calculated in (b)(ii)(C) of this subsection.

(8) "Levy reduction funds" shall mean increases in state funds from the prior school year for programs included under subsections (3) and (4) of this section: (a) That are not attributable to enrollment changes, compensation increases, or inflationary adjustments; and (b) that are or were specifically identified as levy reduction funds in the appropriations act. If levy reduction funds are dependent on formula factors which would not be finalized until after the start of the current school year, the superintendent of public instruction shall estimate the total amount of levy reduction funds by using prior school year data in place of current school year data.

Levy reduction funds shall not include moneys received by school districts from cities or counties.

(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Prior school year" means the most recent school year completed prior to the year in which the levies are to be collected.

(b) "Current school year" means the year immediately following the prior school year.

(c) "Initiative 728 rate" means the allocation rate at which the student achievement program would have been funded under chapter 3, Laws of 2001, if all annual adjustments to the initial 2001 allocation rate had been made in previous years and in each subsequent year as provided for under chapter 3, Laws of 2001.

(d) "Initiative 732 base" means the prior year's state allocation for annual salary cost-of-living increases for district employees in the state-funded salary base as it would have been calculated under chapter 4, Laws of 2001, if each annual cost-of-living increase allocation had been provided in previous years and in each subsequent year.

(10) Funds collected from transportation vehicle fund tax levies shall not be subject to the levy limitations in this section.

(11) The superintendent of public instruction shall develop rules and inform school districts of the pertinent data necessary to carry out the provisions of this section.

(12) For calendar year 2009, the office of the superintendent of public instruction shall recalculate school district levy authority to reflect levy rates certified by school districts for calendar year 2009. [2017 3rd sp.s. c 13 § 202; 2017 c 6 § 2; 2013 c 242 § 8; 2012 1st sp.s. c 10 § 8. Prior: 2010 c 237 § 1; 2010 c 99 § 11; (2010 c 99 § 10 expired January 1, 2012); (2009 c 4 § 908 expired January 1, 2012); 2006 c 119 § 2; 2004 c 21 § 2; 1997 c 259 § 2; 1995 1st sp.s. c 11 § 1; 1994 c 116 § 2; 1993 c 465 § 1; 1992 c 49 § 1; 1990 c 33 § 601; 1989 c 141 § 1; 1988 c 252 § 1; 1987 1st ex.s. c 2 § 101; 1987 c 185 § 40; 1985 c 374 § 1; prior: 1981 c 264 § 10; 1981 c 168 § 1; 1979 ex.s. c 172 § 1; 1977 ex.s. c 325 § 4.]

Reviser's note: *(1) RCW 84.52.068 was repealed by 2009 c 479 § 75. ***(2) RCW 28A.505.220 was repealed by 2012 1st sp.s. c 10 § 9.

(3) The effective date for 2017 c 6 § 2 is January 1, 2018. The effective date for 2017 3rd sp.s. c 13 § 202 is July 6, 2017.

Effective date—2017 3rd sp.s. c 13 § 202: "Section 202 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 6, 2017]." [2017 3rd sp.s. c 13 § 212.]

Expiration date—2017 3rd sp.s. c 13 § 202: "Section 202 of this act expires January 1, 2019." [2017 3rd sp.s. c 13 § 209.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2017 c 6 § 2: "Section 2 of this act takes effect January 1, 2018." [2017 c 6 § 10.]

Expiration date—2017 c 6 § 2: "Section 2 of this act expires January 1, 2019." [2017 c 6 § 11.]

Intent—2017 c 6: "The legislature recognizes that school districts may provide locally funded enrichment to the state's program of basic education. The legislature further recognizes that the system of state and local funding for school districts is in transition during 2017, with the state moving toward full funding of its statutory program of basic education, and with current statutory policies on school district levies scheduled to expire at the end of calendar year 2017. To promote school districts' ability to plan for the future during this transitional period, the legislature intends to extend current statutory policies on local enrichment through calendar year 2018." [2017 c 6 § 1.]

Expiration date—2017 c 6; 2013 c 242 § 8: "Section 8 of this act expires January 1, 2019." [2017 c 6 § 4; 2013 c 242 § 10.]

Purpose—Construction—2012 1st sp.s. c 10: "(1) Legislation enacted in 2009 (chapter 548, Laws of 2009) and in 2010 (chapter 236, Laws of 2010) revised the definition of the program of basic education, established new methods for distributing state funds to school districts to support this program of basic education, and provided an outline of specific enhancements to the program of basic education that are required to be implemented by 2018. In order to meet the required deadlines to implement full funding of the enhancements, the joint task force in section 2 of this act is created to develop and recommend options for a permanent funding mechanism.

(2) Initiative Measure No. 728 (chapter 3, Laws of 2001) dedicated a portion of state revenues to fund class size reductions and other education improvements. Because class size reductions and similar improvements are incorporated in the reforms that were enacted in chapter 548, Laws of 2009, and chapter 236, Laws of 2010, and that are being incrementally implemented through 2018, Initiative Measure No. 728 is repealed in order to make these dedicated revenues available for implementation of basic education reform and to facilitate the funding reform recommendations of the joint task force in section 2 of this act.

(3) Nothing in chapter 10, Laws of 2012 1st sp. sess. alters or amends the elements included in the school district levy base set forth in RCW 84.52.0531." [2012 1st sp.s. c 10 § 1.]

Expiration date—2017 c 6; 2012 1st sp.s. c 10 § 8: "Section 8 of this act expires January 1, 2019." [2017 c 6 § 5; 2012 1st sp.s. c 10 § 10.]

Expiration date—2017 c 6; 2010 c 237 §§ 1, 5, and 6: "Sections 1, 5, and 6 of this act expire January 1, 2019." [2017 c 6 § 6; 2010 c 237 § 9.]

Effective date—2010 c 237 §§ 1 and 3-9: "Sections 1 and 3 through 9 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 29, 2010]." [2010 c 237 § 11.]

Intent—2010 c 237: "The legislature recognizes that school districts request voter approval for two-year through four-year levies based on their projected levy capacities at the time that the levies are submitted to the voters. It is the intent of the legislature to permit school districts with voter-approved maintenance and operation levies to seek an additional approval from the voters, if subsequently enacted legislation would permit a higher levy." [2010 c 237 § 3.]

Effective date—2010 c 99 § 11: "Section 11 of this act takes effect January 1, 2012." [2010 c 99 § 15.]

Expiration date—2010 c 99 § 10: "Section 10 of this act expires January 1, 2012." [2010 c 99 § 14.]

Findings—Intent—2010 c 99: See note following RCW 28A.340.080.

Effective date—2009 c 4: See note following RCW 43.79.460.

Expiration date—2009 c 4 § 908: "Section 908 of this act expires January 1, 2012." [2009 c 4 § 909.]

Expiration date—2017 c 6; 2010 c 237; 2006 c 119; 2004 c 21: "This act expires January 1, 2019." [2017 c 6 § 7; 2010 c 237 § 8; 2006 c 119 § 3; 2004 c 21 § 3.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Intent—1987 1st ex.s. c 2: "The legislature intends to establish the limitation on school district maintenance and operations levies at twenty percent, with ten percent to be equalized on a statewide basis. The legislature further intends to establish a modern school financing system for compensation of school staff and provide a class size reduction in grades kindergarten through three. The legislature intends to give the highest funding priority to strengthening support for existing school programs.

The legislature finds that providing for the adoption of a statewide salary allocation schedule for certificated instructional staff will encourage recruitment and retention of able individuals to the teaching profession, and limit the administrative burden associated with implementing state teacher salary policies." [1987 1st ex.s. c 2 § 1.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Payments to high school districts for educating nonhigh school district students: Chapter 28A.545 RCW.

Purposes: RCW 28A.545.030.

Rules to effect purposes and implement provisions: RCW 28A.545.110.

Superintendent's annual determination of estimated amount due—Process: RCW 28A.545.070.

Additional notes found at www.leg.wa.gov

84.52.0531 Enrichment levies by school districts—Maximum dollar amount—Definitions—Enrichment levy expenditure plan approval—Rules—Deposit of funds. (Effective January 1, 2019.) (1) Beginning with taxes levied for collection in 2019, the maximum dollar amount which may be levied by or for any school district for enrichment levies under RCW 84.52.053 is equal to the lesser of one dollar and fifty cents per thousand dollars of the assessed value of property in the school district or the maximum per-pupil limit.

(2) The definitions in this subsection apply to this section unless the context clearly requires otherwise.

(a) "Inflation" means inflation as defined in RCW 84.55.005.

(b) "Maximum per-pupil limit" means two thousand five hundred dollars, multiplied by the number of average annual resident full-time equivalent students enrolled in the school district in the prior school year. Beginning with property taxes levied for collection in 2020, the maximum per-pupil limit shall be increased by inflation.

(c) "Prior school year" means the most recent school year completed prior to the year in which the levies are to be collected.

(3) Beginning with propositions for enrichment levies for collection in calendar year 2020 and thereafter, a district must receive approval of an enrichment levy expenditure plan under RCW 28A.505.240 before submission of the proposition to the voters.

(4) The superintendent of public instruction shall develop rules and regulations and inform school districts of the pertinent data necessary to carry out the provisions of this section.

(5) Beginning with taxes levied for collection in 2020, enrichment levy revenues must be deposited in a separate subfund of the school district's general fund pursuant to RCW 28A.320.330, and are subject to the restrictions of RCW 28A.150.276 and the audit requirements of RCW 43.09.2856.

(6) Funds collected from transportation vehicle enrichment levies shall not be subject to the levy limitations in this section. [2017 3rd sp.s. c 13 § 203; 2017 c 6 § 3. Prior: 2010 c 237 § 2; 2010 c 99 § 11; 1997 c 259 § 2; 1995 1st sp.s. c 11 § 1; 1994 c 116 § 2; 1993 c 465 § 1; 1992 c 49 § 1; 1990 c 33 § 601; 1989 c 141 § 1; 1988 c 252 § 1; 1987 1st ex.s. c 2 § 101; 1987 c 185 § 40; 1985 c 374 § 1; prior: 1981 c 264 § 10; 1981 c 168 § 1; 1979 ex.s. c 172 § 1; 1977 ex.s. c 325 § 4.]

Effective date—2017 3rd sp.s. c 13 §§ 201, 203, 206, and 207: "Sections 201, 203, 206, and 207 of this act take effect January 1, 2019." [2017 3rd sp.s. c 13 § 210.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2017 c 6 § 3: "Section 3 of this act takes effect January 1, 2019." [2017 c 6 § 12.]

Intent—2010 c 237: "The legislature recognizes that school districts request voter approval for two-year through four-year levies based on their

[2017 RCW Supp—page 1066]

projected levy capacities at the time that the levies are submitted to the voters. It is the intent of the legislature to permit school districts with voter-approved maintenance and operation levies to seek an additional approval from the voters, if subsequently enacted legislation would permit a higher levy." [2010 c 237 § 3.]

Effective date—2017 c 6; 2010 c 237 § 2: "Section 2 of this act takes effect January 1, 2019." [2017 c 6 § 8; 2010 c 237 § 10.]

Findings—Intent—2010 c 99: See note following RCW 28A.340.080

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Intent—1987 1st ex.s. c 2: "The legislature intends to establish the limitation on school district maintenance and operations levies at twenty percent, with ten percent to be equalized on a statewide basis. The legislature further intends to establish a modern school financing system for compensation of school staff and provide a class size reduction in grades kindergarten through three. The legislature intends to give the highest funding priority to strengthening support for existing school programs.

The legislature finds that providing for a statewide salary allocation schedule for certificated instructional staff will encourage recruitment and retention of able individuals to the teaching profession, and limit the administrative burden associated with implementing state teacher salary policies." [1987 1st ex.s. c 2 § 1.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Payments to high school districts for educating nonhigh school district students: Chapter 28A.545 RCW.

Purposes: RCW 28A.545.030.

Rules to effect purposes and implement provisions: RCW 28A.545.110.

Superintendent's annual determination of estimated amount due—Process: RCW 28A.545.070.

Additional notes found at www.leg.wa.gov

84.52.065 State levy for support of common schools.

(1) Except as otherwise provided in this section, subject to the limitations in RCW 84.55.010, in each year the state shall levy for collection in the following year for the support of common schools of the state a tax of three dollars and sixty cents per thousand dollars of assessed value upon the assessed valuation of all taxable property within the state adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue.

(2)(a) In addition to the tax authorized under subsection (1) of this section, the state must levy an additional property tax for the support of common schools of the state.

(i) For taxes levied for collection in calendar years 2018 through 2021, the rate of tax is the rate necessary to bring the aggregate rate for state property tax levies levied under this subsection and subsection (1) of this section to a combined rate of two dollars and seventy cents per thousand dollars of assessed value upon the assessed valuation of all taxable property within the state adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue.

(ii) For taxes levied for collection in calendar year 2022 and thereafter, the tax authorized under this subsection (2) is subject to the limitations of chapter 84.55 RCW.

(b) Taxes collected under this subsection (2) must be deposited into the state general fund.

(3) For taxes levied for collection in calendar years 2019 through 2021, the state property taxes levied under subsections (1) and (2) of this section are not subject to the limitations in chapter 84.55 RCW.

(4) For taxes levied for collection in calendar year 2022 and thereafter, the aggregate rate limit for state property taxes

levied under subsections (1) and (2) of this section is three dollars and sixty cents per thousand dollars of assessed value upon the assessed valuation of all taxable property within the state adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue.

(5) For property taxes levied for collection in calendar years 2019 through 2021, the rate of tax levied under subsection (1) of this section is the actual rate that was levied for collection in calendar year 2018 under subsection (1) of this section.

(6) As used in this section, "the support of common schools" includes the payment of the principal and interest on bonds issued for capital construction projects for the common schools. [2017 3rd sp.s. c 13 § 301; 1991 sp.s. c 31 § 16; 1979 ex.s. c 218 § 1; 1973 1st ex.s. c 195 § 106; 1971 ex.s. c 299 § 25; 1969 ex.s. c 216 § 2; 1967 ex.s. c 133 § 1.]

Application—2017 3rd sp.s. c 13 §§ 301-314: "Sections 301 through 314 of this act apply beginning with taxes levied for collection in 2018 and thereafter." [2017 3rd sp.s. c 13 § 317.]

Tax preference performance statement and expiration—2017 3rd sp.s. c 13 §§ 301-314: "RCW 82.32.805 and 82.32.808 do not apply to sections 301 through 314, chapter 13, Laws of 2017 3rd sp. sess." [2017 3rd sp.s. c 13 § 316.]

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Limitation of levies: RCW 84.52.050.

Additional notes found at www.leg.wa.gov

84.52.067 State levy for support of common schools—Disposition of funds. Property taxes levied by the state under RCW 84.52.065(1) for the support of common schools must be paid into the general fund of the state treasury as provided in RCW 84.56.280. Property taxes levied by the state under RCW 84.52.065(2) for the support of common schools shall be paid into the state general fund in the state treasury as provided in RCW 84.52.065(2). [2017 3rd sp.s. c 13 § 313; 2009 c 479 § 73; 2001 c 3 § 7 (Initiative Measure No. 728, approved November 7, 2000); 1967 ex.s. c 133 § 2.]

Application—Tax preference performance statement and expiration—2017 3rd sp.s. c 13 §§ 301-314: See notes following RCW 84.52.065.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2009 c 479: See note following RCW 2.56.030.

Short title—Purpose—Intent—Construction—Effective dates—2001 c 3 (Initiative Measure No. 728): See notes following RCW 67.70.240.

84.52.070 Certification of levies to assessor. (1) It is the duty of the county legislative authority of each county, on or before the thirtieth day of November in each year, to certify to the county assessor the amount of taxes levied upon the property in the county for county purposes, and the respective amounts of taxes levied by the board for each taxing district, within or coextensive with the county, for district purposes.

(2) It is the duty of the council of each city having a population of three hundred thousand or more, and of the council of each town, and of all officials or boards of taxing districts within or coextensive with the county, authorized by law to levy taxes directly and not through the county legislative authority, on or before the thirtieth day of November in each year, to certify to the county assessor the amount of taxes levied upon the property within the city, town, or district for city, town, or district purposes.

(3) If a levy amount is certified to the county assessor after the thirtieth day of November, the county assessor may use no more than the certified levy amount for the previous year for the taxing district. This subsection (3) does not apply to state levies or when the assessor has not certified assessed values as required by RCW 84.48.130 at least twelve working days before November 30th. [2017 3rd sp.s. c 13 § 307; 2010 c 106 § 313; 1994 c 81 § 86; 1988 c 222 § 28; 1961 c 15 § 84.52.070. Prior: 1925 ex.s. c 130 § 78; RRS § 11239; prior: 1890 p 558 §§ 77, 78; Code 1881 § 2881.]

Application—Tax preference performance statement and expiration—2017 3rd sp.s. c 13 §§ 301-314: See notes following RCW 84.52.065.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2010 c 106: See note following RCW 35.102.145.

Additional notes found at www.leg.wa.gov

84.52.125 Fire protection districts and regional fire protection service authorities—Protection from levy prorationing. A fire protection district or regional fire protection service authority may protect the district's or authority's tax levy from prorationing under RCW 84.52.010(3)(b) by imposing up to a total of twenty-five cents per thousand dollars of assessed value of the tax levies authorized under RCW 52.16.140 and 52.16.160, or 52.26.140(1) (b) and (c) outside of the five dollars and ninety cents per thousand dollars of assessed valuation limitation established under RCW 84.52.043(2), if those taxes otherwise would be prorated under RCW 84.52.010(3)(b)(vi). [2017 c 196 § 13; 2005 c 122 § 1.]

Effective date—2017 c 196 §§ 1-9, 11, 13, and 14: See note following RCW 52.26.220.

Application—2017 c 196 §§ 3 and 9-13: See note following RCW 84.52.092.

Additional notes found at www.leg.wa.gov

84.52.825 Tax preferences—Expiration dates. (1) See RCW 82.32.805 for the expiration date of new tax preferences for the taxes imposed under RCW 84.52.065.

(2) See RCW 82.32.808 for reporting requirements for any new tax preference for the taxes imposed under RCW 84.52.065. [2017 3rd sp.s. c 13 § 314; 2013 2nd sp.s. c 13 § 1721.]

Application—Tax preference performance statement and expiration—2017 3rd sp.s. c 13 §§ 301-314: See notes following RCW 84.52.065.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Effective date—2013 2nd sp.s. c 13: See note following RCW 82.04.43393.

Chapter 84.55 RCW

LIMITATIONS UPON REGULAR PROPERTY TAXES

Sections

84.55.010	Limitations prescribed.
84.55.050	Election to authorize increase in regular property tax levy—Limited propositions—Procedure.
84.55.070	Inapplicability of chapter to levies for certain purposes.
84.55.092	Protection of future levy capacity.

84.55.010 Limitations prescribed. (1) Except as provided in this chapter, the levy for a taxing district in any year must be set so that the regular property taxes payable in the

following year do not exceed the limit factor multiplied by the amount of regular property taxes lawfully levied for such district in the highest of the three most recent years in which such taxes were levied for such district plus an additional dollar amount calculated by multiplying the regular property tax levy rate of that district for the preceding year by the increase in assessed value in that district resulting from:

(a) New construction;

(b) Increases in assessed value due to construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under this section for purposes of providing an additional dollar amount. The property may be classified as real or personal property;

(c) Improvements to property; and

(d) Any increase in the assessed value of state-assessed property.

(2) The requirements of this section do not apply to:

(a) State property taxes levied under RCW 84.52.065(1) for collection in calendar years 2019 through 2021; and

(b) State property taxes levied under RCW 84.52.065(2) for collection in calendar years 2018 through 2021. [2017 3rd sp.s. c 13 § 302; 2014 c 4 § 1; 2006 c 184 § 1; 1997 c 3 § 202 (Referendum Bill No. 47, approved November 4, 1997); 1979 ex.s. c 218 § 2; 1973 1st ex.s. c 67 § 1; 1971 ex.s. c 288 § 20.]

Application—Tax preference performance statement and expiration—2017 3rd sp.s. c 13 §§ 301-314: See notes following RCW 84.52.065.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Application—2014 c 4: "This act applies to taxes levied for collection in 2015 and thereafter." [2014 c 4 § 6.]

Intent—1997 c 3 §§ 201-207: "It is the intent of sections 201 through 207 of this act to lower the one hundred six percent limit while still allowing taxing districts to raise revenues in excess of the limit if approved by a majority of the voters as provided in RCW 84.55.050." [1997 c 3 § 208 (Referendum Bill No. 47, approved November 4, 1997).]

Additional notes found at www.leg.wa.gov

84.55.050 Election to authorize increase in regular property tax levy—Limited propositions—Procedure.

(1) Subject to any otherwise applicable statutory dollar rate limitations, regular property taxes may be levied by or for a taxing district in an amount exceeding the limitations provided for in this chapter if such levy is authorized by a proposition approved by a majority of the voters of the taxing district voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters. Any election held pursuant to this section shall be held not more than twelve months prior to the date on which the proposed levy is to be made, except as provided in subsection (2) of this section. The ballot of the proposition shall state the dollar rate proposed and shall clearly state the conditions, if any, which are applicable under subsection (4) of this section.

(2)(a) Subject to statutory dollar limitations, a proposition placed before the voters under this section may authorize annual increases in levies for multiple consecutive years, up to six consecutive years, during which period each year's authorized maximum legal levy shall be used as the base upon which an increased levy limit for the succeeding year is computed, but the ballot proposition must state the dollar rate

proposed only for the first year of the consecutive years and must state the limit factor, or a specified index to be used for determining a limit factor, such as the consumer price index, which need not be the same for all years, by which the regular tax levy for the district may be increased in each of the subsequent consecutive years. Elections for this purpose must be held at a primary or general election. The title of each ballot measure must state the limited purposes for which the proposed annual increases during the specified period of up to six consecutive years shall be used.

(b)(i) Except as otherwise provided in this subsection (2)(b), funds raised by a levy under this subsection may not supplant existing funds used for the limited purpose specified in the ballot title. For purposes of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in contract provisions beyond the control of the taxing district receiving the services, and major nonrecurring capital expenditures.

(ii) The supplanting limitations in (b)(i) of this subsection do not apply to levies approved by the voters in calendar years 2009, 2010, and 2011, in any county with a population of one million five hundred thousand or more. This subsection (2)(b)(ii) only applies to levies approved by the voters after July 26, 2009.

(iii) The supplanting limitations in (b)(i) of this subsection do not apply to levies approved by the voters in calendar year 2009 and thereafter in any county with a population less than one million five hundred thousand. This subsection (2)(b)(iii) only applies to levies approved by the voters after July 26, 2009.

(3) After a levy authorized pursuant to this section is made, the dollar amount of such levy may not be used for the purpose of computing the limitations for subsequent levies provided for in this chapter, unless the ballot proposition expressly states that the levy made under this section will be used for this purpose.

(4) If expressly stated, a proposition placed before the voters under subsection (1) or (2) of this section may:

(a) Use the dollar amount of a levy under subsection (1) of this section, or the dollar amount of the final levy under subsection (2) of this section, for the purpose of computing the limitations for subsequent levies provided for in this chapter;

(b) Limit the period for which the increased levy is to be made under (a) of this subsection;

(c) Limit the purpose for which the increased levy is to be made under (a) of this subsection, but if the limited purpose includes making redemption payments on bonds;

(i) For the county in which the state capitol is located, the period for which the increased levies are made may not exceed twenty-five years; and

(ii) For districts other than a district under (c)(i) of this subsection, the period for which the increased levies are made may not exceed nine years;

(d) Set the levy or levies at a rate less than the maximum rate allowed for the district; or

(e) Include any combination of the conditions in this subsection.

(5) Except as otherwise expressly stated in an approved ballot measure under this section, subsequent levies shall be computed as if:

(a) The proposition under this section had not been approved; and

(b) The taxing district had made levies at the maximum rates which would otherwise have been allowed under this chapter during the years levies were made under the proposition. [2017 c 296 § 2; 2009 c 551 § 3; 2008 c 319 § 1; 2007 c 380 § 2; 2003 1st sp.s. c 24 § 4; 1989 c 287 § 1; 1986 c 169 § 1; 1979 ex.s. c 218 § 3; 1973 1st ex.s. c 195 § 109; 1971 ex.s. c 288 § 24.]

Findings—2017 c 296: "The legislature finds government owned property is exempt from both property taxes and leasehold excise tax. The legislature further finds property tax exemptions lower the taxable assessed value within a district. The legislature further finds most of the state-owned buildings in Washington, including the state capitol, are located in Thurston county. The legislature further finds this imposes a disproportional burden on taxpayers and Thurston county. It is the legislature's objective to mitigate this burden by providing Thurston county the ability to increase a bond levy for a longer period of time with a voter approved lid lift." [2017 c 296 § 1.]

Application—2017 c 296: "This act applies to taxes levied for collection in 2018 and thereafter." [2017 c 296 § 3.]

Application—2008 c 319: "This act applies prospectively only to levy lid lift ballot propositions under RCW 84.55.050 that receive voter approval on or after April 1, 2008." [2008 c 319 § 2.]

Effective date—2008 c 319: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2008]." [2008 c 319 § 3.]

Finding—Intent—Effective date—Severability—2003 1st sp.s. c 24: See notes following RCW 82.14.450.

Additional notes found at www.leg.wa.gov

84.55.070 Inapplicability of chapter to levies for certain purposes. The provisions of this chapter do not apply to a levy, including any state levy, or that portion of a levy, made by or for a taxing district:

(1) For the purpose of funding a property tax refund paid under the provisions of chapter 84.68 RCW;

(2) Under RCW 84.69.180; or

(3) Attributable to amounts of state taxes withheld under RCW 84.56.290 or the provisions of chapter 84.69 RCW, or otherwise attributable to state taxes lawfully owing by reason of adjustments made under RCW 84.48.080. [2017 3rd sp.s. c 13 § 308; 2009 c 350 § 11; 1982 1st ex.s. c 28 § 2; 1981 c 228 § 3.]

Application—Tax preference performance statement and expiration—2017 3rd sp.s. c 13 §§ 301-314: See notes following RCW 84.52.065.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Application—2009 c 350 §§ 10 and 11: See note following RCW 84.69.180.

Additional notes found at www.leg.wa.gov

84.55.092 Protection of future levy capacity. (1) The regular property tax levy for each taxing district other than the state's levies may be set at the amount which would be allowed otherwise under this chapter if the regular property tax levy for the district for taxes due in prior years beginning with 1986 had been set at the full amount allowed under this chapter including any levy authorized under RCW 52.16.160 or 52.26.140(1)(c) that would have been imposed but for the limitation in RCW 52.18.065 or 52.26.240, applicable upon

imposition of the benefit charge under chapter 52.18 or 52.26 RCW.

(2) The purpose of subsection (1) of this section is to remove the incentive for a taxing district to maintain its tax levy at the maximum level permitted under this chapter, and to protect the future levy capacity of a taxing district that reduces its tax levy below the level that it otherwise could impose under this chapter, by removing the adverse consequences to future levy capacities resulting from such levy reductions.

(3) Subsection (1) of this section does not apply to any portion of a city or town's regular property tax levy that has been reduced as part of the formation of a fire protection district under RCW 52.02.160. [2017 3rd sp.s. c 13 § 309. Prior: 2017 c 328 § 3; 2017 c 196 § 3; 1998 c 16 § 3; 1988 c 274 § 4; 1986 c 107 § 3.]

Application—Tax preference performance statement and expiration—2017 3rd sp.s. c 13 §§ 301-314: See notes following RCW 84.52.065.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Application—2017 c 196 §§ 3 and 9-13: "Sections 3 and 9 through 13 of this act apply to property taxes levied for collection in 2018 and thereafter." [2017 c 196 § 18.]

Effective date—2017 c 196 §§ 1-9, 11, 13, and 14: See note following RCW 52.26.220.

Purpose—Severability—1988 c 274: See notes following RCW 84.52.010.

Additional notes found at www.leg.wa.gov

Chapter 84.56 RCW COLLECTION OF TAXES

Sections

84.56.020	Taxes collected by treasurer—Dates of delinquency—Tax statement notice concerning payment by check—Interest—Penalties—Extensions during state of emergency.
84.56.050	Treasurer's duties on receiving rolls—Notice of taxes due.
84.56.345	Alteration of property lines—Payment of taxes and assessments.

84.56.020 Taxes collected by treasurer—Dates of delinquency—Tax statement notice concerning payment by check—Interest—Penalties—Extensions during state of emergency. (1) The county treasurer must be the receiver and collector of all taxes extended upon the tax rolls of the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his or her county. No treasurer may accept tax payments or issue receipts for the same until the treasurer has completed the tax roll for the current year's collection and provided notification of the completion of the roll. Notification may be accomplished electronically, by posting a notice in the office, or through other written communication as determined by the treasurer. All real and personal property taxes and assessments made payable by the provisions of this title are due and payable to the county treasurer on or before the thirtieth day of April and, except as provided in this section, are delinquent after that date.

(2) Each tax statement must include a notice that checks for payment of taxes may be made payable to "Treasurer of County" or other appropriate office, but tax statements may not include any suggestion that checks may be

made payable to the name of the individual holding the office of treasurer nor any other individual.

(3) When the total amount of tax or special assessments on personal property or on any lot, block or tract of real property payable by one person is fifty dollars or more, and if one-half of such tax is paid on or before the thirtieth day of April, the remainder of such tax is due and payable on or before the following thirty-first day of October and is delinquent after that date.

(4) When the total amount of tax or special assessments on any lot, block or tract of real property or on any mobile home payable by one person is fifty dollars or more, and if one-half of such tax is paid after the thirtieth day of April but before the thirty-first day of October, together with the applicable interest and penalty on the full amount of tax payable for that year, the remainder of such tax is due and payable on or before the following thirty-first day of October and is delinquent after that date.

(5) Except as provided in (c) of this subsection, delinquent taxes under this section are subject to interest at the rate of twelve percent per annum computed on a monthly basis on the amount of tax delinquent from the date of delinquency until paid. Interest must be calculated at the rate in effect at the time of the tax payment, regardless of when the taxes were first delinquent. In addition, delinquent taxes under this section are subject to penalties as follows:

(a) A penalty of three percent of the amount of tax delinquent is assessed on the tax delinquent on June 1st of the year in which the tax is due.

(b) An additional penalty of eight percent is assessed on the delinquent tax amount on December 1st of the year in which the tax is due.

(c) If a taxpayer is successfully participating in a payment agreement under subsection (12)(b) of this section or a partial payment program pursuant to subsection (13) of this section, the county treasurer may not assess additional penalties on delinquent taxes that are included within the payment agreement. Interest and penalties that have been assessed prior to the payment agreement remain due and payable as provided in the payment agreement.

(6)(a) When real property taxes become delinquent and prior to the filing of the certificate of delinquency, the treasurer is authorized to assess and collect tax foreclosure avoidance costs.

(b) For the purposes of this section, "tax foreclosure avoidance costs" means those direct costs associated with the administration of properties subject to and prior to foreclosure. Tax foreclosure avoidance costs include:

(i) Compensation of employees for the time devoted to administering the avoidance of property foreclosure; and

(ii) The cost of materials, services, or equipment acquired, consumed, or expended in administering tax foreclosure avoidance prior to the filing of a certificate of delinquency.

(c) When tax foreclosure avoidance costs are collected, such costs must be credited to the county treasurer service fund account, except as otherwise directed.

(d) For purposes of chapter 84.64 RCW, any taxes, interest, or penalties deemed delinquent under this section remain delinquent until such time as all taxes, interest, and penalties

for the tax year in which the taxes were first due and payable have been paid in full.

(7) Subsection (5) of this section notwithstanding, no interest or penalties may be assessed during any period of armed conflict regarding delinquent taxes imposed on the personal residences owned by active duty military personnel who are participating as part of one of the branches of the military involved in the conflict and assigned to a duty station outside the territorial boundaries of the United States.

(8) During a state of emergency declared under RCW 43.06.010(12), the county treasurer, on his or her own motion or at the request of any taxpayer affected by the emergency, may grant extensions of the due date of any taxes payable under this section as the treasurer deems proper.

(9) All collections of interest on delinquent taxes must be credited to the county current expense fund.

(10) For purposes of this chapter, "interest" means both interest and penalties.

(11) The direct cost of foreclosure and sale of real property, and the direct fees and costs of distraint and sale of personal property, for delinquent taxes, must, when collected, be credited to the operation and maintenance fund of the county treasurer prosecuting the foreclosure or distraint or sale; and must be used by the county treasurer as a revolving fund to defray the cost of further foreclosure, distraint, and sale because of delinquent taxes without regard to budget limitations and not subject to indirect costs of other charges.

(12)(a) For purposes of this chapter, and in accordance with this section and RCW 36.29.190, the treasurer may collect taxes, assessments, fees, rates, interest, and charges by electronic billing and payment. Electronic billing and payment may be used as an option by the taxpayer, but the treasurer may not require the use of electronic billing and payment. Electronic bill presentment and payment may be on a monthly or other periodic basis as the treasurer deems proper for delinquent tax year payments only or for prepayments of current tax. All prepayments must be paid in full by the due date specified in (c) of this subsection. Payments on past due taxes must include collection of the oldest delinquent year, which includes interest and taxes within a twelve-month period, prior to filing a certificate of delinquency under chapter 84.64 RCW or distraint pursuant to RCW 84.56.070.

(b) The treasurer may provide, by electronic means or otherwise, a payment agreement that provides for payment of current year taxes, inclusive of prepayment collection charges. The treasurer may provide, by electronic means or otherwise, a payment agreement for payment of past due delinquencies, which must also require current year taxes to be paid timely. The payment agreement must be signed by the taxpayer and treasurer prior to the sending of an electronic or alternative bill, which includes a payment plan for current year taxes. The treasurer may accept partial payment of current and delinquent taxes including interest and penalties using electronic bill presentment and payments.

(c) All taxes upon real and personal property made payable by the provisions of this title are due and payable to the treasurer on or before the thirtieth day of April and are delinquent after that date. The remainder of the tax is due and payable on or before the following thirty-first of October and is delinquent after that date. All other assessments, fees, rates, and charges are delinquent after the due date.

(d) A county treasurer may authorize payment of past due property taxes, penalties, and interest under this chapter by electronic funds transfers on a monthly basis. Delinquent taxes are subject to interest and penalties, as provided in subsection (5) of this section.

(e) The treasurer must pay any collection costs, investment earnings, or both on past due payments or prepayments to the credit of a county treasurer service fund account to be created and used only for the payment of expenses incurred by the treasurer, without limitation, in administering the system for collecting prepayments.

(13) In addition to the payment program in subsection (12)(b) of this section, the treasurer may accept partial payment of current and delinquent taxes including interest and penalties by any means authorized.

(14) For purposes of this section unless the context clearly requires otherwise, the following definitions apply:

(a) "Electronic billing and payment" means statements, invoices, or bills that are created, delivered, and paid using the internet. The term includes an automatic electronic payment from a person's checking account, debit account, or credit card.

(b) "Internet" has the same meaning as provided in RCW 19.270.010. [2017 c 142 § 1; 2014 c 13 § 1; 2013 c 239 § 3; 2010 c 200 § 1; 2008 c 181 § 510; 2007 c 105 § 2; 2005 c 502 § 7; 2004 c 161 § 6; 1996 c 153 § 1. Prior: 1991 c 245 § 16; 1991 c 52 § 1; 1988 c 222 § 30; 1987 c 211 § 1; 1984 c 131 § 1; 1981 c 322 § 2; 1974 ex.s. c 196 § 1; 1974 ex.s. c 116 § 1; 1971 ex.s. c 288 § 3; 1969 ex.s. c 216 § 3; 1961 c 15 § 84.56.020; prior: 1949 c 21 § 1; 1935 c 30 § 2; 1931 c 113 § 1; 1925 ex.s. c 130 § 83; Rem. Supp. 1949 § 11244; prior: 1917 c 141 § 1; 1899 c 141 § 6; 1897 c 71 § 68; 1895 c 176 § 14; 1893 c 124 § 69; 1890 p 561 § 84; Code 1881 § 2892. Formerly RCW 84.56.020 and 84.56.030.]

Findings—2013 c 239: "The legislature finds that it is difficult for many property owners to pay property taxes under the current system where past due property tax payments must be paid in full, including penalties and interest. The legislature further finds that providing counties and property owners some flexibility in structuring past due property tax payments may provide some relief for property owners with delinquent tax payments." [2013 c 239 § 2.]

Part headings not law—2008 c 181: See note following RCW 43.06.220.

Payment of taxes upon loss of exempt status: RCW 84.40.380.

Additional notes found at www.leg.wa.gov

84.56.050 Treasurer's duties on receiving rolls—Notice of taxes due. (1) On receipt of the certification of the tax rolls from the county assessor, the county treasurer must transfer all real and personal property taxes from the rolls to the treasurer's tax roll, and must carry forward to the current tax rolls a memorandum of all delinquent taxes on each and every description of property, entering which taxes are delinquent and the amounts for each year. Except as provided otherwise in this section, the treasurer must provide a printed notice or electronically publish, at the expense of the county, information for each taxpayer, regarding the amount of real and personal property, and the name of each tax and levy made on the same. The county treasurer must be the sole collector of all taxes, current or delinquent.

(2) For the purposes of this section, "taxpayer" means any person charged, or whose property is charged, with property tax.

(3) The person to be notified under this section is the person whose name appears on the tax roll herein mentioned. However, if:

(a) No name so appears the person to be notified is the person shown by the treasurer's tax rolls or duplicate tax receipts of any preceding year as the payer of the tax last paid on the property; or

(b) The real property taxes are paid by a bank, as defined in RCW 62A.1-201, the name of each tax and levy in the property tax information on the county treasurer's web site satisfies the notice requirements of this section. [2017 c 142 § 2; 1991 c 245 § 17; 1963 c 94 § 1; 1961 c 15 § 84.56.050. Prior: 1941 c 32 § 1; 1939 c 206 § 41; 1937 c 121 § 2; 1925 ex.s. c 130 § 84; Rem. Supp. 1941 § 11245; prior: 1897 c 71 § 69; 1893 c 124 § 70; 1890 p 561 § 85; Code 1881 §§ 2894, 2895.]

84.56.345 Alteration of property lines—Payment of taxes and assessments. Every person who offers a document to the auditor of the proper county for recording that results in any division, alteration, or adjustment of real property boundary lines, except as provided for in RCW 58.04.007(1) and 84.40.042(1)(c), must present a certificate of payment from the proper officer who is in charge of the collection of taxes and assessments for the affected property or properties. All taxes and assessments, both current and delinquent must be paid. For purposes of chapter 502, Laws of 2005, liability begins on January 1st. [2017 c 109 § 2; 2005 c 502 § 6.]

Additional notes found at www.leg.wa.gov

Chapter 84.69 RCW REFUNDS

Sections

84.69.020 Grounds for refunds—Determination—Payment—Report.

84.69.020 Grounds for refunds—Determination—Payment—Report. On the order of the county treasurer, ad valorem taxes paid before or after delinquency must be refunded if they were:

- (1) Paid more than once;
- (2) Paid as a result of manifest error in description;
- (3) Paid as a result of a clerical error in extending the tax rolls;
- (4) Paid as a result of other clerical errors in listing property;
- (5) Paid with respect to improvements which did not exist on assessment date;
- (6) Paid under levies or statutes adjudicated to be illegal or unconstitutional;
- (7) Paid as a result of mistake, inadvertence, or lack of knowledge by any person exempted from paying real property taxes or a portion thereof pursuant to RCW 84.36.381 through 84.36.389, as now or hereafter amended;
- (8) Paid as a result of mistake, inadvertence, or lack of knowledge by either a public official or employee or by any

person with respect to real property in which the person paying the same has no legal interest;

(9) Paid on the basis of an assessed valuation which was appealed to the county board of equalization and ordered reduced by the board;

(10) Paid on the basis of an assessed valuation which was appealed to the state board of tax appeals and ordered reduced by the board: PROVIDED, That the amount refunded under subsections (9) and (10) of this section shall only be for the difference between the tax paid on the basis of the appealed valuation and the tax payable on the valuation adjusted in accordance with the board's order;

(11) Paid as a state property tax levied upon property, the assessed value of which has been established by the state board of tax appeals for the year of such levy: PROVIDED, HOWEVER, That the amount refunded shall only be for the difference between the state property tax paid and the amount of state property tax which would, when added to all other property taxes within the one percent limitation of Article VII, section 2 of the state Constitution equal one percent of the assessed value established by the board;

(12) Paid on the basis of an assessed valuation which was adjudicated to be unlawful or excessive: PROVIDED, That the amount refunded shall be for the difference between the amount of tax which was paid on the basis of the valuation adjudged unlawful or excessive and the amount of tax payable on the basis of the assessed valuation determined as a result of the proceeding;

(13) Paid on property acquired under RCW 84.60.050, and canceled under RCW 84.60.050(2);

(14) Paid on the basis of an assessed valuation that was reduced under RCW 84.48.065;

(15) Paid on the basis of an assessed valuation that was reduced under RCW 84.40.039; or

(16) Abated under RCW 84.70.010.

No refunds under the provisions of this section shall be made because of any error in determining the valuation of property, except as authorized in subsections (9), (10), (11), and (12) of this section nor may any refunds be made if a bona fide purchaser has acquired rights that would preclude the assessment and collection of the refunded tax from the property that should properly have been charged with the tax. Any refunds made on delinquent taxes must include the proportionate amount of interest and penalties paid. However, no refunds as a result of an incorrect payment authorized under subsection (8) of this section made by a third party payee shall be granted. The county treasurer may deduct from monies collected for the benefit of the state's levies, refunds of the state's levies including interest on the levies as provided by this section and chapter 84.68 RCW.

The county treasurer of each county must make all refunds determined to be authorized by this section, and by the first Monday in February of each year, report to the county legislative authority a list of all refunds made under this section during the previous year. The list is to include the name of the person receiving the refund, the amount of the refund, and the reason for the refund. [2017 3rd sp.s. c 13 § 310; 2005 c 502 § 9; 2002 c 168 § 11; 1999 sp.s. c 8 § 2. Prior: 1998 c 306 § 2; 1997 c 393 § 18; 1996 c 296 § 2; 1994 c 301 § 55; 1991 c 245 § 31; 1989 c 378 § 17; 1981 c 228 § 1; 1975 1st ex.s. c 291 § 21; 1974 ex.s. c 122 § 2; 1972 ex.s.

c 126 § 2; 1971 ex.s. c 288 § 14; 1969 ex.s. c 224 § 1; 1961 c 15 § 84.69.020; prior: 1957 c 120 § 2.]

Application—Tax preference performance statement and expiration—2017 3rd sp.s. c 13 §§ 301-314: See notes following RCW 84.52.065.

Intent—2017 3rd sp.s. c 13: See note following RCW 28A.150.410.

Purpose—1974 ex.s. c 122: "The legislature recognizes that the operation of the provisions of RCW 84.52.065 and 84.48.080, providing for adjustments in the county-determined assessed value of property for purposes of the state property tax for schools, may, with respect to certain properties, result in a total regular property tax payment in excess of the one percent limitation provided for in Article 7, section 2 (Amendment 59) of the state Constitution. The primary purpose of this 1974 amendatory act is to provide a procedure for administrative relief in such cases, such relief to be in addition to the presently existing procedure for judicial relief through a refund action provided for in RCW 84.68.020." [1974 ex.s. c 122 § 1.]

Additional notes found at www.leg.wa.gov

Title 86 FLOOD CONTROL

Chapters

86.09 Flood control districts—1937 act.

Chapter 86.09 RCW

FLOOD CONTROL DISTRICTS—1937 ACT

Sections

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| 86.09.418 | Assessments—Revision of benefit classification—Appointment of reappraisers—Effect of reexamination. |
| 86.09.419 | Assessments—Revision of benefit classification, when subdivision, adjustment, or change in use of tract—Effect of reexamination, process limitation. |

86.09.418 Assessments—Revision of benefit classification—Appointment of reappraisers—Effect of reexamination. Upon completion of the control works of the district or of any unit thereof, the board of directors of the district may, with the written consent of the county legislative authority of the county within which the major portion of the district is situated, and upon petition signed by landowners representing twenty-five percent of the acreage of the lands in the district or twenty-five percent of the value of the assessments of the district shall, appoint three qualified persons who shall be approved in writing by the county legislative authority, to act as a board of appraisers and who shall reconsider and revise and/or reaffirm the classification and relative percentages, or any part or parts thereof, in the same manner and with the same legal effect as that provided herein for the determination of such matters in the first instance: PROVIDED, That such reexamination shall have no legal effect on any assessments regularly levied prior to the order of appraisal by the reexamining board of appraisers. [2017 c 67 § 1; 1985 c 396 § 68; 1937 c 72 § 140; RRS § 9663E-140. Formerly RCW 86.08.470, part.]

86.09.419 Assessments—Revision of benefit classification, when subdivision, adjustment, or change in use of tract—Effect of reexamination, process limitation. (1) Upon completion of the control works of the district or of any unit of the district, when there is any subdivision, short subdivision, parcel segregation or merger, lot-line adjustment, or other change in the land use characteristics of any tract or tracts of land within the boundaries of the district, occurring after completion of the most recent examination or reexam-

ination of the benefit classification of the lands within the boundaries of the district pursuant to RCW 86.09.388 through 86.09.418, the board of directors of the district may, with the written consent of the county legislative authority of the county within which the major portion of the district is situated, and without a landowner petition or formation of a board of appraisers, reconsider and revise and/or reaffirm the classification and relative percentages assigned to such a tract or tracts consistent with the current district classifications and benefit percentages, in the same manner and with the same legal effect as provided for in this chapter for the determination of these matters originally. However, such a reexamination has no legal effect on any assessment regularly levied prior to the order of appraisal by the reexamining board of directors.

(2) The reexamination process provided in subsection (1) of this section may occur no more than once per calendar year. [2017 c 67 § 2.]

Title 87 IRRIGATION

Chapters

87.03 Irrigation districts generally.

Chapter 87.03 RCW

IRRIGATION DISTRICTS GENERALLY

Sections

87.03.015	Certain powers of district enumerated.
87.03.0155	Contract and formation powers.
87.03.115	Organization of board—Meetings—Quorum—Certain powers and duties.
87.03.240	Assessments, how and when made—Assessment roll.
87.03.445	Acquisition, construction, and operating funds—Tolls and assessments, alternative methods of—Liens, foreclosure of—Delinquencies by tenants.
87.03.565	Adding lands to district—Notice—Contents—Service.
87.03.820	Disposal of real property—Right of adjacent owners.

87.03.015 Certain powers of district enumerated.

Any irrigation district, operating and maintaining an irrigation system, in addition to other powers conferred by law, shall have authority:

(1) To purchase and sell electric power to the inhabitants of the irrigation district for the purposes of irrigation and domestic use; to finance, acquire, construct, own, and lease dams, canals, plants, transmission lines, and other power equipment and the necessary property and rights therefor and to operate, improve, repair, and maintain the same, for the generation and transmission of electrical energy for use in the operation of pumping plants and irrigation systems of the district and for sale to the inhabitants of the irrigation district for the purposes of irrigation and domestic use; and, as a further and separate grant of authority and in furtherance of a state purpose and policy of developing hydroelectric capability in connection with irrigation facilities, to construct, finance, acquire, own, lease, operate, improve, repair, and maintain, alone or jointly with other irrigation districts, boards of control, municipal or quasi-municipal corporations or cooperatives authorized to engage in the business of distributing electricity, electrical companies subject to the jurisdiction of the utilities and transportation commission, private commercial

or industrial entities that construct or operate electric power generation or transmission facilities, or private commercial or industrial entities that acquire electric power for their own use or resale, hydroelectric facilities including but not limited to dams, canals, plants, transmission lines, other power equipment, and the necessary property and rights therefor, located within or outside the district, for the purpose of utilizing for the generation of electricity, water power made available by and as a part of the irrigation water storage, conveyance, and distribution facilities, waste ways, and drainage water facilities which serve irrigation districts, and to sell any and all the electric energy generated at any such hydroelectric facilities or the irrigation district's share of such energy, to municipal or quasi-municipal corporations or cooperatives authorized to engage in the business of distributing electricity, electrical companies subject to the jurisdiction of the utilities and transportation commission, private commercial or industrial entities that acquire electric power for their own use or resale, or other irrigation districts, and on such terms and conditions as the board of directors shall determine. No contract entered into under this subsection by the board of directors of any irrigation district for the sale of electrical energy from such hydroelectric facility for a period longer than forty years from the date of commercial operation of such hydroelectric facility shall be binding on the district until ratified by a majority vote of the electors of the district at an election therein, called, held, and canvassed for that purpose in the same manner as that provided by law for district bond elections.

(2) To construct, repair, purchase, maintain, or lease a system for the sale or lease of water to the owners of irrigated lands within the district for domestic purposes.

(3) To construct, repair, purchase, lease, acquire, operate and maintain a system of drains, sanitary sewers, and sewage disposal or treatment plants as herein provided.

(4) To assume, as principal or guarantor, any indebtedness to the United States under the federal reclamation laws, on account of district lands.

(5) To maintain, repair, construct, and reconstruct ditches, laterals, pipe lines, and other water conduits used or to be used in carrying water for irrigation of lands located within the boundaries of a city or town, or for the domestic use of the residents of a city or town where the owners of land within such city or town shall use such works to carry water to the boundaries of such city or town for irrigation, domestic, or other purposes within such city or town, and to charge to such city or town the pro rata proportion of the cost of such maintenance, repair, construction, and reconstruction work in proportion to the benefits received by the lands served and located within the boundaries of such city or town, and if such cost is not paid, then and in that event said irrigation district shall have the right to prevent further water deliveries through such works to the lands located within the boundaries of such city or town until such charges have been paid.

(6) To acquire, install, and maintain as a part of the irrigation district's water system the necessary water mains and fire hydrants to make water available for firefighting purposes; and in addition any such irrigation district shall have the authority to repair, operate, and maintain such hydrants and mains.

(7) To enter into contracts with other irrigation districts, boards of control, municipal or quasi-municipal corporations or cooperatives authorized to engage in the business of distributing electricity, electrical companies subject to the jurisdiction of the utilities and transportation commission, private commercial or industrial entities that construct or operate electric power generation or transmission facilities, or private commercial or industrial entities that acquire electric power for their own use or resale, to jointly finance, acquire, lease, construct, own, operate, improve, repair, and maintain irrigation water, domestic water, drainage and sewerage works, and electrical power works to the same extent as authorized by subsection (1) of this section, or portions of such works. If an irrigation district enters into a contract or agreement under this subsection to create a legal entity or undertaking with an investor-owned utility or a private commercial or industrial entity, that contract or agreement must provide that the irrigation district be severally liable only for its own acts and not jointly or severally liable for the acts, omissions, or obligations of an investor-owned utility or a private commercial or industrial entity. No money or property supplied by any irrigation district for the planning, financing, acquisition, construction, operation, or maintenance of any common facility may be credited or otherwise applied to the account of any investor-owned utility or private commercial or industrial entity therein, nor may the undivided share of any irrigation district in any common facility be charged, directly or indirectly, with any debt or obligation of any investor-owned utility or private commercial or industrial entity or be subject to any lien as a result thereof. No action in connection with a common facility may be binding upon any irrigation district unless authorized or approved by resolution of its board.

(8) To acquire from a water-sewer district wholly within the irrigation district's boundaries, by a conveyance without cost, the water-sewer district's water system and to operate the same to provide water for the domestic use of the irrigation district residents. As a part of its acceptance of the conveyance the irrigation district must agree to relieve the water-sewer district of responsibility for maintenance and repair of the system. Any such water-sewer district is authorized to make such a conveyance if all indebtedness of the water-sewer district, except local improvement district bonds, has been paid and the conveyance has been approved by a majority of the water-sewer district's voters voting at a general or special election.

(9) To approve and condition placement of hydroelectric generation facilities by entities other than the district on water conveyance facilities operated or maintained by the district.

This section shall not be construed as in any manner abridging any other powers of an irrigation district conferred by law. [2017 c 63 § 1; 2014 c 2 § 6; 1999 c 153 § 74; 1979 ex.s. c 185 § 2; 1967 c 206 § 1; 1965 c 141 § 1; 1943 c 57 § 1; 1941 c 143 § 1; 1933 c 31 § 1; 1923 c 138 § 2, part; RRS § 7417-2. Formerly RCW 87.01.210, part.]

District bond elections: RCW 87.03.200.

Heating systems authorized: RCW 35.97.020.

Prerequisite to furnishing water or power outside of district: RCW 87.03.115.

Additional notes found at www.leg.wa.gov

87.03.0155 Contract and formation powers. (1) An irrigation district may enter into any contract or agreement with, or form a separate legal entity with, one or more of the entities or utilities specified in subsection (3) of this section for any of the following purposes:

- (a) Purchasing and selling electric power;
 - (b) Developing or owning, or both, electric power generating or transmitting facilities, or both, including, but not limited to, facilities for generating or transmitting electric power generated by water, wind, solar power, thermal power, or batteries; and
 - (c) Developing or owning, or both, water storage, pumping, and transmission facilities.
- (2) The contract or agreement may provide:
- (a) For purchasing the capability of a project to produce or transmit electric power, in addition to actual output of a project;
 - (b) For making payments whether or not a project is completed, operative, or operating, and notwithstanding the suspension, interruption, interference, reduction, or curtailment of output or use of a project or the use, power, and energy contracted for or agreed to;
 - (c) That payments are not subject to reduction, whether by offset or otherwise; and
 - (d) That performance is not conditioned upon performance or nonperformance of any party or entity.

(3) Pursuant to authority granted under this section, irrigation districts may contract or enter into agreements with one or more:

- (a) Agencies of the United States government;
- (b) States;
- (c) Municipalities;
- (d) Public utility districts;
- (e) Irrigation districts;
- (f) Joint operating agencies;
- (g) Rural electric cooperatives;
- (h) Mutual corporations or associations;
- (i) Investor-owned utilities;
- (j) Private commercial or industrial entities that construct or operate electric power generation or transmission facilities;
- (k) Private commercial or industrial entities that acquire electric power for their own use or resale; or
- (l) Associations or legal entities composed of any such entities or utilities.

(4) If an irrigation district enters into a contract or agreement under this section to create a legal entity or undertaking with an investor-owned utility or a private commercial or industrial entity, that contract or agreement must provide that the irrigation district be severally liable only for its own acts and not jointly or severally liable for the acts, omissions, or obligations of an investor-owned utility or a private commercial or industrial entity. No money or property supplied by any irrigation district for the planning, financing, acquisition, construction, operation, or maintenance of any common facility may be credited or otherwise applied to the account of any investor-owned utility or private commercial or industrial entity therein, nor may the undivided share of any irrigation district in any common facility be charged, directly or indirectly, with any debt or obligation of any investor-owned utility or private commercial or industrial entity or be subject

to any lien as a result thereof. No action in connection with a common facility may be binding upon any irrigation district unless authorized or approved by resolution of its board.

(5) This section may not be construed in any manner that abridges any other powers of an irrigation district conferred by law. [2017 c 63 § 2; 2009 c 145 § 4.]

87.03.115 Organization of board—Meetings—Quorum—Certain powers and duties. (1) The directors of the district shall organize as a board and shall elect a president from their number, and appoint a secretary, who shall keep a record of their proceedings.

(2) The office of the directors and principal place of business of the district shall be at some place in the county in which the organization was effected, to be designated by the directors.

(3) The directors serving districts of five thousand acres or more shall hold a regular monthly meeting at their office on the first Tuesday in every month, or on such other day in each month as the board shall direct in its bylaws, and may adjourn any meeting from time to time as may be required for the proper transaction of business.

(4) Directors serving districts of less than five thousand acres shall hold at least quarterly meetings on a day designated by the board's bylaws, and may adjourn any meeting from time to time as may be required for the proper transaction of business.

(5) Special meetings shall be called and conducted in the manner required by chapter 42.30 RCW.

(6) All meetings of the directors must be public.

(7) A majority of the directors shall constitute a quorum for the transaction of business, and in all matters requiring action by the board there shall be a concurrence of at least a majority of the directors.

(8) All records of the board shall be open to the inspection of any electors during business hours.

(9) The board shall have the power, and it shall be its duty, to adopt a seal of the district, to manage and conduct the business and affairs of the district, to make and execute all necessary contracts, to employ and appoint such agents, officers, and employees as may be necessary and prescribe their duties, and to establish equitable bylaws, rules, and regulations for the government and management of the district, and for the equitable distribution of water to the lands within the district, upon the basis of the beneficial use thereof, and generally to perform all such acts as shall be necessary to fully carry out the provisions of this chapter: PROVIDED, That all water, the right to the use of which is acquired by the district under any contract with the United States shall be distributed and apportioned by the district in accordance with the acts of congress, and rules and regulations of the secretary of the interior until full reimbursement has been made to the United States, and in accordance with the provisions of said contract in relation thereto.

(10) The bylaws, rules, and regulations must be on file and open to inspection of any elector during regular business hours.

(11) All leases, contracts, or other form of holding any interest in any state or other public lands shall be, and the same are hereby declared to be title to and evidence of title to lands and for all purposes within *this act, shall be treated as

the private property of the lessee or owner of the contractual or possessory interest: PROVIDED, That nothing in this section shall be construed to affect the title of the state or other public ownership, nor shall any lien for such assessment attach to the fee simple title of the state or other public ownership.

(12) The board of directors shall have authority to develop and to sell, lease, or rent the use of: (a) Water facilities and water derived from the operation of the water facilities to such municipal and quasi-municipal entities, the state of Washington, and state entities and agencies, and public and private corporations and individuals located within and outside the boundaries of the district, and on such terms and conditions as the board of directors shall determine; (b) electric facilities and power derived from electric facilities authorized by RCW 87.03.015 or 87.03.0155, to such municipal or quasi-municipal corporations and cooperatives authorized to engage in the business of distributing electricity, electrical companies subject to the jurisdiction of the utilities and transportation commission, private commercial or industrial entities that acquire electric power for their own use or resale, and other irrigation districts, and on such terms and conditions as the board of directors shall determine; and (c) power derived from electric facilities authorized by RCW 87.03.015 or 87.03.0155 on such terms and conditions as the board of directors shall determine. No water shall be furnished for use outside of said district until all demands and requirements for water for use in said district are furnished and supplied by said district. As soon as any public lands situated within the limits of the district shall be acquired by any private person, or held under any title of private ownership, the owner thereof shall be entitled to receive his or her proportion of water as in case of other land owners, upon payment by him or her of such sums as shall be determined by the board, and at the time to be fixed by the board, which sums shall be such equitable amount as such lands should pay having regard to placing said lands on the basis of equality with other lands in the district as to benefits received, and giving credit if equitable for any sums paid as water rent by the occupant of said lands prior to the vesting of private ownership, and such lands shall also become subject to all taxes and assessments of the district thereafter imposed. [2017 c 63 § 3; 2013 c 23 § 492; 1983 c 262 § 1; 1979 ex.s. c 185 § 3; 1921 c 129 § 5; 1919 c 180 § 4; 1915 c 179 § 4; 1913 c 165 § 5; 1889-90 p 677 § 11; RRS § 7428. Formerly RCW 87.01.200 and 87.32.010, part.]

*Reviser's note: "This act" first appears in 1921 c 129 § 5.

Director divisions: Chapter 87.04 RCW.

Additional notes found at www.leg.wa.gov

87.03.240 Assessments, how and when made—Assessment roll. (1) Assessments made in order to carry out the purpose of this act shall be made in proportion to the benefits accruing to the lands assessed and equitable credit shall be given to the lands having a partial or full water right: PROVIDED, That nothing herein shall be construed to affect or impair the obligation of any existing contract providing for a water supply to lands so assessed, unless the right under such contract shall first have been acquired by said district, and in acquiring such rights, the district may exercise the right of eminent domain.

(2) The secretary must between the first Monday in March and the first Tuesday in November each year prepare an assessment roll with appropriate headings in which must be listed all the lands within the district. In such book must be specified, in separate columns, under the appropriate headings:

(a) First, the name of the person to whom the property is assessed. If the name is not known to the secretary, the property shall be assessed to "unknown owners."

(b)(i) Second, land by township, range and section or fractional section, and when such land is not a legal subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, city and town lots, naming the city or town, and the number and block according to the system of numbering in such city or town.

(ii) Assessors' plat tax numbers used by county assessors for general state and county taxes in the county where such land is situate may be used for such identification in such assessment roll.

(c) Third, in further columns with appropriate headings shall be specified the ratio of benefits, or, when deemed by the secretary more practicable, the per acre value, or the amount of benefits, for general and special district and local improvement district purposes, and the total amount assessed against each tract of land.

(3) Any property which may have escaped assessment for any year or years, shall in addition to the assessment for the then current year, be assessed for such year or years with the same effect and with the same penalties as are provided for such current year and any property delinquent in any year may be directly assessed during the current year for any expenses caused the district on account of such delinquency.

(4) Where the district embraces lands lying in more than one county the assessment roll shall be so arranged that the lands lying in each county shall be segregated and grouped according to the county in which the same are situated. [2017 c 321 § 1; 1933 c 43 § 3; 1921 c 129 § 11; 1919 c 180 § 7; 1917 c 162 § 4; 1915 c 179 § 10; 1913 c 165 § 9; 1895 c 165 § 8; 1889-90 p 681 § 18; RRS § 7436. Formerly RCW 87.32.010, part and 87.32.020.]

Assessments

districts under contract with United States: Chapter 87.68 RCW. when delinquent—Notice—Collection: RCW 87.03.270.

Certain excess lands, assessments against (director districts): RCW 87.04.100.

Director districts—Limit of levy until water is received (federal contracts): RCW 87.04.090.

District elections (assessment roll): RCW 87.03.040.

Eminent domain: RCW 87.03.140 through 87.03.150.

Evidence of assessment, what is: RCW 87.03.420.

87.03.445 Acquisition, construction, and operating funds—Tolls and assessments, alternative methods of—Liens, foreclosure of—Delinquencies by tenants. (1) The cost and expense of purchasing and acquiring property, and construction, reconstruction, extension, and betterment of the works and improvements herein provided for, and the expenses incidental thereto, and indebtedness to the United States for district lands assumed by the district, and for the carrying out of the purposes of this chapter, may be paid for

by the board of directors out of the funds received from bond sales as well as other district funds.

(2) For the purpose of defraying the costs and expenses of the organization of the district, and of the care, operation, management, maintenance, repair, and improvement of the district and its irrigation water, domestic water, electric power, drainage, or sewer facilities or of any portion thereof, or for the payment of any indebtedness due the United States or the state of Washington, or for the payment of district bonds, the board may either fix reasonable rates or tolls and charges, and collect the same from all persons for whom district service is made available for irrigation water, domestic water, electric power, drainage or sewerage, and other purposes, or it may provide for the payment of said costs and expenses by a levy of assessment therefor, or by both said rates or tolls and charges and assessment.

(3) If the assessment method is utilized, the levy of assessments shall be made on the completion and equalization of the assessment roll each year, and the board shall have the same powers and functions for the purpose of said levy as possessed by it in case of levy to pay bonds of the district. The procedure for the collection of assessments by such levy shall in all respects conform with the provisions of this chapter, relating to the collection of assessments for the payment of principal and interest of bonds herein provided for, and shall be made at the same time.

(4) If the rates or tolls and charges method is adopted in whole or in part, the secretary shall deliver to the board of directors, within the time for filing the assessment roll, a schedule containing the names of the owners or reputed owners, as shown on the rolls of the county treasurer as of the first Tuesday in November of each year such a schedule is filed of the various parcels of land against which rates or tolls and charges are to be levied, the description of each such parcel of land and the amount to be charged against each parcel for irrigation water, domestic water, electric power, drainage, sewerage, and other district costs and expenses. Said schedule of rates or tolls and charges shall be equalized pursuant to the same notice, in the same manner, at the same time and with the same legal effect as in the case of assessments. Such schedule of rates or tolls and charges for a given year shall be filed with the proper county treasurer within the same time as that provided by law for the filing of the annual assessment roll, and the county treasurer shall collect and receipt for the payment of said rates or tolls and charges and credit them to the proper funds of the district. The board may designate the time and manner of making such collections and shall require the same to be paid in advance of delivery of water and other service. For the purposes of collection and enforcement, all tolls and charges levied shall also at once become and constitute an assessment upon and against the lands for which they are levied, with the same force and effect, and the same manner of enforcement, and with the same rate of interest from date of delinquency, in case of nonpayment, as other district assessments. Any tolls and charges constituting an assessment for collection and enforcement purposes under this section are not subject to the provisions of RCW 87.03.240(1).

(5) As an alternative method of imposing, collecting, and enforcing such rates or tolls and charges, the board may also base such rates or tolls and charges upon the quantity of irrigation water, domestic water, or electric power delivered, or

drainage or sewage disposed of, and may fix a minimum rate or toll and charge to be paid by each parcel of land or use within the district for the delivery or disposal of a stated quantity of each such service with a graduated charge for additional quantities of such services delivered or disposed of. If the board elects to utilize this alternative method of imposing, collecting, and enforcing such rates or tolls and charges, there shall be no requirement that the schedule referred to in the preceding paragraph be prepared, be filed with the board of directors by the secretary, be equalized, or be filed with a county treasurer. The board shall enforce collection of such rates or tolls and charges against property to which and its owners to whom the service is available, such rates or tolls and charges being deemed charges and a lien against the property to which the service is available, until paid in full. Prior to furnishing services, a board may require a deposit to guarantee payment for services. However, failure to require a deposit does not affect the validity of any lien authorized by this section.

(6) The board may provide by resolution that where such rates or tolls and charges are delinquent for any specified period of time, the district shall certify the delinquencies to the treasurer of the county in which the real property is located, and the charges and any penalties added thereto and interest thereon at the rate not to exceed twelve percent per annum fixed by resolution shall be a lien against the property to which the service was available, subject only to the lien for general taxes. The district may, at any time after such rates or tolls and charges and penalties provided for herein are delinquent for a period of one year, bring suit in foreclosure by civil action in the superior court of the county in which the real property is situated.

(7) A board may determine how to apply partial payments on past due accounts.

(8) A board may provide a real property owner or the owner's designee with duplicate bills for service to tenants, or may notify an owner or the owner's designee that a tenant's service account is delinquent. However, if an owner or the owner's designee notifies the board in writing that a property served by the board is a rental property, asks to be notified of a tenant's delinquency, and has provided, in writing, a complete and accurate mailing address, the board shall notify the owner or the owner's designee of a tenant's delinquency at the same time and in the same manner the board notifies the tenant of the tenant's delinquency or by mail. When a district provides a real property owner or the owner's designee with duplicates of tenant utility service bills or notice that a tenant's utility account is delinquent, the district shall notify the tenant that it is providing the duplicate bills or delinquency notice to the owner or the owner's designee. After January 1, 1999, if a board fails to notify the owner of a tenant's delinquency after receiving a written request to do so and after receiving the other information required by this subsection (8), the board shall have no lien against the premises for the tenant's delinquent and unpaid charges.

(9) The court may allow, in addition to the costs and disbursements provided by statute, such attorneys' fees as it may adjudge reasonable. The action shall be in rem against the property, and in addition may be brought in the name of the district against an individual, or against all of those who are delinquent, in one action, and the rules of the court shall con-

trol as in other civil actions. The board may in the same year use the assessment method for part of the lands in the district and the rates or tolls and charges method for the remaining lands in the district in such proportion as it may deem advisable for the best interest of the district.

(10) The procedures herein provided for the collection and enforcement of rates, tolls, and charges also shall be applicable and available to the districts board of directors for the collection and enforcement of charges for water imposed by contract entered into or administered by the district's board of directors. [2017 c 321 § 2; 2001 c 149 § 4; 1998 c 285 § 3; 1979 ex.s. c 185 § 5; 1939 c 171 § 7; 1931 c 60 § 5; 1929 c 185 § 4; 1915 c 179 § 18; 1913 c 165 § 20; 1889-90 p 690 § 37; RRS § 7454. Formerly RCW 87.08.060.]

Assessments, when delinquent—Notice—Collection—Additional fee for delinquency: RCW 87.03.270.

Board's powers and duties generally—Condemnation procedure: RCW 87.03.140.

Bonds—Election for—Form and contents—Facsimile signatures, when, procedure—Exchange—Cancellation—Sale and issue—Reissue—Election concerning contract with United States—Penalty: RCW 87.03.200.

Equalization of assessments: RCW 87.03.255.

Levies, amount—Special funds—Failure to make levy, procedure: RCW 87.03.260.

Lien of assessments: RCW 87.03.265.

Payment of bonds and interest, other indebtedness—Lien, enforcement of—Scope of section: RCW 87.03.215.

Property taxes—Listing of property: Chapter 84.40 RCW.

Sale or pledge of bonds: RCW 87.03.210.

Additional notes found at www.leg.wa.gov

87.03.565 Adding lands to district—Notice—Contents—Service. The secretary of the board of directors shall cause a notice of the filing of such petition to be published in the same manner and for the same time that notice of special elections for the issue of bonds are required by this chapter to be given. The notice shall state the filing of such petition and the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petition, and it shall notify all persons interested in or that may be affected by such change of the boundaries of the district to appear at the office of said board at a time named in said notice, and show cause in writing, if any they have, why the change in the boundaries of said district, as proposed in said petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioners shall advance to the secretary sufficient money to pay the estimated costs of all proceedings under this chapter, however should the board of directors determine that the annexation would be of benefit to the irrigation district as a whole, the board of directors may waive payment and deposits in whole or in part for the cost of the annexation proceedings. [2017 c 321 § 3; 1963 c 68 § 3; 1921 c 129 § 33; 1889-90 p 695 § 49; RRS § 7476. Formerly RCW 87.44.030.]

Notice of special elections for the issue of bonds: RCW 87.03.200.

Official paper for publication: RCW 87.03.020.

87.03.820 Disposal of real property—Right of adjacent owners. Whenever as the result of abandonment of an irrigation district right-of-way real property held by an irrigation district is to be sold or otherwise disposed of, notice shall be given to the owners of lands adjoining that real property and such owners shall have a right of first refusal to purchase at the appraised price all or any part of the real property to be sold or otherwise disposed of which adjoins or is adjacent to their land.

Real property to be sold or otherwise disposed of under this section shall have been first appraised by the county assessor or by a person designated by him or her.

Notice under this section shall be sufficient if sent by registered mail to the owner, and at the address, as shown in the tax records of the county in which the land is situated. Notice under this section shall be in addition to any other notice required by law.

After sixty days from the date of sending of notice, if no applications for purchase have been received by the irrigation district or other person or entity sending notice, the rights of first refusal of owners of adjoining lands shall be deemed to have been waived, and the real property may be sold or otherwise disposed of. When no applications for purchase have been received, if the irrigation district board of directors determines that due to the configuration of the abandoned right-of-way, or other facts, it appears unlikely that the property, or a portion of the property, can be sold for the appraised price, and the property is considered a burden to the irrigation district, the real property may be sold at a negotiated price, including a transfer for no payment, without further publication or notice to all adjoining owners.

If two or more owners of adjoining lands apply to purchase the same real property, or apply to purchase overlapping parts of the real property, the respective rights of the applicants may be determined in the superior court of the county in which the real property is situated; and the court may divide the real property in question between some or all of the applicants or award the whole to one applicant, as justice may require.

Any sale or other disposal of real property pursuant to chapters 87.52, 87.53, and 87.56 RCW shall be made in accordance with the requirements of this section. [2017 c 321 § 4; 2013 c 23 § 510; 1973 c 150 § 1; 1971 ex.s. c 125 § 2.]

Title 88

NAVIGATION AND HARBOR IMPROVEMENTS

Chapters

- 88.02** Vessel registration.
88.16 Pilotage act.

Chapter 88.02 RCW

VESSEL REGISTRATION

Sections

- 88.02.375 Ten-day notice—Owner name or address change or destruction, loss, etc. of vessel or registration certificate.
 88.02.620 Nonresident vessel permit. (*Effective until July 1, 2026.*)
 88.02.620 Nonresident vessel permit. (*Effective July 1, 2026.*)
 88.02.640 Fees by type—Disposition, distribution. (*Effective until July 1, 2019.*)

88.02.640 Fees by type—Disposition, distribution. (*Effective July 1, 2019, until January 1, 2026.*)

88.02.640 Fees by type—Disposition, distribution. (*Effective January 1, 2026.*)

88.02.375 Ten-day notice—Owner name or address change or destruction, loss, etc. of vessel or registration certificate. A vessel owner shall notify the department within ten days of any of the following:

- (1) A change of name or address of the owner, as provided in RCW 46.08.195;
- (2) Destruction, loss, abandonment, theft, or recovery of the vessel; or
- (3) Loss or destruction of a valid registration certificate issued for the vessel. [2017 c 147 § 11; 2010 c 161 § 1013.]

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.620 Nonresident vessel permit. (*Effective until July 1, 2026.*) (1) A vessel owner who is a nonresident person must obtain a nonresident vessel permit on or before the sixty-first day of use in Washington state if the vessel:

- (a) Is currently registered or numbered under the laws of the state of principal operation or has been issued a valid number under federal law; and
- (b) Has been brought into Washington state for personal use for not more than six months in any continuous twelve-month period.

(2) In addition to the requirements in subsection (1) of this section, a nonresident vessel owner that is not a natural person may only obtain a nonresident vessel permit if:

- (a) The vessel is at least thirty feet in length, but no more than one hundred sixty-four feet in length;
- (b) No Washington state resident is a principal, as defined in RCW 82.32.865, of the nonresident person; and
- (c) The department of revenue has provided the nonresident vessel owner written approval authorizing the permit as provided in RCW 82.32.865.

(3) A nonresident vessel permit:

- (a) May be obtained from the department, county auditor or other agent, or subagent appointed by the director;
- (b) Must show the date the vessel first came into Washington state;
- (c) Is valid for two months; and
- (d) May not be issued after December 31, 2025, to a nonresident vessel owner that is not a natural person.

(4) The department, county auditor or other agent, or subagent appointed by the director must collect the fee required in RCW 88.02.640(1)(i) when issuing nonresident vessel permits.

(5) A nonresident vessel permit is not required under this section if the vessel is used in conducting temporary business activity within Washington state.

(6) For any permits issued under this section to a nonresident vessel owner that is not a natural person, the department must maintain a record of the following information and provide it to the department of revenue quarterly or as otherwise mutually agreed to by the department and department of revenue:

- (a) The name of the record owner of the vessel;
- (b) The vessel's hull identification number;

- (c) The amount of the fee paid under RCW 88.02.640(5);
- (d) The date the vessel first entered the waters of this state;
- (e) The expiration date for the permit; and
- (f) Any other information mutually agreed to by the department and department of revenue.

(7) The department must adopt rules to implement this section, including rules on issuing and displaying the nonresident vessel permit. [2015 3rd sp.s. c 6 § 802; 2011 c 171 § 133; 2010 c 161 § 1027.]

Expiration date—2017 c 323; 2015 3rd sp.s. c 6 §§ 802-805: "(1) Sections 802 and 804, chapter 6, Laws of 2015 3rd sp. sess. expire July 1, 2026;

(2) Section 803, chapter 6, Laws of 2015 3rd sp. sess. expires January 1, 2026; and

(3) Section 805, chapter 6, Laws of 2015 3rd sp. sess. expires January 1, 2031." [2017 c 323 § 302; 2015 3rd sp.s. c 6 § 2303.]

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Findings—Intent—Tax preference performance statement—2017 c 323; 2015 3rd sp.s. c 6 §§ 802-805: See note following RCW 88.02.640.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.620 Nonresident vessel permit. (Effective July 1, 2026.) (1) A vessel owner who is a nonresident natural person shall apply for a nonresident vessel permit on or before the sixty-first day of use in Washington state if the vessel:

- (a) Is currently registered or numbered under the laws of the state of principal operation or has been issued a valid number under federal law; and

(b) Has been brought into Washington state for personal use for not more than six months in any continuous twelve-month period.

(2) A nonresident vessel permit:

(a) May be obtained from the department, county auditor or other agent, or subagent appointed by the director;

(b) Must show the date the vessel first came into Washington state; and

(c) Is valid for two months.

(3) The department, county auditor or other agent, or subagent appointed by the director shall collect the fee required in *RCW 88.02.640(1)(h) when issuing nonresident vessel permits.

(4) A nonresident vessel permit is not required under this section if the vessel is used in conducting temporary business activity within Washington state.

(5) The department shall adopt rules to implement this section, including rules on issuing and displaying the nonresident vessel permit. [2011 c 171 § 133; 2010 c 161 § 1027.]

***Reviser's note:** RCW 88.02.640 was amended by 2012 c 74 § 16, changing subsection (1)(h) to subsection (1)(i).

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.640 Fees by type—Disposition, distribution. (Effective until July 1, 2019.) (1) In addition to any other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director must charge the following vessel fees and surcharge:

FEE	AMOUNT	AUTHORITY	DISTRIBUTION
(a) Dealer temporary permit	\$5.00	RCW 88.02.800(2)	General fund
(b) Derelict vessel and invasive species removal	Subsection (3) of this section	Subsection (3) of this section	Subsection (3) of this section
(c) Derelict vessel removal surcharge	\$1.00	Subsection (4) of this section	Subsection (4) of this section
(d) Duplicate certificate of title	\$1.25	RCW 88.02.530(1)(c)	General fund
(e) Duplicate registration	\$1.25	RCW 88.02.590(1)(c)	General fund
(f) Filing	RCW 46.17.005	RCW 88.02.560(2)	RCW 46.68.400
(g) License plate technology	RCW 46.17.015	RCW 88.02.560(2)	RCW 46.68.370
(h) License service	RCW 46.17.025	RCW 88.02.560(2)	RCW 46.68.220
(i) Nonresident vessel permit	Subsection (5) of this section	RCW 88.02.620(4)	Subsection (5) of this section
(j) Quick title service	\$50.00	RCW 88.02.540(3)	Subsection (7) of this section
(k) Registration	\$10.50	RCW 88.02.560(2)	RCW 88.02.650
(l) Replacement decal	\$1.25	RCW 88.02.595(1)(c)	General fund
(m) Service fee	RCW 46.17.040	RCW 88.02.515 and 88.02.560(2)	RCW 46.17.040
(n) Title application	\$5.00	RCW 88.02.515	General fund
(o) Transfer	\$1.00	RCW 88.02.560(7)	General fund
(p) Vessel visitor permit	\$30.00	RCW 88.02.610(3)	Subsection (6) of this section

(2) The five dollar dealer temporary permit fee required in subsection (1) of this section must be credited to the payment of registration fees at the time application for registration is made.

(3) The derelict vessel and invasive species removal fee required in subsection (1) of this section is five dollars and must be distributed as follows:

(a) Two dollars must be deposited in the aquatic invasive species management account created in RCW 77.135.200;

(b) One dollar must be deposited into the aquatic algae control account created in RCW 43.21A.667; and

(c) Two dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100.

(4) In addition to other fees required in this section, an annual derelict vessel removal surcharge of one dollar must be charged with each vessel registration. The surcharge is to address the significant backlog of derelict vessels accumulated in Washington waters that pose a threat to the health and safety of the people and to the environment and must be deposited into the derelict vessel removal account created in RCW 79.100.100.

(5)(a) The amount of the nonresident vessel permit fee is:

(i) For a vessel owned by a nonresident natural person, twenty-five dollars; and

(ii) For a nonresident vessel owner that is not a natural person, the fee is equal to:

(A) Twenty-five dollars per foot for vessels between thirty and ninety-nine feet in length;

(B) Thirty dollars per foot for vessels between one hundred and one hundred twenty feet in length; and

(C) Thirty-seven dollars and fifty cents per foot for vessels between one hundred twenty-one and one hundred sixty-four feet in length. The fee must be multiplied by the extreme length of the vessel in feet, rounded up to the nearest whole foot.

(b) The fee must be paid by the vessel owner to the department. Any moneys remaining from the fee after the payment of costs to administer the permit must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.650.

(c) A nonresident vessel owner that is not a natural person may not obtain more than two nonresident vessel permits under RCW 88.02.620 within any thirty-six month period.

(6) The thirty dollar vessel visitor permit fee must be distributed as follows:

(a) Five dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100;

(b) The department may keep an amount to cover costs for providing the vessel visitor permit;

(c) Any moneys remaining must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.650; and

(d) Any fees required for licensing agents under RCW 46.17.005 are in addition to any other fee or tax due for the titling and registration of vessels.

(7)(a) The fifty dollar quick title service fee must be distributed as follows:

(i) If the fee is paid to the director, the fee must be deposited to the general fund.

mittee must provide the following in a published evaluation of this tax pref-

(ii) If the fee is paid to the participating county auditor or other agent appointed by the director, twenty-five dollars must be deposited to the general fund. The remainder must be retained by the county treasurer in the same manner as other fees collected by the county auditor.

(iii) If the fee is paid to a subagent appointed by the director, twenty-five dollars must be deposited to the general fund. The remaining twenty-five dollars must be distributed as follows: Twelve dollars and fifty cents must be retained by the county treasurer in the same manner as other fees collected by the county auditor and twelve dollars and fifty cents must be retained by the subagent.

(b) For the purposes of this subsection, "quick title" has the same meaning as in RCW 88.02.540.

(8) The department, county auditor or other agent, or subagent appointed by the director shall charge the service fee under subsection (1)(m) of this section beginning January 1, 2016. [2017 3rd sp.s. c 17 § 103. Prior: 2015 3rd sp.s. c 44 § 216; 2015 3rd sp.s. c 6 § 803; 2015 2nd sp.s. c 1 § 2; 2013 c 291 § 1; 2012 c 74 § 16; prior: 2011 c 326 § 5; 2011 c 171 § 134; 2011 c 169 § 1; 2010 c 161 § 1028.]

Expiration date—2017 3rd sp.s. c 17 § 103: "Section 103 of this act expires July 1, 2019." [2017 3rd sp.s. c 17 § 310.]

Findings—Intent—Tax preference performance statement—2017 c 323; 2015 3rd sp.s. c 6 §§ 802-805: "(1)(a) The legislature finds that a robust maritime industry is crucial for the state's economic vitality. The legislature further finds that:

(i) The joint task force for economic resilience of maritime and manufacturing established policy goals to continue efforts towards developing a robust maritime industry in the state;

(ii) The maritime industry has a direct and indirect impact on jobs in the state;

(iii) Many of the cities and towns impacted by the maritime industry are often small with limited resources to encourage economic growth, heavily relying on the maritime industry for local jobs and revenues in the community;

(iv) Keeping Washington competitive with other cruising destinations is essential to continue to build a robust maritime economy in the state; and

(v) Tax incentives are an imperative component to improve the state's overall competitiveness in this sector.

(b) Therefore, the legislature intends to:

(i) Bolster the maritime industry in the state by incentivizing larger vessel owners to use Washington waters for recreational boating to increase economic activity and jobs in coastal communities and inland water regions of the state;

(ii) Achieve this objective in a fiscally responsible manner and require analysis of specific metrics to ensure valuable state resources are being used to accomplish the intended goal; and

(iii) Provide limited, short-term tax relief to entity-owned nonresident vessel owners that currently are not afforded the same benefits as other nonresident vessel owners.

(2)(a) This subsection is the tax preference performance statement for the entity-owned nonresident vessel tax preference established in section 803 of this act. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes this tax preference as one intended to accomplish the purposes indicated in RCW 82.32.808(2)(c) and one intended to improve the state's competitiveness with other nearby cruising destinations.

(c) It is the legislature's specific public policy objective to increase economic activity and jobs related to the maritime industry by providing a tax preference for large entity-owned nonresident vessels to increase the length of time these vessels cruise Washington waters in turn strengthening the maritime economy in the state.

(d) To measure the effectiveness of the tax preference provided in part VIII, chapter 6, Laws of 2015 3rd sp. sess. in achieving the public policy objective in (c) of this subsection, the joint legislative audit and review commencing by December 31, 2024:

(i) A comparison of the gross and taxable revenue generated by businesses that sell or provide maintenance or repair of vessels, prior to and after the enactment of this tax preference;

(ii) Analysis of retail sales taxes collected from the restaurant and service industries in coastal and inlet coastal jurisdictions, for both counties and cities, for periods prior to and after the enactment of this tax preference;

(iii) Employment and wage trends for businesses described in (d)(i) and (ii) of this subsection, for periods prior to and after the enactment of this tax preference;

(iv) Descriptive statistics for the number of permits sold each year in addition to the following information:

(A) The cost for each permit by strata of vessel length;

(B) The jurisdiction of ownership for the nonresident vessel; and

(C) The amount of use tax that would have been due based on the estimated value of the vessel;

(v) A comparison of the number of registered entity-owned and individually owned vessels registered in Washington prior to and after the enactment of this tax preference; and

(vi) Data and analysis for Washington's main cruising destination competitors, specifically looking at tax preferences provided in those jurisdictions, vessel industry income data, and any additional relevant information to compare Washington's maritime climate with its competitors.

(e) The provision of RCW 82.32.808(5) does not apply to this tax preference." [2017 c 323 § 303; 2015 3rd sp.s. c 6 § 801.]

Expiration date—2017 c 323; 2015 3rd sp.s. c 6 §§ 802-805: See note following RCW 88.02.620.

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

Effective date—2015 2nd sp.s. c 1: See note following RCW 46.68.025.

Application—Effective date—2011 c 326: See notes following RCW 46.12.555.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

88.02.640 Fees by type—Disposition, distribution. (Effective July 1, 2019, until January 1, 2026.) (1) In addition to any other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director must charge the following vessel fees and surcharge:

FEE	AMOUNT	AUTHORITY	DISTRIBUTION
(a) Dealer temporary permit	\$5.00	RCW 88.02.800(2)	General fund
(b) Derelict vessel and invasive species removal	Subsection (3) of this section	Subsection (3) of this section	Subsection (3) of this section
(c) Derelict vessel removal surcharge	\$1.00	Subsection (4) of this section	Subsection (4) of this section
(d) Duplicate certificate of title	\$1.25	RCW 88.02.530(1)(c)	General fund
(e) Duplicate registration	\$1.25	RCW 88.02.590(1)(c)	General fund
(f) Filing	RCW 46.17.005	RCW 88.02.560(2)	RCW 46.68.400
(g) License plate technology	RCW 46.17.015	RCW 88.02.560(2)	RCW 46.68.370
(h) License service	RCW 46.17.025	RCW 88.02.560(2)	RCW 46.68.220
(i) Nonresident vessel permit	Subsection (5) of this section	RCW 88.02.620(4)	Subsection (5) of this section
(j) Quick title service	\$50.00	RCW 88.02.540(3)	Subsection (7) of this section
(k) Registration	\$10.50	RCW 88.02.560(2)	RCW 88.02.650
(l) Replacement decal	\$1.25	RCW 88.02.595(1)(c)	General fund
(m) Service fee	RCW 46.17.040	RCW 88.02.515 and 88.02.560(2)	RCW 46.17.040
(n) Title application	\$5.00	RCW 88.02.515	General fund
(o) Transfer	\$1.00	RCW 88.02.560(7)	General fund
(p) Vessel visitor permit	\$30.00	RCW 88.02.610(3)	Subsection (6) of this section

(2) The five dollar dealer temporary permit fee required in subsection (1) of this section must be credited to the payment of registration fees at the time application for registration is made.

(3) The derelict vessel and invasive species removal fee required in subsection (1) of this section is five dollars and must be distributed as follows:

(a) Two dollars must be deposited in the aquatic invasive species management account created in RCW 77.135.200;

(b) One dollar must be deposited into the aquatic algae control account created in RCW 43.21A.667; and

(c) Two dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100.

(4) In addition to other fees required in this section, an annual derelict vessel removal surcharge of one dollar must be charged with each vessel registration. The surcharge is to address the significant backlog of derelict vessels accumulated in Washington waters that pose a threat to the health and safety of the people and to the environment and must be deposited into the derelict vessel removal account created in RCW 79.100.100.

(5)(a) The amount of the nonresident vessel permit fee is:

(i) For a vessel owned by a nonresident natural person, twenty-five dollars; and

(ii) For a nonresident vessel owner that is not a natural person, the fee is equal to:

(A) Twenty-five dollars per foot for vessels between thirty and ninety-nine feet in length;

(B) Thirty dollars per foot for vessels between one hundred and one hundred twenty feet in length; and

(C) Thirty-seven dollars and fifty cents per foot for vessels between one hundred twenty-one and one hundred sixty-four feet in length. The fee must be multiplied by the extreme length of the vessel in feet, rounded up to the nearest whole foot.

(b) The fee must be paid by the vessel owner to the department. Any moneys remaining from the fee after the payment of costs to administer the permit must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.650.

(c) A nonresident vessel owner that is not a natural person may not obtain more than two nonresident vessel permits under RCW 88.02.620 within any thirty-six month period.

(6) The thirty dollar vessel visitor permit fee must be distributed as follows:

(a) Five dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100;

(b) The department may keep an amount to cover costs for providing the vessel visitor permit;

(c) Any moneys remaining must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.650; and

(d) Any fees required for licensing agents under RCW 46.17.005 are in addition to any other fee or tax due for the titling and registration of vessels.

(7)(a) The fifty dollar quick title service fee must be distributed as follows:

(i) If the fee is paid to the director, the fee must be deposited to the general fund.

(ii) If the fee is paid to the participating county auditor or other agent appointed by the director, twenty-five dollars must be deposited to the general fund. The remainder must be retained by the county treasurer in the same manner as other fees collected by the county auditor.

(iii) If the fee is paid to a subagent appointed by the director, twenty-five dollars must be deposited to the general fund. The remaining twenty-five dollars must be distributed as follows: Twelve dollars and fifty cents must be retained by the county treasurer in the same manner as other fees collected by the county auditor and twelve dollars and fifty cents must be retained by the subagent.

(b) For the purposes of this subsection, "quick title" has the same meaning as in RCW 88.02.540.

(8) The department, county auditor or other agent, or subagent appointed by the director shall charge the service fee under subsection (1)(m) of this section beginning January 1, 2016. [2017 3rd sp.s. c 17 § 104. Prior: 2015 3rd sp.s. c 44 § 216; 2015 3rd sp.s. c 6 § 803; 2015 2nd sp.s. c 1 § 2; 2013 c 291 § 1; 2012 c 74 § 16; prior: 2011 c 326 § 5; 2011 c 171 § 134; 2011 c 169 § 1; 2010 c 161 § 1028.]

Effective date—2017 3rd sp.s. c 17 § 104: "Section 104 of this act takes effect July 1, 2019." [2017 3rd sp.s. c 17 § 311.]

Findings—Intent—Tax preference performance statement—2017 c 323; 2015 3rd sp.s. c 6 §§ 802-805: "(1)(a) The legislature finds that a robust maritime industry is crucial for the state's economic vitality. The legislature further finds that:

Effective date—2015 2nd sp.s. c 1: See note following RCW

(i) The joint task force for economic resilience of maritime and manufacturing established policy goals to continue efforts towards developing a robust maritime industry in the state;

(ii) The maritime industry has a direct and indirect impact on jobs in the state;

(iii) Many of the cities and towns impacted by the maritime industry are often small with limited resources to encourage economic growth, heavily relying on the maritime industry for local jobs and revenues in the community;

(iv) Keeping Washington competitive with other cruising destinations is essential to continue to build a robust maritime economy in the state; and

(v) Tax incentives are an imperative component to improve the state's overall competitiveness in this sector.

(b) Therefore, the legislature intends to:

(i) Bolster the maritime industry in the state by incentivizing larger vessel owners to use Washington waters for recreational boating to increase economic activity and jobs in coastal communities and inland water regions of the state;

(ii) Achieve this objective in a fiscally responsible manner and require analysis of specific metrics to ensure valuable state resources are being used to accomplish the intended goal; and

(iii) Provide limited, short-term tax relief to entity-owned nonresident vessel owners that currently are not afforded the same benefits as other nonresident vessel owners.

(2)(a) This subsection is the tax preference performance statement for the entity-owned nonresident vessel tax preference established in section 803 of this act. The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(b) The legislature categorizes this tax preference as one intended to accomplish the purposes indicated in RCW 82.32.808(2)(c) and one intended to improve the state's competitiveness with other nearby cruising destinations.

(c) It is the legislature's specific public policy objective to increase economic activity and jobs related to the maritime industry by providing a tax preference for large entity-owned nonresident vessels to increase the length of time these vessels cruise Washington waters in turn strengthening the maritime economy in the state.

(d) To measure the effectiveness of the tax preference provided in part VIII, chapter 6, Laws of 2015 3rd sp. sess. in achieving the public policy objective in (c) of this subsection, the joint legislative audit and review committee must provide the following in a published evaluation of this tax preference by December 31, 2024:

(i) A comparison of the gross and taxable revenue generated by businesses that sell or provide maintenance or repair of vessels, prior to and after the enactment of this tax preference;

(ii) Analysis of retail sales taxes collected from the restaurant and service industries in coastal and inlet coastal jurisdictions, for both counties and cities, for periods prior to and after the enactment of this tax preference;

(iii) Employment and wage trends for businesses described in (d)(i) and (ii) of this subsection, for periods prior to and after the enactment of this tax preference;

(iv) Descriptive statistics for the number of permits sold each year in addition to the following information:

(A) The cost for each permit by strata of vessel length;

(B) The jurisdiction of ownership for the nonresident vessel; and

(C) The amount of use tax that would have been due based on the estimated value of the vessel;

(v) A comparison of the number of registered entity-owned and individually owned vessels registered in Washington prior to and after the enactment of this tax preference; and

(vi) Data and analysis for Washington's main cruising destination competitors, specifically looking at tax preferences provided in those jurisdictions, vessel industry income data, and any additional relevant information to compare Washington's maritime climate with its competitors.

(e) The provision of RCW 82.32.808(5) does not apply to this tax preference." [2017 c 323 § 303; 2015 3rd sp.s. c 6 § 801.]

Expiration date—2017 c 323; 2015 3rd sp.s. c 6 §§ 802-805: See note following RCW 88.02.620.

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Effective dates—2015 3rd sp.s. c 6: See note following RCW 82.04.4266.

46.68.025.

Application—Effective date—2011 c 326: See notes following RCW 46.12.555.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

FEE	AMOUNT	AUTHORITY	DISTRIBUTION
(a) Dealer temporary permit	\$5.00	RCW 88.02.800(2)	General fund
(b) Derelict vessel and invasive species removal	Subsection (3) of this section	Subsection (3) of this section	Subsection (3) of this section
(c) Derelict vessel removal surcharge	\$1.00	Subsection (4) of this section	Subsection (4) of this section
(d) Duplicate certificate of title	\$1.25	RCW 88.02.530(1)(c)	General fund
(e) Duplicate registration	\$1.25	RCW 88.02.590(1)(c)	General fund
(f) Filing	RCW 46.17.005	RCW 88.02.560(2)	RCW 46.68.400
(g) License plate technology	RCW 46.17.015	RCW 88.02.560(2)	RCW 46.68.370
(h) License service	RCW 46.17.025	RCW 88.02.560(2)	RCW 46.68.220
(i) Nonresident vessel permit	\$25.00	RCW 88.02.620(3)	Subsection (5) of this section
(j) Quick title service	\$50.00	RCW 88.02.540(3)	Subsection (7) of this section
(k) Registration	\$10.50	RCW 88.02.560(2)	RCW 88.02.650
(l) Replacement decal	\$1.25	RCW 88.02.595(1)(c)	General fund
(m) Service fee	RCW 46.17.040	RCW 88.02.515 and 88.02.560(2)	RCW 46.17.040
(n) Title application	\$5.00	RCW 88.02.515	General fund
(o) Transfer	\$1.00	RCW 88.02.560(7)	General fund
(p) Vessel visitor permit	\$30.00	RCW 88.02.610(3)	Subsection (6) of this section

(2) The five dollar dealer temporary permit fee required in subsection (1) of this section must be credited to the payment of registration fees at the time application for registration is made.

(3) The derelict vessel and invasive species removal fee required in subsection (1) of this section is five dollars and must be distributed as follows:

(a) Two dollars must be deposited in the aquatic invasive species management account created in RCW 77.135.200;

(b) One dollar must be deposited into the aquatic algae control account created in RCW 43.21A.667; and

(c) Two dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100.

(4) In addition to other fees required in this section, an annual derelict vessel removal surcharge of one dollar must be charged with each vessel registration. The surcharge is to address the significant backlog of derelict vessels accumulated in Washington waters that pose a threat to the health and safety of the people and to the environment and must be deposited into the derelict vessel removal account created in RCW 79.100.100.

(5) The twenty-five dollar nonresident vessel permit fee must be paid by the vessel owner to the department for the cost of providing the identification document by the department. Any moneys remaining from the fee after the payment of costs must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.650.

88.02.640 Fees by type—Disposition, distribution. (Effective January 1, 2026.) (1) In addition to any other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director shall charge the following vessel fees and surcharge:

(6) The thirty dollar vessel visitor permit fee must be distributed as follows:

(a) Five dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100;

(b) The department may keep an amount to cover costs for providing the vessel visitor permit;

(c) Any moneys remaining must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.650; and

(d) Any fees required for licensing agents under RCW 46.17.005 are in addition to any other fee or tax due for the titling and registration of vessels.

(7)(a) The fifty dollar quick title service fee must be distributed as follows:

(i) If the fee is paid to the director, the fee must be deposited to the general fund.

(ii) If the fee is paid to the participating county auditor or other agent appointed by the director, twenty-five dollars must be deposited to the general fund. The remainder must be retained by the county treasurer in the same manner as other fees collected by the county auditor.

(iii) If the fee is paid to a subagent appointed by the director, twenty-five dollars must be deposited to the general fund. The remaining twenty-five dollars must be distributed as follows: Twelve dollars and fifty cents must be retained by the county treasurer in the same manner as other fees collected by the county auditor and twelve dollars and fifty cents must be retained by the subagent.

(b) For the purposes of this subsection, "quick title" has the same meaning as in RCW 88.02.540.

(8) The department, county auditor or other agent, or subagent appointed by the director shall charge the service fee under subsection (1)(m) of this section beginning January 1, 2016. [2017 3rd sp.s. c 17 § 104. Prior: 2015 3rd sp.s. c 44 § 216; 2015 2nd sp.s. c 1 § 2; 2013 c 291 § 1; 2012 c 74 § 16; prior: 2011 c 326 § 5; 2011 c 171 § 134; 2011 c 169 § 1; 2010 c 161 § 1028.]

Effective date—2017 3rd sp.s. c 17 § 104: "Section 104 of this act takes effect July 1, 2019." [2017 3rd sp.s. c 17 § 311.]

Effective date—2015 3rd sp.s. c 44: See note following RCW 46.68.395.

Effective date—2015 2nd sp.s. c 1: See note following RCW 46.68.025.

Application—Effective date—2011 c 326: See notes following RCW 46.12.555.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Chapter 88.16 RCW PILOTAGE ACT

Sections

88.16.070 Vessels exempted and included under chapter—Fee—Penalty.

88.16.070 Vessels exempted and included under chapter—Fee—Penalty. Every vessel not exempt under this section that operates in the waters of the Puget Sound pilotage district or Grays Harbor pilotage district is subject to compulsory pilotage under this chapter.

(1) A United States vessel on a voyage in which it is operating exclusively on its coastwise endorsement, its fishery endorsement (including catching and processing its own catch outside United States waters and economic zone for delivery in the United States), and/or its recreational (or pleasure) endorsement, and all United States and Canadian vessels engaged exclusively in the coasting trade on the west coast of the continental United States (including Alaska) and/or British Columbia shall be exempt from the provisions of this chapter unless a pilot licensed under this chapter be actually employed, in which case the pilotage rates provided for in this chapter shall apply.

(2) The board may, upon the written petition of any interested party, and upon notice and opportunity for hearing, grant an exemption from the provisions of this chapter to any vessel that the board finds is (a) a small passenger vessel that is not more than one thousand three hundred gross tons (international), does not exceed two hundred feet in overall length, is manned by United States-licensed deck and engine officers appropriate to the size of the vessel with merchant mariner credentials issued by the United States coast guard or Canadian deck and engine officers with Canadian-issued certificates of competency appropriate to the size of the vessel, and is operated exclusively in the waters of the Puget Sound pilotage district and lower British Columbia, or (b) a yacht that is not more than one thousand three hundred gross tons (international) and does not exceed two hundred feet in overall length. Such an exemption shall not be detrimental to the

public interest in regard to safe operation preventing loss of human lives, loss of property, and protecting the marine environment of the state of Washington. Such petition shall set out the general description of the vessel, the contemplated use of same, the proposed area of operation, and the name and address of the vessel's owner. The board shall annually, or at any other time when in the public interest, review any exemptions granted to this specified class of small vessels to insure that each exempted vessel remains in compliance with the original exemption. The board shall have the authority to revoke such exemption where there is not continued compliance with the requirements for exemption. The board shall maintain a file which shall include all petitions for exemption, a roster of vessels granted exemption, and the board's written decisions which shall set forth the findings for grants of exemption. Each applicant for exemption or annual renewal shall pay a fee, payable to the pilotage account. Fees for initial applications and for renewals shall be established by rule, and shall not exceed one thousand five hundred dollars. The board shall report annually to the legislature on such exemptions.

(3) Every vessel not exempt under subsection (1) or (2) of this section shall, while navigating the Puget Sound and Grays Harbor pilotage districts, employ a pilot licensed under the provisions of this chapter and shall be liable for and pay pilotage rates in accordance with the pilotage rates herein established or which may hereafter be established under the provisions of this chapter: PROVIDED, That any vessel inbound to or outbound from Canadian ports is exempt from the provisions of this section, if said vessel actually employs a pilot licensed by the Pacific pilotage authority (the pilot licensing authority for the western district of Canada), and if it is communicating with the vessel traffic system and has appropriate navigational charts, and if said vessel uses only those waters east of the international boundary line which are west of a line which begins at the southwestern edge of Point Roberts then to Alden Point (Patos Island), then to Skipjack Island light, then to Turn Point (Stuart Island), then to Kellet Bluff (Henry Island), then to Lime Kiln (San Juan Island) then to the intersection of one hundred twenty-three degrees seven minutes west longitude and forty-eight degrees twenty-five minutes north latitude then to the international boundary. The board shall correspond with the Pacific pilotage authority from time to time to ensure the provisions of this section are enforced. If any exempted vessel does not comply with these provisions it shall be deemed to be in violation of this section and subject to the penalties provided in RCW 88.16.150 as now or hereafter amended and liable to pilotage fees as determined by the board. The board shall investigate any accident on the waters covered by this chapter involving a Canadian pilot and shall include the results in its annual report. [2017 c 88 § 1; 2012 c 81 § 1; 2008 c 128 § 3; 1996 c 144 § 1; 1995 c 174 § 1; 1987 c 194 § 2; 1977 ex.s. c 337 § 6; 1971 ex.s. c 297 § 3; 1967 c 15 § 3; 1935 c 18 § 4; RRS § 9871-4.]

Intent—1987 c 194: "The legislature intends to provide a limited exemption from the provisions of this chapter for a specified class of small vessels registered as passenger vessels or yachts. It is not the intent of the legislature that such an exemption shall be a precedent for future exemptions of other classes of vessels from the provisions of this chapter." [1987 c 194 § 1.]

Additional notes found at www.leg.wa.gov

Title 90

WATER RIGHTS—ENVIRONMENT

Chapters

- 90.56 Oil and hazardous substance spill prevention and response.**
90.71 Puget sound water quality protection.

Chapter 90.56 RCW

OIL AND HAZARDOUS SUBSTANCE SPILL PREVENTION AND RESPONSE

Sections

- 90.56.210 Contingency plans.

90.56.210 Contingency plans. (1) Each onshore and offshore facility shall have a contingency plan for the containment and cleanup of oil spills from the facility into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills. The department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The department shall require contingency plans, at a minimum, to meet the following standards:

(a) Include full details of the method of response to spills of various sizes from any facility which is covered by the plan;

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the department removing oil and minimizing any damage to the environment resulting from a worst case spill;

(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

(d) Provide procedures for early detection of oil spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;

(e) State the number, training preparedness, and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan;

(f) Incorporate periodic training and drill programs to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;

(g) Describe important features of the surrounding environment, including fish and wildlife habitat, shellfish beds, environmentally and archaeologically sensitive areas, and public facilities. The departments of ecology, fish and wildlife, and natural resources, and the department of archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. The description of archaeologically sensitive areas shall not be required to be included in a contingency plan until it is reviewed and updated pursuant to subsection (9) of this section;

(h) State the means of protecting and mitigating effects on the environment, including fish, shellfish, marine mammals, and other wildlife, and ensure that implementation of

the plan does not pose unacceptable risks to the public or the environment;

(i) Provide arrangements for the repositioning of oil spill containment and cleanup equipment and trained personnel at strategic locations from which they can be deployed to the spill site to promptly and properly remove the spilled oil;

(j) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan;

(k) Provide for disposal of recovered spilled oil in accordance with local, state, and federal laws;

(l) Until a spill prevention plan has been submitted pursuant to RCW 90.56.200, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to, design and operation of a facility, training of personnel, number of personnel, and backup systems designed to prevent a spill;

(m) State the amount and type of equipment available to respond to a spill, where the equipment is located, and the extent to which other contingency plans rely on the same equipment; and

(n) If the department has adopted rules permitting the use of dispersants, the circumstances, if any, and the manner for the application of the dispersants in conformance with the department's rules.

(2)(a) The following shall submit contingency plans to the department within six months after the department adopts rules establishing standards for contingency plans under subsection (1) of this section:

(i) Onshore facilities capable of storing one million gallons or more of oil; and

(ii) Offshore facilities.

(b) Contingency plans for all other onshore and offshore facilities shall be submitted to the department within eighteen months after the department has adopted rules under subsection (1) of this section. The department may adopt a schedule for submission of plans within the eighteen-month period.

(3)(a) The department by rule shall determine the contingency plan requirements for railroads transporting oil in bulk.

(b) For class III railroads transporting oil in bulk that is not crude oil in an amount of forty-nine or more tank car loads per year, the rules adopted under this subsection may not require contingency plans to include:

(i) Contracted access to oil spill response equipment; or

(ii) The completion of more than a total of one basic table-top drill every three years to test the contingency plans.

(c) For class III railroads transporting oil in bulk that is not crude oil in an amount less than forty-nine tank car loads per year, rules adopted under this subsection may only require railroads to submit a basic contingency plan to the department. A basic contingency plan filed under this subsection (3)(c) must be limited to requiring the class III railroads to:

(i) Keep documentation of the basic contingency plan on file with the department at the plan holder's principal place of business and at dispatcher field offices of the railroad;

(ii) Identify and include contact information for the chain of command and other personnel, including employees or spill response contractors, who will be involved in the railroad's response in the event of a spill;

(iii) Include information related to the relevant accident insurance carried by the railroad and provide a certificate of insurance upon request;

(iv) Develop a field document for use by personnel involved in oil handling operations that includes time-critical information regarding basic contingency plan procedures to be used in the initial response to a spill or a threatened spill; and

(v) Annually review the plan for accuracy.

(d) Federal oil spill response plans created pursuant to 33 U.S.C. Sec. 1321 may be submitted in lieu of contingency plans by a class III railroad transporting oil in bulk that is not crude oil.

(e) For the purposes of this section, "class III railroad" has the same meaning as defined by the United States surface transportation board as of January 1, 2017.

(4)(a) The owner or operator of a facility shall submit the contingency plan for the facility.

(b) A person who has contracted with a facility to provide containment and cleanup services and who meets the standards established pursuant to RCW 90.56.240, may submit the plan for any facility for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one facility.

(5) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under this section. The department shall ensure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

(6) In reviewing the contingency plans required by this section, the department shall consider at least the following factors:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(b) The nature and amount of vessel traffic within the area covered by the plan;

(c) The volume and type of oil being transported within the area covered by the plan;

(d) The existence of navigational hazards within the area covered by the plan;

(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(f) The sensitivity of fisheries, shellfish beds, and wildlife and other natural resources within the area covered by the plan;

(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the department; and

(h) The extent to which reasonable, cost-effective measures to prevent a likelihood that a spill will occur have been incorporated into the plan.

(7) The department shall approve a contingency plan only if it determines that the plan meets the requirements of this section and that, if implemented, the plan is capable, in

terms of personnel, materials, and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(8) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the department shall provide to the person submitting the plan a statement indicating that the plan has been approved, the facilities or vessels covered by the plan, and other information the department determines should be included.

(9) An owner or operator of a facility shall notify the department in writing immediately of any significant change of which it is aware affecting its contingency plan, including changes in any factor set forth in this section or in rules adopted by the department. The department may require the owner or operator to update a contingency plan as a result of these changes.

(10) The department by rule shall require contingency plans to be reviewed, updated, if necessary, and resubmitted to the department at least once every five years.

(11) Approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law. [2017 c 239 § 1; 2015 c 274 § 5; 2005 c 78 § 1; 2000 c 69 § 20; 1992 c 73 § 33; 1991 c 200 § 202; 1990 c 116 § 3. Formerly RCW 90.48.371.]

Reviser's note: Chapter 226, Laws of 2004 (Substitute Senate Bill No. 6641) directed that: "If specific funding for the purposes of sections 5 and 6 of this act, referencing sections 5 and 6 of this act by bill or chapter or section number, is not provided by June 30, 2004, in the omnibus transportation appropriations act, sections 5 and 6 of this act are null and void." Substitute Senate Bill No. 6641 was referenced by bill number in chapter 276, Laws of 2004, the omnibus operating appropriations act, in section 301(9), however neither the bill nor the chapter number were mentioned in chapter 229, Laws of 2004, the omnibus transportation appropriations act. Therefore, the chapter 226, Laws of 2004 amendments to RCW 90.56.200 and 90.56.210, did not take effect.

Effective date—2015 c 274: See note following RCW 90.56.005.

Additional notes found at www.leg.wa.gov

Chapter 90.71 RCW

PUGET SOUND WATER QUALITY PROTECTION

Sections

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

(1) "Action agenda" means the comprehensive schedule of projects, programs, and other activities designed to achieve a healthy Puget Sound ecosystem that is authorized and further described in RCW 90.71.300 and 90.71.310.

(2) "Action area" means the geographic areas delineated as provided in RCW 90.71.260.

(3) "Benchmarks" means measurable interim milestones or achievements established to demonstrate progress towards a goal, objective, or outcome.

(4) "Board" means the ecosystem coordination board.

(5) "Council" means the leadership council.

(6) "Environmental indicator" means a physical, biological, or chemical measurement, statistic, or value that provides a proximate gauge, or evidence of, the state or condition of Puget Sound.

(7) "Implementation strategies" means the strategies incorporated on a quadrennial basis in the action agenda developed under RCW 90.71.310.

(8) "Nearshore" means the area beginning at the crest of coastal bluffs and extending seaward through the marine photic zone, and to the head of tide in coastal rivers and streams. "Nearshore" also means both shoreline and estuaries.

(9) "Panel" means the Puget Sound science panel.

(10) "Partnership" means the Puget Sound partnership.

(11) "Puget Sound" means Puget Sound and related inland marine waters, including all salt waters of the state of Washington inside the international boundary line between Washington and British Columbia, and lying east of the junction of the Pacific Ocean and the Strait of Juan de Fuca, and the rivers and streams draining to Puget Sound as mapped by water resource inventory areas 1 through 19 in WAC 173-500-040 as it exists on July 1, 2007.

(12) "Puget Sound partner" means an entity that has been recognized by the partnership, as provided in RCW 90.71.340, as having consistently achieved outstanding progress in implementing the 2020 action agenda.

(13) "Watershed groups" means all groups sponsoring or administering watershed programs, including but not limited to local governments, private sector entities, watershed planning units, watershed councils, shellfish protection areas, regional fishery enhancement groups, marine resources committees including those working with the Northwest straits commission, nearshore groups, and watershed lead entities.

(14) "Watershed programs" means and includes all watershed-level plans, programs, projects, and activities that relate to or may contribute to the protection or restoration of Puget Sound waters. Such programs include jurisdiction-wide programs regardless of whether more than one watershed is addressed. [2017 c 54 § 1; 2007 c 341 § 2; 1996 c 138 § 2.]

90.71.280 Science panel—Duties. (1) The panel shall:

(a) Assist the council, board, and executive director in carrying out the obligations of the partnership, including preparing and updating the action agenda;

(b) As provided in RCW 90.71.290, assist the partnership in developing an ecosystem level strategic science program that:

(i) Addresses monitoring, modeling, data management, and research; and

(ii) Identifies science gaps and recommends research priorities;

(c) Develop and provide oversight of a competitive peer-reviewed process for soliciting, strategically prioritizing, and funding research and modeling projects;

(d) Develop and implement an appropriate process for peer review of monitoring, research, and modeling conducted as part of the strategic science program;

(e) Provide input to the executive director in developing quadrennial implementation strategies; and

(f) Offer an ecosystem-wide perspective on the science work being conducted in Puget Sound and by the partnership.

(2) The panel should collaborate with other scientific groups and consult other scientists in conducting its work. To the maximum extent possible, the panel should seek to integrate the state-sponsored Puget Sound science program with the Puget Sound science activities of federal agencies, including working toward an integrated research agenda and Puget Sound science work plan.

(3) By July 31, 2008, the panel shall identify environmental indicators measuring the health of Puget Sound, and recommend environmental benchmarks that need to be achieved to meet the goals of the action agenda. The council shall confer with the panel on incorporating the indicators and benchmarks into the action agenda. [2017 c 54 § 2; 2009 c 99 § 2; 2007 c 341 § 10.]

90.71.290 Science panel—Strategic science program—Puget Sound science update—Quadrennial science work plan. (1) The strategic science program shall be developed by the panel with assistance and staff support provided by the executive director. The science program may include:

(a) Continuation of the Puget Sound assessment and monitoring program, as provided in RCW 90.71.060, as well as other monitoring or modeling programs deemed appropriate by the executive director;

(b) Development of a monitoring program, in addition to the provisions of RCW 90.71.060, including baselines, protocols, guidelines, and quantifiable performance measures, to be recommended as an element of the action agenda;

(c) Recommendations regarding data collection and management to facilitate easy access and use of data by all participating agencies and the public; and

(d) A list of critical research needs.

(2) The strategic science program may not become an official document until a majority of the members of the council votes for its adoption.

(3) A Puget Sound science update shall be developed by the panel with assistance and staff support provided by the executive director. The panel shall submit the initial update to the executive director by April 2010, and subsequent updates as necessary to reflect new scientific understandings. The update shall:

(a) Describe the current scientific understanding of various physical attributes of Puget Sound;

(b) Serve as the scientific basis for the selection of environmental indicators measuring the health of Puget Sound; and

(c) Serve as the scientific basis for the status and trends of those environmental indicators.

(4) The executive director shall provide the Puget Sound science update to the Washington academy of sciences, the governor, and appropriate legislative committees, and include:

(a) A summary of information in existing updates; and

(b) Changes adopted in subsequent updates and in the state of the Sound reports produced pursuant to RCW 90.71.370.

(5) A quadrennial science work plan shall be developed by the panel, with assistance and staff support provided by

the executive director, and approved by the council. The quadrennial science work plan shall include, at a minimum:

- (a) Identification of recommendations from scientific and technical reports relating to Puget Sound;
- (b) A description of the Puget Sound science-related activities being conducted by various entities in the region, including studies, models, monitoring, research, and other appropriate activities;
- (c) A description of whether the ongoing work addresses the recommendations and, if not, identification of necessary actions to fill gaps;
- (d) Identification of specific quadrennial science work actions to be done over the course of the work plan, and how these actions address science needs in Puget Sound; and
- (e) Recommendations for improvements to the ongoing science work in Puget Sound. [2017 c 54 § 3; 2007 c 341 § 11.]

90.71.310 Action agenda—Development—Elements revision and updates. (1) The council shall develop a science-based action agenda that leads to the recovery of Puget Sound by 2020 and achievement of the goals and objectives established in RCW 90.71.300. The action agenda shall:

- (a) Address all geographic areas of Puget Sound including upland areas and tributary rivers and streams that affect Puget Sound;
- (b) Describe the problems affecting Puget Sound's health using supporting scientific data, and provide a summary of the historical environmental health conditions of Puget Sound so as to determine past levels of pollution and restorative actions that have established the current health conditions of Puget Sound;
- (c) Meet the goals and objectives described in RCW 90.71.300, including measurable outcomes for each goal and objective specifically describing what will be achieved, how it will be quantified, and how progress towards outcomes will be measured. The action agenda shall include near-term and long-term benchmarks designed to ensure continuous progress needed to reach the goals, objectives, and designated outcomes by 2020. The council shall consult with the panel in developing these elements of the plan;
- (d) Identify and prioritize the strategies and actions necessary to restore and protect Puget Sound and to achieve the goals and objectives described in RCW 90.71.300;
- (e) Identify the agency, entity, or person responsible for completing the necessary strategies and actions, and potential sources of funding;
- (f) Include prioritized actions identified through the assembled proposals from each of the seven action areas and the identification and assessment of ecosystem scale programs as provided in RCW 90.71.260;
- (g) Include specific actions to address aquatic rehabilitation zone one, as defined in RCW 90.88.010;
- (h) Incorporate any additional goals adopted by the council; and
- (i) Incorporate appropriate actions to carry out the quadrennial science work plan created in RCW 90.71.290.

(2) In developing the action agenda and any subsequent revisions, the council shall, when appropriate, incorporate the following:

(a) Water quality, water quantity, sediment quality, watershed, marine resource, and habitat restoration plans created by governmental agencies, watershed groups, and marine and shoreline groups. The council shall consult with the board in incorporating these plans;

(b) Recovery plans for salmon, orca, and other species in Puget Sound listed under the federal endangered species act;

(c) Existing plans and agreements signed by the governor, the commissioner of public lands, other state officials, or by federal agencies;

(d) Appropriate portions of the Puget Sound water quality management plan existing on July 1, 2007.

(3) Until the action agenda is adopted, the existing Puget Sound management plan and the 2007-09 Puget Sound biennial plan shall remain in effect. The existing Puget Sound management plan shall also continue to serve as the comprehensive conservation and management plan for the purposes of the national estuary program described in section 320 of the federal clean water act, until replaced by the action agenda and approved by the United States environmental protection agency as the new comprehensive conservation and management plan.

(4) The council shall adopt the action agenda by December 1, 2008. The council shall revise the action agenda as needed, and revise the implementation strategies every four years using an adaptive management process informed by tracking actions and monitoring results in Puget Sound. In revising the action agenda and the implementation strategies, the council shall consult the panel and the board and provide opportunity for public review and comment. Quadrennial updates shall:

(a) Contain a detailed description of prioritized actions necessary in the quadrennial time period to achieve the goals, objectives, outcomes, and benchmarks of progress identified in the action agenda;

(b) Identify the agency, entity, or person responsible for completing the necessary action; and

(c) Establish quadrennial benchmarks for near-term actions.

(5) The action agenda shall be organized and maintained in a single document to facilitate public accessibility to the plan. [2017 c 54 § 4; 2008 c 329 § 926; 2007 c 341 § 13.]

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

90.71.420 Report to the legislature. Nothing in this chapter may be construed to relieve the partnership of the need to provide a written report to the legislature each biennium pursuant to RCW 90.71.370(3), which must also include references to ongoing science-related activities and monitoring efforts that inform the findings of the report. [2017 c 54 § 5.]